

ORDINANCE NO. 551 N. S.

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TIBURON ADDING
CHAPTER 10A TO TITLE III OF THE TIBURON MUNICIPAL CODE
WITH RESPECT TO REGULATION OF CARRYOUT BAGS**

SECTION 1. FINDINGS.

- A. The Town Council held duly noticed public hearings on July 2 and July 16, 2014 and has heard and considered all public testimony on the proposed Ordinance.
- B. The Town Council finds that all notices and procedures required by law attendant to the adoption of this Ordinance have been followed.
- C. The Town Council finds that the actions made by this Ordinance are necessary for the protection of the public health, safety, and welfare for the following reasons:
- (1) The manufacture and distribution of single-use carryout bags requires utilization of finite natural resources.
 - (2) The use of single-use shopping bags have severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, water consumption and solid waste generation.
 - (3) Plastic bag litter results in costs to public agencies, including the Town of Tiburon, through necessary removal of bag debris from storm drains, public roadways and open spaces that are owned and maintained by those public agencies, including the Town of Tiburon.
 - (4) Statewide the rate of recycling of plastic bags is only approximately five percent (5%).

It is the desire of the Town of Tiburon to conserve natural resources, to protect wildlife and natural habitat, to reduce waste, litter and marine pollution and to protect the public health and welfare, and adoption of the ordinance will further these objectives.

- D. The Town Council finds that the actions made by this Ordinance are consistent with the goals and polices of the Tiburon General Plan and other adopted ordinances and regulations of the Town of Tiburon.
- E. The Town Council finds that adoption of this ordinance would comply with the requirements of the California Environmental Quality Act (CEQA) as described below:
- (1) The Town Council finds that the project is exempt from the requirements of the California Environmental Quality Act per Section 15307 of the CEQA Guidelines. There is substantial evidence in the record that plastic single-use carryout bags affect marine natural resources, as such bags constitute a substantial portion of man-made marine debris and degrade into smaller pieces which are more difficult to remove from the environment and are consumed by wildlife. The manufacture, transport and recycling of

reusable bags uses far less natural resources than plastic disposable bags and only a small fraction of all plastic bags are recycled.

(2) The Town Council finds that the project is exempt from the requirements of the California Environmental Quality Act per Section 15308 of the CEQA Guidelines. There is substantial evidence in the record that because of their shape and light weight, plastic bags are highly windblown throughout the urban environment and into creeks, wetlands and the Bay. Plastic bags also comprise a large portion of storm drain debris and man-made marine debris and represent a significant threat to wildlife.

(3) The Town Council finds that the project is exempt from the requirements of the California Environmental Quality Act per Section 15061 (b[3]) of the CEQA Guidelines. Due to the small population and limited commercial areas of Tiburon create a certainty that the adoption of this ordinance regulating plastic carryout bags would not possibly have a significant effect on the environment.

SECTION 2. ADOPTION OF CHAPTER 10A.

Chapter 10A (Carryout Bags) is hereby added to Title III of the Tiburon Municipal Code to read as follows:

Chapter 10A CARRYOUT BAGS

Sections:

10A.010 Title.

10A.020 Purpose and Intent.

10A.030 Definitions.

10A.040 Plastic carryout bags prohibited.

10A.050 Permitted bags regulated.

10A.060 Reusable bags regulated.

10A.070 Exempt customers.

10A.080 Enforcement; violations; penalties; cumulative remedies.

10A.090 No conflict with federal or state law.

10A.010 Title.

This chapter shall be known as the "Town of Tiburon Carryout Bag Ordinance" and may be so cited.

10A.020 Purpose and Intent.

The purpose of this chapter is to reduce harmful waste from entering the environment by regulating Single Use Carryout Bags in Stores and generally requiring Reusable Bags or Recyclable Paper Carryout Bags in their place.

10A.030 Definitions.

The following definitions apply to this chapter:

- A. "Carryout Bag" means a bag intended to convey or protect goods, products or packaged food products provided by a Store to a Customer at the point of sale.
- B. "Customer" means any person purchasing goods from a Store.
- C. "Operator" means the person in control of, or having the responsibility for, the operation of a Store, which may include, but is not limited to, the owner of the Store.
- D. "Plastic Carryout Bag" means any bag made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or other plant sources, which is provided to a Customer at the point of sale. Plastic Carryout Bag includes compostable and biodegradable bags but does not include Reusable Bags or Product Bags.
- E. "Postconsumer Recycled Material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer Recycled Material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.
- F. "Product Bag" means any bag without handles used exclusively to carry produce, meats, or other food items such as bulk foods to the point of sale inside a Store or to prevent such food items from coming into direct contact with other purchased items.
- G. "Recyclable" means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.
- H. "Recyclable Paper Carryout Bag" means a paper bag that meets all of the following requirements: (1) contains no old growth fiber, (2) is one hundred percent (100%) Recyclable overall and contains a minimum of forty percent (40%) Postconsumer Recycled Material; (3) is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; (4) is accepted for recycling in curbside programs in the Town of Tiburon; (5) has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the percentage of Postconsumer Recycled Material used; and (6) displays the word "Recyclable" in a highly visible manner on the outside of the bag.
- I. "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 chapter 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; (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.

