

ORDINANCE NO. 2014-08

**AN ORDINANCE OF THE CITY OF ENCINITAS, CALIFORNIA,
ADDING CHAPTER 11.26 "SINGLE-USE DISPOSABLE BAG REDUCTION"
TO THE ENCINITAS MUNICIPAL CODE PROHIBITING RETAIL
ESTABLISHMENTS FROM PROVIDING SINGLE-USE CARRYOUT BAGS
AND REGULATING THE DISTRIBUTION OF PAPER CARRYOUT BAGS**

WHEREAS, the City of Encinitas, California (City) has a strong interest in encouraging the conservation of resources, reducing beach litter and marine pollution, and protecting local wildlife, all of which increase the quality of life of and promote the health and welfare of Encinitas residents and visitors;

WHEREAS, an estimated 20 billion single-use bags are used annually in retail establishments in California, but less than 5 percent of those single-use bags are recycled;

WHEREAS, there are approximately 300 retail establishments that have retail sales greater than \$50,000 annually in the City which may distribute single-use, disposable carryout bags to their customers;

WHEREAS, it is estimated that 31.9 million single use carryout bags are distributed in the City each year;

WHEREAS, many of the local commercial and retail establishments use single-use carryout bags made from plastic or other materials that do not readily decompose;

WHEREAS, numerous studies have documented the prevalence of single-use, carryout bags littering the environment, blocking storm drains and fouling beaches, waterways and the ocean environment;

WHEREAS, plastic bags are a significant source of marine debris and are hazardous to marine animals and birds which may often confuse single-use, plastic carryout bags as a source of food and the ingestion of these bags by wildlife can result in reduced nutrient absorption and death;

WHEREAS, single-use paper bags made from renewable resources are more environmentally friendly than single-use plastic bags, yet the manufacturing, transport, recycling and/or disposal of paper bags require environmental resources;

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

WHEREAS, other jurisdictions in the state require retail establishments to

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impose a paper bag cost pass-through on customers that are provided paper bags, and this cost pass-through has been effective in generating a shift in consumer behavior toward the use of reusable bags and reducing single-use bag distribution and use; and

WHEREAS, this Ordinance allows customers to avoid this cost pass-through by using their own reusable bags;

WHEREAS, the cost pass-through is not a fee subject to Proposition 26 because the monetary proceeds from the collection of the paper bag cost pass-through will be retained by the retail establishments and this Ordinance does not specify how the retailers must expend the monies collected;

WHEREAS, a paper bag cost pass-through is an essential element of this Ordinance because it is intended to provide a disincentive to consumers to request paper bags when shopping at regulated stores and to encourage a shift towards the use of reusable bags;

WHEREAS, there are several alternatives to single-use carryout bags available, including reusable bags produced from sustainable materials;

WHEREAS, the City has determined that the proposed Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15307 and 15308 of the CEQA Guidelines.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ENCINITAS DOES ORDAINS AS FOLLOWS:

SECTION ONE. A new Chapter 11.26 is hereby added to the Encinitas Municipal Code to read as follows:

**“CHAPTER 11.26
SINGLE-USE DISPOSABLE BAG REDUCTION**

11.26.010 Definitions.

"Carry-out bag" means any bag that is provided by a retail establishment at the point of sale to a customer for use to transport or carry away purchases, such as merchandise, goods, or food, from the retail establishment. Carryout bags do not include Product Bags as defined in this chapter.

"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, convenience stores, liquor stores and gasoline station stores.

"Paper bag cost pass-through" means the cost which may be collected by retailers from their customers when providing a Recycled paper bag.

"Pharmacy" means any retail establishment, where prescriptions, medications, controlled or over the counter drugs, personal care products or health supplement goods or vitamins are sold, but excluding any licensed pharmacy located within a hospital.

"Product bag" means any bag provided to a customer for use within a retail establishment to assist in the collection or transport of products to the point-of-sale within the Retail Establishment, or to protect a purchased item from damaging or contaminating other purchased items when placed together in a recycled paper bag or reusable bag; a bag provided by a pharmacy to a customer purchasing prescription medication.

