

ORDINANCE NO. _____

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UKIAH
AMENDING DIVISION 5 OF THE UKIAH CITY CODE BY ADDING
CHAPTER 9, ENTITLED: "DISPOSABLE BAG REDUCTION"**

The City Council hereby ordains as follows.

SECTION ONE – FINDINGS AND DECLARATIONS

The City Council hereby finds and declares as follows.

1. Scientific evidence has shown that the use of all single-use shopping bags (plastic, paper, biodegradable) has severe environmental impacts, including greenhouse gas (GHG) emissions, litter, harm to wildlife, water consumption and solid waste generation.
2. There are retail establishments in the City of Ukiah ("City") which provide single-use, disposable carryout bags to their Customers.
3. Many of these single-use carryout bags are made from plastic or other material that does not readily decompose.
4. Billions of single-use plastic bags are used annually in California but only a small percentage are recycled.
5. On September 17, 2011, the Ukiah Friends of Gibson Creek, a local creek advocacy group, conducted a four-hour clean-up of a one-mile stretch of Gibson Creek and found 241 plastic bags.
6. Studies have documented the prevalence of single-use plastic carryout bags littering the environment, blocking storm drains and fouling beaches.
7. Typically, the City's taxpayers must incur clean-up costs associated with discarded single-use plastic bags.
8. Plastic bags have been found in the Russian River which flows to the ocean strongly suggesting that the use of plastic bags in Ukiah contributes to marine debris and is hazardous to marine animals and birds which confuse single-use plastic fragments for a source of food resulting in injury and death to birds and marine animals.
9. Of all single-use bags, single-use plastic bags have the greatest impacts on litter and marine life.
10. Single-use paper bags result in greenhouse gas emissions, atmospheric acidification, water consumption, and ozone production.
11. From an overall environmental and economic perspective, the best alternative to single-use plastic and paper carryout bags is a shift to reusable bags.

12. There are environmentally superior and economically feasible alternatives to single-use carryout bags readily available.
13. It is the desire of the City Council to conserve resources, reduce the amount of waste, litter and marine pollution that are attributable to the use of single use bags, and to protect the general health and welfare of the public as well as to protect wildlife, all of which activities increase the quality of life for the Ukiah residents and visitors.
14. Studies document that banning plastic bags and placing fees on paper bags will dramatically reduce the use of both types of single use bags.
15. The City Council finds that it will discourage the use of single use paper bags and encourage the use of reusable carryout bags, if a store is required to charge the Customer who uses the disposal paper bag for the cost of the bag rather than spreading that cost among all of its customers by including the cost in the prices charged for its merchandise. Section 4515.E is included in the Ukiah City Code solely for this reason and not to raise revenue for a general or special purpose of the City.
16. While the City Council recognizes carryout bag regulation is a matter of statewide interest and concern that is best applied uniformly throughout the state, in the absence of statewide regulation, it is in the best interests of the City and its residents for the City to regulate carryout bags as described herein.
17. The regulation of single use shopping bags as proposed herein promotes the general health and welfare of the public by:
 - A. Eliminating a significant contributor to local litter and the associated aesthetic impact to the community.
 - B. Reducing impacts to animals locally and regionally by eliminating a man-made item that studies show wildlife mistake for a food source, eat, and become injured and even die.
 - C. Reducing greenhouse gas emissions, atmospheric acidification, water consumption, and ozone production.

SECTION TWO

Chapter 9 entitled: "DISPOSABLE BAG REDUCTION," is hereby added to Division 5 (Health and Sanitation) of the Ukiah City Code as follows:

"CHAPTER 9: DISPOSABLE BAG REDUCTION

Article 1	Definitions
Article 2	Carryout Bag Regulations
Article 3	Effective Date
Article 4	Violations and Penalties

Article 1: DEFINITIONS - For the purpose of this chapter, the following definitions shall apply to the capitalized terms, unless the context clearly indicates or requires a different meaning.

§4514. Definitions

Customer: Any person obtaining goods from a Store.

Effective Date: The date this ordinance first becomes effective, not the date it first applies to a class of Stores pursuant to Section 3516.

Prepared Food: Foods or beverages which are prepared on the premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed. *Prepared Food* does not include any raw, uncooked meat product or fruits or vegetables which are chopped, squeezed, or mixed.

Public Eating Establishment: A restaurant, take-out food establishment, or any other business that receives 90% or more of its revenue from the sale of *Prepared Food* and beverages, including alcoholic beverages, to be eaten on or off its premises.

Postconsumer Recycled Content: A material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer Recycled Content does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

Recycled-Content Paper Bag: A paper carryout bag provided by a Store to a Customer at the point of purchase that meets all of the following requirements:

A. Contains a minimum of 40 percent Postconsumer Recycled Content, except a 350 cubic inch or smaller recycled-content paper bag shall contain a minimum of 20 percent Postconsumer Recycled Content.

B. Is accepted for recycling in the curbside waste collection program of the City.

C. Has printed on the bag the name of the manufacturer and the minimum percentage of Postconsumer Recycled Content.

Reusable Carryout Bag: A bag with handles that is specifically designed and manufactured for multiple reuse, and which has been certified by the manufacturer not to contain lead, cadmium, or any other heavy metal in toxic amounts as established by the United States Pharmacopeia Convention (USP), and is either:

A. Made of cloth or other machine washable fabric, or

B. Made of durable plastic that is at least 2.25 mils thick and is specifically designed and manufactured to carry a minimum of 22 pounds for at least 125 times over a distance of at least 175 feet.