J. "Single Use Carryout Bag" means a bag made of plastic, paper, or other material, that is provided by a Store to a Customer at the point of sale that is not a Reusable Bag as defined in this chapter. A Single Use Carryout Bag does not include a Product Bag or a bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the California Business and Professions Code to a Customer purchasing a prescription medication.

K. "Store" means a retail establishment located within the Town of Tiburon that meets any one or more of the following definitions:

1. A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000) or more that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;
2. A store of at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or
3. A drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.

L. "Town Manager" means the town manager of the town or his or her designee.

10A.040 Plastic carryout bags prohibited.

A. No Store shall provide to any Customer a Plastic Carryout Bag.

B. This prohibition applies to bags provided for the purpose of carrying away goods from the point of sale and does not apply to Product Bags.

10A.050 Permitted bags regulated.

All Stores shall provide or make available to a Customer only Recyclable Paper Carryout Bags or Reusable Bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this chapter. Nothing in this chapter prohibits a Customer from using a bag of any type that is brought to the Store by that Customer or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the Store.

10A.060 Reusable bags regulated.

- A. All Stores shall make Reusable Bags available for purchase by a Customer.
- B. Each Store is strongly encouraged to educate its employees and staff to promote Reusable Bags and to post signs encouraging Customers to use Reusable Bags.
- C. Each Store is strongly encouraged to charge for a Reusable Bag a price commensurate with the cost to procure the Reusable Bag, in order to encourage maximum reusability and not cause the Reusable Bags to be treated as throw-away items.

10A.070 Exempt customers.

All Stores must provide at the point of sale, free of charge, either Reusable Bags or Recyclable Paper Carryout Bags or both, at the Store Operator's option, to any Customer participating either in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code or in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code.

10A.080 Enforcement; violations; penalties; cumulative remedies.

- A. The Town Manager has primary responsibility for enforcement of this chapter. The Town Manager is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, investigating violations, issuing fines and entering the premises of any Store during business hours.
- B. If the Town Manager determines that a violation of this chapter has occurred, he/she will issue a written warning notice to the Operator of a Store that a violation has occurred and the potential penalties that will apply for future violations.
- C. Any Store that violates or fails to comply with any of the requirements of this chapter after a written warning notice has been issued for that violation shall be guilty of an infraction.
- D. Violations of this chapter shall be punishable and subject to remedy as follows:
 - (1) Violations of this chapter will be subject to enforcement under title VI, chapter 31 of this code, which may include, without limitation, a citation assessing a monetary fine not to exceed two hundred fifty dollars per violation. The town council may adjust the monetary fine amount for violations from time to time by resolution.
 - (2) Any property owner or employee, agent or contractor working for a property owner who violates this chapter may also be considered guilty of an infraction, and each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. Such infraction shall be punishable by a monetary fine not to exceed two hundred fifty dollars. The town council may adjust the monetary fine amount for violations from time to time by resolution.
 - (3) Violations of this chapter shall be deemed a public nuisance. In addition to other remedies provided in this section, the Town may summarily abate any such violation or

bring civil suit to abate the same, or use other methods of enforcement as set forth in chapter 31 of the Tiburon Municipal Code.

E. The remedies provided in this section shall be cumulative and not exclusive.

10A.090 No conflict with federal or state law.

Nothing in this chapter is intended to create any requirement, power or duty that is in conflict with any federal or state law.

SECTION 3. SEVERABILITY.


If any section, subsection, clause, sentence, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Town Council of the Town of Tiburon hereby declares that it would have passed this Ordinance, any section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

SECTION 4. EFFECTIVE DATE.


This Ordinance shall take effect and be in force thirty (30) days after the date of adoption, and before the expiration of fifteen (15) days after its adoption a copy of the ordinance shall be published, with the names of the members voting for and against it, at least once in a newspaper of general circulation in the Town of Tiburon.

This ordinance was read and introduced at a regular meeting of the Town Council of the Town of Tiburon, held on the 16th day of July, 2014, and was adopted at a regular meeting of the Town Council of the Town of Tiburon, held on the 3rd day of September, 2014, by the following vote:

AYES:	COUNCILMEMBERS:	Doyle, Fraser, Fredericks, O'Donnell. Tollini
NAYS:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	None


 ALICE FREDERICKS, MAYOR
 TOWN OF TIBURON

ATTEST:


 DIANE CRANE IACOPI, TOWN CLERK