

MEMORANDUM

DATE: October 21, 2015

TO: Honorable Mayor and Councilmembers

FROM: Judy Krueger, City Manager's Office

SUBJECT: REQUEST BY DEPUTY MAYOR LOWERY TO DIRECT STAFF, IN COORDINATION WITH THE UTILITIES COMMISSION, TO BEGIN THE PROCESS OF DISCUSSING AND IMPLEMENTING THE EXISTING SINGLE-USE, CARRY-OUT BAG ORDINANCE AS FOUND IN APPENDIX Q OF THE OCEANSIDE ZERO WASTE STRATEGIC RESOURCE MANAGEMENT PLAN

Appendix Q to the Oceanside Zero Waste Strategic Resource Management Plan is attached.

Appendix Q - Sample Plastic Bag Resolution

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OCEANSIDE, CALIFORNIA REGULATING RETAIL ESTABLISHMENTS PROVISION OF SINGLE-USE CARRY-OUT BAGS

THE OCEANSIDE CITY COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS.

WHEREAS, the use of all single-use shopping bags (plastic, paper, biodegradable) has severe environmental impacts, including greenhouse gas (GHG) emissions, litter, harm to wildlife, ground-level ozone formation, atmospheric acidification, water consumption and solid waste generation; and

WHEREAS, there are approximately _____ retail establishments in the City of Oceanside as defined herein, most of which provide single-use, disposable carry-out bags to their customers; and

WHEREAS, many of these single-use carry-out bags are made from plastic or other material that does not readily decompose; and

WHEREAS, approximately Nineteen Billion (19,000,000,000) single-use plastic bags are used annually in California but less than 5% are recycled; and

WHEREAS, numerous studies have documented the prevalence of single-use plastic carry-out bags littering the environment, blocking storm drains and fouling beaches; and

WHEREAS, the City of Oceanside taxpayers must bear the brunt of the clean-up costs of this litter; and

WHEREAS, plastic bags are a significant source of marine debris and are hazardous to marine animals and birds which often confuse single-use plastic carry-out bags for a source of food resulting in injury and death to birds and marine animals; and

WHEREAS, of all single-use bags, single-use plastic bags have the greatest impacts on litter and marine life; and

WHEREAS, the use of single-use paper bags result in greater (GHG) emissions, atmospheric acidification, water consumption, and ozone production than single-use plastic bags; and

WHEREAS, from an overall environmental and economic perspective, the best alternative to single-use plastic and paper carry-out bags is a shift to reusable bags; and

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

WHEREAS, an important goal of the City of Oceanside is to procure and use sustainable products and services; and

WHEREAS, it is the desire of City of Oceanside to conserve resources, reduce the amount of GHG emissions, waste, litter and marine pollution and to protect the public health and

Zero Waste = Focusing on Reducing and Reusing *First*, then Recycling and Composting the Rest 121

welfare as well as to protect wildlife, all of which activities increase the quality of life for the [name of jurisdiction] residents and visitors; and

WHEREAS, studies document that banning plastic bags and placing fees on paper bags will dramatically reduce the use of both types of bags.

SECTION 2. Chapter __ is hereby added to the City of Oceanside Code to read as follows:

CHAPTER __ DISPOSABLE BAG REDUCTION ORDINANCE

An Ordinance for the Chapter 1.1 DISPOSABLE BAG REDUCTION ORDINANCE for the City of Oceanside relating to regulating the use of plastic carryout bags and recyclable paper carryout bags and promoting the use of reusable bags within the City limits.

The City Council of Oceanside ordains as follows:

SECTION 2. Chapter 1.1 reads as follows:

1.1.010 Definitions.

The following definitions apply to this Chapter:

A. "Customer" means any person purchasing goods from a store.

B. "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.

C. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.

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, produce 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. "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.

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 County; (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 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 machine 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.

J. "Store" means any of the following retail establishments located within the City of Oceanside:

(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, foodmart, 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.

1.1.020 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 produce bags or product bags.

1.1.030 Permitted bags.

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 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.