"Recycled paper bag" means a paper carryout bag provided by a store to a customer at the point of sale for the purpose of transporting food and merchandise out of the store and that meets the following standards: (1) contains no old-growth fiber; (2) contains a minimum of forty percent (40%) post-consumer recycled materials; (3) is recyclable; (4) has printed in a highly visible manner on the outside of the bag the word "recyclable" and the percentage of post-consumer recycled content.

"Recycled paper bag cost pass-through" means the cost that this chapter requires grocery stores and pharmacies to collect from their customers whenever a *recycled* paper bag is provided to a customer.

"Restaurant" means any person or establishment doing business within the City of Encinitas that provides prepared food or beverages for consumption on or off its premises such as a restaurant, café, bakery, grocery or convenience store counter or delicatessen, or catering truck vehicle.

"Retail establishment" means any person, including a corporation, partnership, business, facility, vendor, organization or individual, that sells or provides merchandise, goods or materials, including, without limitation, clothing, food, or personal item of any kind, directly to a consumer. Retail establishment includes, without limitation, any grocery store, department store, hardware store, pharmacy, liquor store, convenience store, outdoor farmers' market, and any other retail store or vendor. Retail establishment does not include restaurants, catering trucks, mobile food trucks, and other similar food establishments.

"Reusable bag" means a bag with handles that is specially designed and manufactured for reuse and meets all of the following requirements: (1) has a minimum lifetime of one hundred and twenty-five (125) uses, which for purposes of this subsection, means the capability of carrying a minimum of twenty-two (22) pounds one-hundred and twenty-five (125) times over a distance of at least one-hundred and seventy-five (175)

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feet; (2) has a minimum volume of fifteen (15) liters; (3) is machine washable or 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; and (5) if made of plastic, is a minimum of at least two and one-quarter (2.25) mils thick.

"Single-use plastic carry-out bag" means any bag less than 2.25 mils thick and made predominately of plastic derived from petroleum or bio-based sources, such as corn or other plant source, and includes compostable, non-compostable, and biodegradable plastic bags. Single-use carry out bag does not include Product bag as defined in this chapter.

11.26.020 Prohibition on the Distribution of Single-Use Plastic Carryout Bags.

(A) No Retail Establishment in the City shall provide a single-use plastic carryout bag to a person except as otherwise permitted by this chapter.

(B) No Retail Establishment in the City shall provide any type carry-out bag to a person at the point of sale unless it is a reusable bag or a recycled paper bag being provided pursuant to the terms of this chapter.

(C) No person shall distribute a single-use plastic carryout bag at any City facility, City-managed concession, City-sponsored event, or City-permitted event except as otherwise else permitted by this chapter.

(D) Nothing in this chapter is intended to prohibit the distribution of product bags, including plastic carry-out bags, as may be necessary to comply with California Retail Food Code or any other state or federal law.

(E) No person shall distribute single-use plastic carryout bag at any farmers market within the City of Encinitas.

11.26.030 Regulation of the Distribution of Recycled Paper Carryout Bags.

(A) Subject to subsection (B) of this section, an affected Retail establishment may provide a recycled paper bag to a customer if it collects a paper bag cost pass-through from the customer for each recycled paper bag provided.

(B) The recycled paper bag cost pass-through shall not be less than \$0.10 unless a Retail establishment has previously submitted a full accounting to the City, signed by a responsible manager under penalty of perjury, which identifies all costs including bag purchase, shipping, handling, and storage, showing a lesser actual cost to the store for each paper carry-out bag. Any such accounting shall expire one year from the date of original submission and a new accounting must be resubmitted.

(C) An affected Retail establishment may rebate or otherwise reimburse a customer for use of a reusable bag up to \$0.05 per reusable bag per transaction.

(D) All Retail Establishments shall indicate on the customer transaction receipts the number of recycled paper bags provided and the total amount of the recycled paper bag cost pass-through.

