

ORDINANCE NO. 12-898

AN ORDINANCE OF THE CITY OF WEST HOLLYWOOD AMENDING TITLE 15 OF THE WEST HOLLYWOOD MUNICIPAL CODE BANNING SINGLE-USE PLASTIC CARRYOUT SHOPPING BAGS AND IMPOSING A FEE ON RECYCLABLE PAPER BAGS

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Subsection e. of Section 1.08.010 of Title 1, Chapter 1.08 of the West Hollywood Municipal Code is amended to add, in proper numerical sequence, to the list of offenses subject to administrative penalties:

“Chapter 15.72: Plastic Carryout Shopping Bags”

SECTION 2. A new Chapter 15.72 is added to Article 3 of Title 15 of the West Hollywood Municipal Code to read as follows:

Chapter 15.72 Plastic Carryout Shopping Bags

15.72.010 Definitions

The following definitions apply to this Chapter:

- A. “Affected retail establishment” means any retail establishment located within or doing business within the geographical limits of the City of West Hollywood, including vendors at City-sponsored events, City-owned facilities, and events held on City property, but excluding certified Farmers’ Markets and dry cleaners.
- B. “Food provider” means any person or establishment in the City of West Hollywood, that provides prepared food for public consumption on or off its premises and includes, without limitation, any store, shop, sales outlet, restaurant, Grocery Store, delicatessen, or catering truck or vehicle.
- C. “Customer” means any person purchasing goods from a store.
- D. “Grocery store” means any retail establishment that sells groceries, fresh, packaged, canned, dry, prepared or frozen food or beverage products and similar items, and includes, without limitation, supermarkets, and convenience stores, including convenience stores at gasoline stations.

- E. "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.
- F. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.
- G. "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.
- H. "Produce bag" or "product bag" means any bag without handles used exclusively to carry produce, meats, or other food items to the point of sale inside a store or to prevent such food items from coming into direct contact with other purchased items.
- I. "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.
- J. "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 06400; (4) is accepted for recycling in curbside programs in the City (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.
- K. "Retail establishment" means any commercial retail facility that sells goods or provides merchandise directly to the ultimate consumer, including, but not limited to, grocery stores, pharmacies, liquor stores, "mini-marts," clothing stores, newsstands, retail stores and vendors selling goods or merchandise from a kiosk (as that term is used in Title 19).

- L. "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 washable; (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.
  
- M. "Single-use plastic carryout bag" or "plastic carryout bag" means any bag made predominantly of plastic derived from either petroleum or 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, produce bags, or product bags.

#### 15.72.020 Plastic carryout bags prohibited.

No affected retail establishment shall provide plastic carryout bags to customers for the purpose of carrying away goods from the point of sale, except as otherwise provided in Section 15.72.030.

#### 15.72.030 Permitted bags.

- A. Affected retail establishments may provide or make available to a customer recyclable paper carryout bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this Chapter. Non-recyclable paper carryout bags shall not be provided to customers unless they meet the definition of reusable bag.
  
- B. Affected retail establishments shall make reusable bags available to customers either for sale or at no charge.
  
- C. Nothing in this Chapter prohibits customers from using bags of any type that they bring to the store themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the store.

#### 15.72.040 Exceptions.

- A. Affected retail establishments may distribute produce bags for the purpose of preventing food items from coming into direct contact with other purchased items.
- B. Food providers may distribute plastic carryout bags to customers for the purpose of carrying out prepared take-out foods and liquids intended for consumption away from the food provider's premises, and by vendors at Certified Farmers' Markets.

#### 15.72.040 Regulation of recyclable paper carryout bags.

- A. Any affected retail establishment that provides a recyclable paper carryout bag to a customer shall charge the customer 10 cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.
- B. No affected retail establishment shall rebate or otherwise reimburse a customer any portion of the 10-cent (\$0.10) charge required in Subsection A, except as otherwise provided in this Chapter.
- C. All affected retail establishments shall indicate on the customer receipt the number of recyclable paper carryout bags provided and the total amount charged for the bags.
- D. All monies collected by a retail establishment under this Chapter shall be retained by the store and shall be used only for the following purposes: (1) costs associated with complying with the requirements of this Chapter, (2) actual costs of providing recyclable paper carryout bags, or (3) costs associated with a store's educational materials or education campaign encouraging the use of reusable bags, if any.

