

ORDINANCE NO. 2013-03

AN ORDINANCE OF THE CITY OF EL CERRITO REGULATING THE USE OF PLASTIC CARRY-OUT BAGS AND RECYCLABLE PAPER CARRY-OUT BAGS AND PROMOTING THE USE OF REUSABLE BAGS WITHIN THE CITY

SECTION 1. Findings.

WHEREAS, single-use carry-out bags have been associated with significant environmental impacts, including greenhouse gas emissions, harm to wildlife, solid waste generation, and constitute a high percentage of litter, which is unsightly and costly to clean up; and

WHEREAS, littering single-use bags can result in blocked storm drains, fouled waterways, and increased marine debris; and

WHEREAS, even properly disposed or recycled plastic single-use bags cause operational problems at solid waste transfer stations, landfills, and recyclables collection and processing facilities; and

WHEREAS, the City of El Cerrito has a substantial interest in protecting its waterways, environment, and taxpayers from the negative impacts from single-use carry-out bags; and

WHEREAS, there are several alternatives to single-use carry-out bags readily available to El Cerrito residents and shoppers; and

WHEREAS, studies document that banning single-use plastic bags and charging for single-use paper bags will dramatically reduce the use of both types of bags; and

WHEREAS, the West Contra Costa Integrated Waste Management Authority (“Authority”) has developed a single-use bag reduction model ordinance for potential consideration and adoption by its member agencies, including El Cerrito; and

WHEREAS, on April 11, 2013 the Authority Board certified an Environmental Impact Report (“EIR”) for its model ordinance and recommended that each Authority member agency consider adopting the model ordinance; and

WHEREAS, the City intends this ordinance to fall within the scope of the Authority’s EIR and has, therefore, modeled this ordinance on the Authority’s draft ordinance; and

WHEREAS, the City has reviewed the Authority’s EIR and finds that there are no significant environmental impacts relating to the City’s adoption of prohibitions on plastic bag use that were not addressed in the Authority’s EIR.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby ordain as follows:

SECTION 2. Amendment of Municipal Code. Title 8 of the El Cerrito Municipal Code is hereby amended to add a new Chapter 8.22 and shall read as follows:

8.22.010 - Title.

This Ordinance shall be known as the El Cerrito Single Use Bag Ordinance. The City of El Cerrito hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

8.22.020 - Operative Date.

This Ordinance shall become operative on January 1, 2014 and shall become enforceable on July 1, 2014.

8.22.030 - Purpose.

It is the intent of the City of El Cerrito in enacting Chapter 8.22 to reduce the common use of single-use carry-out bags and to encourage the use of reusable bags by consumers and retailers in El Cerrito.

8.22.040 - Definitions.

The following definitions apply to this Ordinance:

- A. "Carry-out Bag" means a bag other than a Reusable Bag provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. Carry-out Bags do not include bags provided to the Customer to contain produce, bulk food or meat from a produce, loose bulk food or meat department within a store to the point of sale.
- B. "Customer" means any person purchasing goods from a Retail Establishment.
- C. "Nonprofit Charitable Reuser" means a charitable organization, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.
- D. "Operator" means the person in control of, or having the responsibility for, the operation of a Retail Establishment, which may include, but is not limited to, the owner of the Retail Establishment.

