

ORDINANCE 437

AN ORDINANCE OF THE CITY OF SOLANA BEACH, CALIFORNIA, CLARIFYING THE CITY'S PROHIBITION OF PLASTIC CARRY-OUT BAGS AS IT RELATES TO RESTAURANTS AND ADDING SUBSECTION 5.01.040(d) TO THE SOLANA BEACH MUNICIPAL CODE

WHEREAS, on April 25, 2012, the City Council introduced Ordinance 435, which was adopted at the second reading on May 9, 2012.

WHEREAS, certain industry representatives threatened litigation against the City if restaurants are not explicitly exempted from the ordinance citing alleged preemption by the California Retail Food Code; and

WHEREAS, although the merits of this argument have yet to be fully litigated, the City Council has directed Staff to amend the ordinance in order to avoid potential litigation.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SOLANA BEACH DOES ORDAIN AS FOLLOWS:

Section 1. Beginning with subsection (h), Section 5.01.010 of the Solana Beach Municipal Code is hereby amended to read as follows:

Section 5.01.010 Definitions

(h) "Restaurant" means any person or establishment doing business within the City of Solana Beach that provides prepared food or beverages for consumption on or off its premises such as a restaurant, café, bakery, grocery or convenience store food counter or delicatessen, or catering truck vehicle.

(i) "Retail Establishment" means any person, including any corporation, partnership, business, facility, vendor, organization or individual that sells or provides merchandise, goods or materials, including, without limitation, clothing, food, or personal items of any kind, directly to a customer; Retail Establishment includes, without limitation, any Grocery Store, department store, hardware store, Pharmacy, liquor store, restaurant, catering truck, convenience store, and any other retail store or vendor.

(j) "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; (2) has a minimum volume of 15 liters; (3) is machine washable or is made from a material that can be cleaned or disinfected; (4) does not contain lead, cadmium, or any

other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags; (5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and (6) if made of plastic, is a minimum of at least 2.25 mils thick.

(k) "Single-Use Plastic Carry-Out Bag" means any bag that is less than 2.25 mils thick and is made predominately of plastic derived from petroleum or from bio-based sources, such as corn or other plant sources. Single-Use Carry-Out Bags do not include Product Bags as defined in this Chapter.

(l) "Vendor" means any store, shop, restaurant, sales outlet or other commercial establishment located within or doing business within the City of Solana Beach, which provides perishable or nonperishable goods.

Section 2. Section 5.01.040(d) of the Solana Beach Municipal Code is hereby added to read as follows:

(d) The provision of Single-Use Plastic Carry-Out Bags at Restaurants as defined in this Chapter is not prohibited.

Section 3. CEQA Finding. The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment. The Ordinance merely clarifies existing Ordinance No. 435, expressly exempting restaurants from the single use plastic carry-out bag ban. It is therefore exempt from California Environmental Quality Act review pursuant to 14 California Code of Regulations Section 15061(b)(3) and the reasoning in the California Supreme Court case *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal. 4th 155 (2011).

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 5. Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Solana Beach, California, on the 11th day of July 2012; and

THEREAFTER ADOPTED at a regular meeting of the City Council of the City of Solana Beach, California, on the ___ day of ____, 2012, by the following vote:

AYES: Councilmembers –
NOES: Councilmembers –
ABSTAIN: Councilmembers –
ABSENT: Councilmembers –

JOE G. KELLEJIAN, Mayor

APPROVED AS TO FORM:

ATTEST:

JOHANNA N. CANLAS, City Attorney

ANGELA IVEY, City Clerk