#### 15.72.050 Exempt Customers

All affected retail establishments must provide at the point of sale, free of charge, either reusable bags or recyclable paper carryout bags, or both, at the store's option, to any customer participating in either 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.

#### 15.72.060 Enforcement and Violation – Penalty

- A. The City Manager, or his or her designee, shall enforce the provisions of this Chapter. Nothing in this Chapter shall be construed to create a private cause of action. The City Manager or his/her designee, shall be authorized to establish regulations and to take any and all actions

reasonable and necessary to obtain compliance with this Chapter, including, but not limited to, inspecting any retail establishment's premises to verify compliance.

- B. If the City Manager, or his/her designee, 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 person 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 subject to the Administrative Citation procedures in Chapter 1.08. .
- D. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- E. Each violation of this Chapter shall be considered a separate offense.
- F. The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in this Chapter shall preclude any person from pursuing any other remedies provided by law.

15.70.070 No conflict with federal or state law.

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

SECTION 3. The City Manager, or his or her designee, may exempt an affected retail establishment from the requirements of this chapter for a period of up to one additional year after the operative date of this ordinance, upon sufficient showing by the applicant that the provisions of this chapter would cause undue hardship. This request must be submitted in writing to the City within 60 days of the effective date of this Chapter. The phrase undue hardship includes without limitation:

- 1. Situations where there are no acceptable alternatives to plastic carryout bags for reasons which are unique to the retail establishment;  
or
- 2. Situations where compliance with the requirements of this Code would deprive a person of a legally protected right.

SECTION 4. Affected retail establishments that have entered into agreements for the purchase of plastic carryout bags within the year prior to the

effective date of this ordinance are exempt from the provisions of this chapter for one additional year following its operative date.

**SECTION 5. Operative Date.** This Ordinance shall become operative as to 1) affected retail establishments that meet the definition of a "supermarket" as found in the California Public Resources Code, Section 14526.5 and affected retail establishments of at least 10,000 square feet, six (6) months after its effective date, and 2) all remaining affected retail establishments including establishments smaller than 10,000 square feet, twelve (12) months after its effective date. The ordinance is effective upon adoption.

**SECTION 6. California Environmental Quality Act (CEQA) Finding.** This ordinance has been evaluated in accordance with the California Environmental Quality Act with the preparation of an Addendum to the Los Angeles County's certified Final Environmental Impact Report for Ordinances to Ban Plastic Carryout Bags in Los Angeles County, State Clearinghouse No. 2009111104 ("FEIR"). The Addendum prepared for this project reflects the City's independent judgment and analysis. The public comment period for the Addendum was from July 3, 2012 to July 30, 2012. The City Council adopted the Addendum, Mitigation Monitoring Program and Statement of Overriding Considerations in Resolution No. 12-4346.

**SECTION 7.** The City Clerk shall certify the adoption of this ordinance.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of West Hollywood at a regular meeting held this 20<sup>th</sup> day of August, 2012 by the following vote:

<b>AYES:</b>	<b>Councilmember:</b>	D'Amico, Duran, Heilman, Mayor Pro Tempore Land and Mayor Prang.
<b>NOES:</b>	<b>Councilmember:</b>	None.
<b>ABSENT:</b>	<b>Councilmember:</b>	None.
<b>ABSTAIN:</b>	<b>Councilmember:</b>	None.

  
JEFFREY PRANG, MAYOR

**ATTEST:**

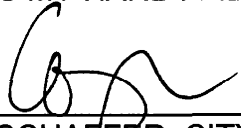
  
COREY SCHAFFER, CITY CLERK

STATE OF CALIFORNIA        )  
COUNTY OF LOS ANGELES    )  
CITY OF WEST HOLLYWOOD    )

I, COREY SCHAFFER, City Clerk of the City of West Hollywood, do hereby certify that the foregoing Ordinance No. 12-898 was duly passed, approved and adopted by the City Council of the City of West Hollywood at a regular meeting held on the 20<sup>th</sup> day of August, 2012, after having its first reading at the regular meeting of said City Council on the 6<sup>th</sup> day of August, 2012.

I further certify that this ordinance was posted in three public places as provided for in Resolution No. 5, adopted the 29<sup>th</sup> day of November, 1984.

WITNESS MY HAND AND OFFICIAL SEAL THIS 21<sup>st</sup> DAY OF August, 2012.



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COREY SCHAFFER, CITY CLERK