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- E.** “Person” means any natural person, firm, corporation, partnership, or other organization or group however organized.
- F.** “Plastic Bag” means any bag made predominantly of plastic derived from either petroleum, ethylene derived from natural gas, or a biologically-based source, such as corn or other plant sources, which is provided to a Customer at the point of sale. Plastic Bags include: compostable and biodegradable bags but does not include Reusable Bags, Produce Bags, or Product Bags.
- G.** “Postconsumer Recycled Material” means a material that has completed its life cycle as a consumer item, would otherwise be destined for solid waste disposal, but is recycled. "Postconsumer Recycled Material" does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.
- H.** “Prepared Food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the Food Provider's premises. For the purposes of this ordinance, Prepared Food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared Food may be eaten either on or off the premises, also known as "take-out food".
- I.** “Produce Bag” or “Product Bag” means any bag without handles used exclusively to carry produce, meats, or other food or goods to the point of sale inside a Retail Establishment, or to prevent such items from coming into direct contact with other purchased items, or to hold prescription medication dispensed from a pharmacy.
- J.** “Recyclable” means material that can be sorted, cleansed, and reconstituted using El Cerrito’s 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.
- K.** “Recycled Paper Bag” means a paper bag provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment and 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) displays the words “Reusable and Recyclable” in a highly visible manner on the outside of the bag; (5) displays the percentage of Postconsumer Recycled Material used; and (6) and displays the name and location of the manufacturer.

- L. “Restaurant” means a restaurant, take-out food establishment, or any other business that receives 90% or more of its revenue from the sale of Prepared Food to be eaten on or off its premises.
- M. “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; (3) is machine washable or capable of being cleaned and 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) if made of plastic, is a minimum of at least 2.25 millimeters thick.
- N. “Retail Establishment” means any commercial establishment that sells perishable and nonperishable goods including, but not limited to, clothing, food and personal items directly to the Customer, and is located within or doing business within the geographical city limits of the City of El Cerrito. Retail Establishments do not include Restaurants or Nonprofit Charitable Reuser organizations.
- O. “Single-Use Carry-out Bag” means a bag other than a Reusable Bag provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. Single-Use Carry-out Bags do not include bags without handles provided to the Customer to transport produce, bulk food or meat from a produce, bulk food or meat department within a store to the point of sale.

8.22.040 – Plastic Carry-out Bags Prohibited.

- A. No Retail Establishment shall provide a plastic Single-Use Carry-out Bag to a Customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this Ordinance.
- B. This prohibition applies to bags provided for the purpose of carrying away goods from the point of sale and does not apply to Produce Bags or Product Bags.

8.22.060 – Permitted Bags.

All Retail Establishments shall provide or make available to a Customer only Recycled Paper Carry-out 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 Ordinance. Nothing in this Ordinance prohibits Customers from using bags of any type that they bring to the Retail Establishment themselves or from carrying away goods that are not

placed in a bag, in lieu of using bags provided by the store.

8.22.080 – Regulation of Recycled Paper Carry-out Bags.

- A. Any Retail Establishment that provides a Recycled Paper Carry-out Bag or Reusable Bag to a Customer must charge the Customer a minimum charge of five cents (\$0.05) for each bag provided, except as otherwise provided in the Ordinance.
- B. Two years after the Ordinance is enacted a Retail Establishment that provides a Recycled Paper Carry-out Bag or Reusable Bag to a Customer must charge the Customer a minimum charge of ten cents (\$0.10) for each bag provided, except as otherwise provided in the Ordinance.
- C. All Retail Establishments must indicate on the Customer receipt the number of Recycled Paper Carry-out Bags provided and the total amount charged for the bags.
- D. All monies collected by a Retail Establishment under this Ordinance will be retained by the Retail Establishment and may be used for any of the following purposes:
 - 1. Costs associated with complying with the requirements of this Ordinance.
 - 2. Actual costs of providing Recycled Paper Carry-out Bags.
 - 3. Costs associated with a Retail Establishment's educational materials or education campaign encouraging the use of reusable bags, if any.
 - 4. Funding reusable bag give-aways during limited-time store promotions.

8.22.100 - Use of Reusable Bags.

- A. All Retail Establishments may provide Reusable Bags to Customers. If provided, Retail Establishments may provide Reusable Bags either:
 - 1. For sale; or
 - 2. At a minimum charge of ten cents (\$0.10) per bag during limited-time store promotions.
 - 3. Retail Establishments need not charge for Reusable Bags that are given away as part of Reusable Bag giveaway events intended to

promote the use of Reusable Bags, not to exceed a total of 90 days in any consecutive 12-month period.

