ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS
AMENDING CHAPTER 9.41 OF TITLE 9 OF THE MENDOCINO COUNTY CODE
CONCERNING SINGLE-USE CARRYOUT BAGS
OF PUBLIC FOOD ESTABLISHMENTS

WHEREAS, the Board of Supervisors of the County of Mendocino adopted Ordinance 4297 (Single-Use Carryout Bags by Retail Establishments) on June 12, 2012; and

WHEREAS, Public Eating Establishments were specifically exempted from Ordinance 4297 because of a claim that any local regulation of them was preempted by the State Restaurant Code; and

WHEREAS, the environmental problems of plastic single-use carryout bags that motivated the adoption of Ordinance 4297, as set forth in its Findings, are caused as much by Public Eating Establishment takeout bags as by bags from other retail stores; and

WHEREAS, the Court of Appeal of the State of California, First Appellate District, ruled in Case Number A137056 on December 10, 2013 that (1) state law does not preempt local regulation of restaurant carryout bags and (2) such regulation qualifies for a categorical exemption under the California Environmental Quality Act as action to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment;

NOW, THEREFORE, the Board of Supervisors of the County of Mendocino ordains as follows:

Section 1. Legislative Findings.

1. While the Board of Supervisors 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 County and its residents for the County to regulate carryout bags as described herein.
2. The regulation of single-use carryout bags as proposed herein promotes the general health and welfare of the public by reducing the amount of waste, litter and marine pollution that are attributable to single use bags.

3. Carryout bags at Public Eating Establishments should be regulated in the same manner as carryout bags at other retail stores, except that the requirement for a minimum charge for recycled paper bags should be waived because of the particular circumstances of takeout food orders at Public Eating Establishments.

4. Regulation of single-use carryout bags at Public Eating Establishments will have beneficial environmental impacts and no significant adverse environmental impacts.

Section 2. Section 9.41.020 of Chapter 9.41 of the Mendocino County Code is hereby amended to read as follows:

1. The definition of STORE in Section 9.41.020 is amended to read: “Store” means a retail establishment, other than a Certified Farmer’s market, that sells perishable or nonperishable goods, licensed to do business in the County.

2. Section 9.41.030 (CARRYOUT BAG REGULATIONS) is amended to read:

   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. Plastic Single-Use Carryout Bags are prohibited.

   C. A Store may provide Reusable Carryout Bags to Customers at no cost, until 18 months after the effective date of this Ordinance, only when combined with a time-limited Store promotional program to promote the use of Reusable Carryout Bags.

   D. A Store may provide to a Customer a Recycled-Content Paper Bag or a Reusable Carryout Bag upon request but any Store except a Public Eating Establishment shall charge the Customer, except as provided in subdivision (F), not less than 10 cents per bag. Public Eating Establishments may elect to charge or not to charge customers for recycled-content paper bags or reusable carryout bags.

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

Section 3: These ordinance amendments shall take effect 180 days after final approval by the Mendocino County Board of Supervisors.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California on this _____day of ________, 2014, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

WHEREUPON, the Chair declared the Ordinance passed and adopted.

____________________________________
ATTEST:
____________________________________
CARMEL J. ANGELO
Clerk of the Board