

ORDINANCE NO. 2011-282

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALABASAS ADDING CHAPTER 8.17 TO THE CALABASAS MUNICIPAL CODE TO REGULATE THE USE OF PLASTIC CARRYOUT BAGS AND RECYCLABLE PAPER BAGS AND PROMOTE THE USE OF REUSABLE BAGS IN THE CITY OF CALABASAS

THE CITY COUNCIL OF THE CITY OF CALABASAS DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS. The City Council of the City of Calabasas hereby finds and declares as follows:

WHEREAS, plastic carryout bags constitute a high percentage of litter, which is unsightly, costly to clean up, and causes serious negative environmental impacts;¹ and

WHEREAS, the City has a substantial interest in protecting its residents and the environment from negative impacts from plastic carryout bags; and

WHEREAS, on November 16, 2010, Los Angeles County Board of Supervisors approved an Environmental Impact Report ("EIR") and adopted an ordinance banning plastic carryout bags from stores, while requiring stores that provide recyclable paper carryout bags to charge customers ten cents per bag to cover reasonable costs associated with the ordinance; and

WHEREAS, County's ordinance encouraged the 88 incorporated cities within the County to adopt similar ordinances and the County's EIR specifically analyzed the possibility of the 88 incorporated cities adopting ordinances banning plastic carryout bags as encouraged by the County; and

WHEREAS, the City intends this Ordinance No. 2011-281 to fall within the scope of the County's EIR and has therefore modeled this Ordinance No. 2011-281 on the County's ordinance;

¹ *Findings of Fact and Statement of Overriding Considerations Ordinances to Ban Plastic Carryout Bags in Los Angeles County*, at IX-5 (2010), available at dpw.lacounty.gov/epd/aboutthebag/PDF/FOFSOC_final.pdf (last accessed January 13, 2011) (citing California Integrated Waste Management Board. Plastic Film Cooperative Recycling Initiative. Available at: www.calrecycle.ca.gov/Plastics/Film/#Problem (last accessed on: 1 March 2010)).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALABASS DOES ORDAIN AS FOLLOWS:

SECTION 2. CODE AMENDMENT. A new Chapter 8.17 is hereby added to Title 8 of the Calabasas Municipal Code to read as set forth in Exhibit A to this ordinance.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Calabasas hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect thirty days after its passage and adoption pursuant to California Government Code section 36937.

SECTION 5. CEQA. Pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and the CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.), Los Angeles County has prepared an Environmental Impact Report ("EIR"), which analyses the potential environmental impacts of this ordinance and is incorporated by reference herein. Pursuant to Section 15096 of the CEQA Guidelines, the City acts as a responsible agency for this ordinance. Upon its independent review of the EIR and all the evidence before it, the City Council finds that:

- (1) The mitigation measures outlined in the EIR avoid or substantially lessen the significant environmental effects as identified in the EIR;
- (2) The potentially cumulatively significant impacts resulting from the decomposition of paper carryout bags in landfills, as identified in the County's EIR, are deemed acceptable due to several economic and environmental overriding benefits which are set out in the County's Statement of Overriding Considerations, which is attached hereto as Exhibit C and incorporated by reference herein.

Substantial evidence in the record supports these conclusions, and can be found in the County's Statement of Overriding Considerations, the EIR, the public hearings conducted by the County, and all other evidence before the City Council.

SECTION 6. CERTIFICATION. The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same to be published or posted according to law.

PASSED, APPROVED AND ADOPTED, this 1st day of February 2011.

Barry Groveman, Mayor

ATTEST:

Gwen Peirce, CMC, City Clerk

APPROVED AS TO FORM:

Michael G. Colantuono, City Attorney

Exhibit A

Chapter 8.17

8.17.010 Definitions.

8.17.020 Plastic carryout bags prohibited.

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8.17.090 No conflict with federal or state law.

8.17.010 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 City or the County of Los Angeles; (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 or is made from a material that can be cleaned or 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) 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 in the City:

(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, food mart, 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.

8.17.020 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.

8.17.030 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.

8.17.040 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 (\$0.10) 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 (\$0.10) 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 City Manager, or his/her designee, 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 City Manager, 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 8.17.080.

8.17.050 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.

8.17.060 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.

8.17.070 Operative date.

This Chapter shall become operative on July 1, 2011, for stores defined in Subsections J(1) and J(2) of Section 8.17.010. For stores defined in Subsection J(3) of Section 8.17.010, this Chapter shall become operative on January 1, 2012.

8.17.080 Enforcement and violation-penalty.

A. The City Manager has primary responsibility for enforcement of this Chapter. The City Manager, or his/her designee, 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.

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 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 used to assist with the implementation and enforcement of 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 City Manager 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 City Manager. 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.

8.17.090 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.