- B.** Each Retail Establishment is strongly encouraged to educate its staff to promote Reusable Bags and to post signs encouraging Customers to use reusable bags.

8.22.120 – Exemptions

- A.** Retail Establishments may provide at the point of sale, free of charge, either Reusable Bags or Recycled Paper Carry-out Bags or both, at the Retail Establishment's option, to any Customer participating in any of the following programs: (1) 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; (2) 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, the State Department of Social Services Food Stamp program; or (3) other state or federal government-subsidized purchase programs for low-income residents.
- B.** Restaurants and Nonprofit Charitable Resuer organizations are exempt from the provisions of this Chapter as specified in Section 8.22.040 - Definitions.

8.22.140 – Enforcement and Violation – Penalty.

- A.** Any violation of this ordinance is punishable as specified in Chapters 1.08 or 1.14 of the El Cerrito Municipal Code or by any other applicable law.
- B.** The City Manager or his or her designee has primary responsibility for enforcement of this Ordinance. The City Manager is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Ordinance, including, but not limited to, investigating violations, issuing fines and entering the premises of any Retail Establishment during business hours. Other City of El Cerrito staff may assist with this enforcement responsibility by entering the premises of a Retail Establishment as part of their regular inspection functions and reporting any alleged violations to the City Manager.

SECTION 3. Compliance with the California Environmental Quality Act.

The findings for this Ordinance have been determined to be in compliance with the California Environmental Quality Act (“CEQA”). On April 11, 2013, the West Contra Costa Integrated Waste Management Authority (“Authority”) Board adopted Resolution 13-08 certifying the single-use bag reduction Environmental Impact Report (“EIR”) that analyzed the impacts of this single-use bag ordinance if adopted in cities

throughout the Authority, including the City of El Cerrito, as well as neighboring jurisdictions. The EIR was adopted pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et seq. and California Code of Regulations, Title 14, Section 15000 et seq. (“CEQA Guidelines”). The EIR is incorporated by reference herein. Pursuant to Section 15096 of the CEQA Guidelines, the City of El Cerrito acts as a responsible agency for adoption of this ordinance within the City of El Cerrito. Upon independent review of the EIR and all the evidence before it, the City Council makes the following findings:

- A.** The Final Environmental Impact Report is complete, correct, adequate, and prepared in accordance with CEQA, 14 California Code of Regulations section 15000 et seq., and the public comment period; and
- B.** On the basis of the Initial Study, Notice of Preparation, Final EIR, and public comment received by both the Authority and the City of El Cerrito, there is no substantial evidence that the project as proposed will have a significant effect on the environment; and
- C.** Adoption of this ordinance and analysis of the EIR reflects the independent judgment of the City Council of the City of El Cerrito; and
- D.** None of the conditions listed in CEQA Guidelines section 15162(a) are applicable to adoption of this Ordinance, and adoption of this Ordinance is an activity that is part of the program examined by the Authority’s Final EIR and is within the scope of the project described in the Authority’s Final EIR.
- E.** A Notice of Determination shall be filed pursuant to CEQA Guidelines section 15096.

SECTION 4. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the Ordinance. The City Council of the City of El Cerrito hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Ordinance would be subsequently declared invalid.

SECTION 5. 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 6. Effective Date.

This Ordinance shall take effect on January 1, 2014 and be enforced on July 1, 2014; prior to the expiration of fifteen (15) days from the passage thereof, the Ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

The foregoing Ordinance was introduced at a regular meeting of the City Council on August 20, 2013, and passed by the following vote:

AYES: Councilmembers Abelson, Benassini, Friedman and Mayor Lyman
NOES: None
ABSENT: Councilmember Bridges

Adopted and ordered published at a regular meeting of the City Council held on the September, 17, 2013, and passed by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

APPROVED:

Gregory B. Lyman, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on _____, 2013.

Cheryl Morse, City Clerk