Single-Use Carryout Bag: A bag made of plastic, paper, or other material that is provided by a Store to a Customer at the point of purchase and that is not a Reusable Carryout Bag. A Single-Use Carryout Bag does not include (1) a bag provided by a pharmacy licensed pursuant

to Chapter 9 (commencing with Section 4000) of Division 2 of the Cal. Business and Professions Code to a Customer purchasing a prescription medication; (2) a bag used by Customers before the point of purchase to (a) package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items; (b) contain or wrap frozen foods, meat, or fish, whether prepackaged or not; (c) contain or wrap flowers, potted plants, or other items where dampness may be a problem; (d) contain unwrapped prepared foods or bakery goods; or (e) separate or protect individual items prior to placing them in a carryout bag; or (3) a newspaper bag, door-hanger bag, laundry-cleaning bag, or bag sold in a multiple package of bags intended for use as garbage, pet waste, or yard waste bags.

Store: A retail establishment that routinely provides carryout bags to Customers at the point of sale for items purchased there and which sells perishable or nonperishable goods. The term Store does not include a Public Eating Establishment.

Article 2: CARRYOUT BAG REGULATIONS.

§4515. Carryout Bag Regulations

~~A. A Store shall not provide a Single-Use Carryout Bag to a Customer at the point of purchase, except as provided in this section.~~

B. Stores are prohibited from using plastic Single-Use Carryout Bags.

C. A Store shall make Reusable Carryout Bags available for purchase by a Customer.

D. A Store may provide Reusable Carryout Bags to customers at no cost, until 18 months after the effective date of this ordinance or six months after the store is required to comply with the ordinance, whichever is later, only when combined with a time-limited store promotional program to promote the use of Reusable Grocery Bags.

E. A Store may provide to a Customer a Recycled-Content Paper Bag or a Reusable Carryout Bag upon request but shall charge the Customer, except as provided in subdivision (F), an amount sufficient to recover the Store's full cost of providing the bag, but not less than 10 cents per bag.

F. A Store will not be required to charge a customer for a Recycled-Content Paper Bag of less than 250 cubic inches capacity.

G. For any Recycled-Content Paper Bag or a Reusable Carryout Bag sold to a customer, the amount of the sale of the bag shall be separately itemized on the sales receipt. No store shall rebate or otherwise reimburse a Customer any portion of the charge required for a Recycled-Content Paper Bag.

Article 3: APPLICATION TO DIFFERENT CLASSES OF STORES

§4516 – Application to Different Classes of Stores

Different classes of Stores shall become subject to and obligated to comply with this Ordinance as follows:

- A. From and after one hundred and eighty (180) days from the Effective Date for:
- (1) A full-line, self-service retail Store with gross annual sales of three million dollars (\$3,000,000) or more and which sells a line of dry grocery, canned goods, nonfood items and some perishable items; and
 - (2) A Store with over 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 Tax Code) and has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.
- B. From and after five hundred and forty-five (545) days from the Effective Date of this ordinance for all other Stores.
- C. The provisions of this Ordinance do not apply to Public Eating Establishments.

Article 4: VIOLATIONS AND PENALTIES.

§4517 – Violations and Penalties

A. Any action to enforce this Ordinance must be preceded by delivery of a written warning to the Store where a violation has occurred. The warning shall be personally delivered to the Store manager or mailed by registered or certified U.S. Mail to the Store. No further enforcement action may be taken against the Store for that violation, if the Store cures the violation within thirty (30) days after receipt of the written warning and does not commit another violation within six (6) months after receipt of the written warning.

B. Any person, firm or corporation who violates this Ordinance shall be guilty of an infraction, and upon conviction thereof, shall be punished by fine not exceeding (1) \$100.00 for a first violation, (2) \$200.00 for a second violation within the same year, and (3) \$500.00 for each additional violation within the same year.

C. Any violation of this Chapter 9 may be enforced through any applicable administrative enforcement procedures contained in the Ukiah City Code. The City Manager, or his or her designee, is authorized to take any and all other actions authorized by law which are reasonable and necessary to enforce this Chapter, including, but not limited to, investigating violations, and imposing administrative fines in amounts as may be established from time to time by ordinance or resolution of the City Council.

D. In addition to the administrative enforcement procedures described above, the City Council may authorize the City Attorney to pursue judicial enforcement of this Chapter through a civil action.

E. A violation of any provision of this Ordinance by any person, firm or corporation shall be subject to a civil action in any court of competent jurisdiction, including the small claims court, by a customer, public interest organization, or the City to recover any damages caused by the violation and a civil penalty of \$1,000 or 10% of actual damages, whichever is higher, for every such violation. For any willful violation, the Customer, public interest organization or City may recover treble damages. Nothing in this subsection shall prohibit the filing of an action as

authorized herein as a class action. The prevailing party in any action filed pursuant to this subsection shall be entitled to recover its reasonable attorneys' fees to be determined by the court.

F. No remedy contained in this Article 4 is intended to be exclusive of any other remedy contained herein and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise.

SECTION THREE

1. **SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. The City Council hereby declares that it would have adopted this Ordinance and any section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

2. **EFFECTIVE DATE.** This Ordinance shall be published as required by law in a newspaper of general circulation in the City of Ukiah, and shall become effective thirty (30) days after its adoption but only when an ordinance with the same substantive provisions become effective in Mendocino County.

Introduced by title only on April 18, 2012, by the following roll call vote:

AYES: Councilmembers Thomas, Rodin, Baldwin, Vice Mayor Crane, and Mayor Landis

NOES: None.

ABSENT: None.

ABSTAIN: None.

Adopted on _____, 2012 by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mary Anne Landis, Mayor

ATTEST:

JoAnne Currie, City Clerk