1.1.040 Regulation of recyclable paper carryout bags.

A. Any store that provides a recyclable paper carryout bag to a customer must charge the customer 10 cents (\$.10) for each bag provided, except as otherwise provided in this Chapter.

B. No store shall rebate or otherwise reimburse a customer any portion of the 10-cent (\$.10) charge required in Subsection A, except as otherwise provided in this Chapter.

C. All stores must 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 store under this Chapter will be retained by the store and may be used only for any of 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.

E. All stores must report to the Solid Waste and Recycling Division, on a quarterly basis, the total number of recyclable paper carryout bags provided, the total amount of monies collected for providing recyclable paper carryout bags, and a summary of any efforts a store has undertaken to promote the use of reusable bags by customers in the prior quarter. Such reporting must be done on a form prescribed by the Solid Waste and Recycling Division, and must be signed by a responsible agent or officer of the store confirming that the information provided on the form is accurate and complete. For the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, all quarterly reporting must be submitted no later than 30 days after the end of each quarter.

F. If the reporting required in Subsection E is not timely submitted by a store, such store shall be subject to the fines set forth in Section 1.1.080.

1.1.050 Use of reusable bags.

A. All stores must provide reusable bags to customers, either for sale or at no charge.

B. Each store is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging customers to use reusable bags.

1.1.060 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'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.

1.1.070 Operative date.

This Chapter shall become operative on _____, for stores defined in Subsections J(1) and J(2) of Section 1.1.010. For stores defined in Subsection J(3) of Section 1.1.010, this Chapter shall become operative six months later.

1.1.080 Enforcement and violation-penalty.

A. The Department of Water Utilities has primary responsibility for enforcement of this Chapter. The Director of Water Utilities 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. The Director of the Department of Agricultural Commissioner/Weights and Measures and the Director of Public Health may assist with this enforcement responsibility by entering the premises of a store as part of their regular inspection functions and reporting any alleged violations to the Director of Water Utilities.

B. If the Director of Water Utilities 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. If a store has subsequent violations of this Chapter that are similar in kind to the violation addressed in a written warning notice, the following penalties will be imposed and shall be payable by the operator of the store:

- (1) A fine not exceeding one hundred dollars (\$100.00) for the first violation after the written warning notice is given;
- (2) A fine not exceeding two hundred dollars (\$200.00) for the second violation after the written warning notice is given; or
- (3) A fine not exceeding five hundred dollars (\$500.00) for the third and any subsequent violations after the written warning notice is given.

E. A fine shall be imposed for each day a violation occurs or is allowed to continue.

F. All fines collected pursuant to this Chapter shall be deposited in the Solid Waste

Management Fund of the Department of Water Utilities to assist the department with its costs of implementing and enforcing the requirements of this Chapter.

G. Any store operator who receives a written warning notice or fine may request an administrative review of the accuracy of the determination or the propriety of any fine issued, by filing a written notice of appeal with the Director of Water Utilities no later than 30 days after receipt of a written warning notice or fine, as applicable. The notice of appeal must include all facts supporting the appeal and any statements and evidence, including copies of all written documentation and a list of any witnesses, that the appellant wishes to be considered in connection with the appeal. The appeal will be heard by a hearing officer designated by the Director of Water Utilities. The hearing officer will conduct a hearing concerning the appeal within 45 days from the date that the notice of appeal is filed, or on a later date if agreed upon by the appellant and the City, and will give the appellant 10 days prior written notice of the date of the hearing. The hearing officer may sustain, rescind, or modify the written warning notice or fine, as applicable, by written decision. The hearing officer will have the power to waive any portion of the fine in a manner consistent with the decision. The decision of the hearing officer is final and effective on the date of service of the written decision, is not subject to further administrative review, and constitutes the final administrative decision.

1.1.090 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 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.

1.1.10 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.

Adapted from the County of Los Angeles Plastic Bag Ban Ordinance.⁹²

⁹² For more information refer to their website at <http://www.bragaboutyourbag.com>