11.26.040 Exemptions.

Notwithstanding the requirements contained in Section 11.26.020

(A) A Retail Establishment shall provide a customer participating 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 California Health and Safety Code and a customer participating in the Supplemental Food Program pursuant to chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code with a reusable bag or a recycled paper bag at no cost at the point of sale.

(B) This chapter shall not apply to 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.

(C) The provision of Product bag as defined in this chapter is not prohibited.

(D) The provision of single-use plastic carry-out bags at Restaurants as defined in this Chapter is not prohibited.

(E) The provision of single-use bags for the collection and disposal of pet waste is not prohibited.

(F) The City Manager, or his or her designee, may exempt a retail establishment or nonprofit from the requirements of this chapter for up to a one-year period upon a showing by the retail establishment that the conditions of this chapter would cause undue hardship. An undue hardship shall only be found if:

- (1) Circumstances or situations unique to the particular retail establishment are such that there are no reasonable alternatives to single-use, plastic carryout bags or a recycled paper bag cost pass-through charge; or
- (2) Circumstances or situations unique to the retail establishment are such that compliance with the requirements of this chapter would deprive a person of a legally protected right.

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(G) If a retail establishment requires an exemption beyond the initial exemption period, the retail establishment must re-apply prior to the end of the exemption period and must demonstrate continued undue hardship if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

(H) An exemption application shall include all information necessary for the City to make its decision, including, but not limited to documentation showing the factual support for the claimed exemption. The City Manager or his or her designee may require the applicant to provide additional information to permit the City to determine facts regarding the exemption application.

(I) The City Council may by resolution establish a fee for exemption applications. The application fee shall be an amount sufficient to cover the costs of processing the exemption application.

11.26.050 Enforcement and Notice of Violation.

(A) The City Manager, or his/her designee, may establish regulations or administrative procedures to take any and all actions reasonable and necessary to further the purposes of this chapter or to obtain compliance with this chapter, including, without limitation, performing inspections in accordance with applicable law of a retail establishment's premises to verify compliance.

(B) Any violation of any of the requirements of this chapter, or of any regulation or administrative procedure authorized pursuant to this chapter shall constitute an infraction.

(C) Each violation of this chapter shall be considered a separate offense.

(D) The remedies and penalties provided in this chapter are cumulative and not exclusive, and nothing in this chapter shall preclude the City from pursuing any other remedies. The City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulation or administrative procedure developed pursuant hereto.

11.26.060 Administrative Remedies.

(A) Any person violating, causing or maintaining a violation of any provision of this chapter may be issued an administrative citation assessing a civil fine as provided in this section. The procedures for the imposition, enforcement, collection, and administrative review of civil fines shall be in addition to, and not in lieu of, any criminal, civil or other legal remedy established by law and available to the City to address violations of this chapter.

(B) Upon a first violation of any provision of this chapter, the City Manager or his/her designee shall issue a written warning Notice of Violation to the offending retail establishment. The warning Notice of Violation shall specify the violation(s), a date by which the violation(s) must be ceased and abated, and the penalties in the event of future violations. If, after the specified correction period following the written warning, the violation is not ceased or abated, the City Manager or his/her designee may issue an administrative citation assessing fines in accordance with this section.

(C) Each separate violation following the issuance of a warning Notice of Violation shall be subject to the following administrative fines which shall be cumulative with each day that a violation occurs constituting a separate violation:

- (1) A fine not exceeding one hundred dollars (\$100) for the first violation following the issuance of a warning notice.
- (2) A fine not exceeding two hundred dollars (\$200) for the second violation following the issuance of a warning notice.
- (3) A fine not exceeding five hundred (\$500) for each additional violations that occurs following the issuance of a warning notice.

(D) Each administrative citation issued for a violation of this chapter shall at a minimum contain the information specified in chapter 1.08.080 of the Encinitas Municipal Code, Administrative Citations, and any person receiving an administrative citation may contest the citation, and shall be entitled to an administrative hearing, pursuant to the procedures set forth in that chapter.

11.26.070 No Conflict with Federal or State Law

Nothing in this chapter is intended to or shall be interpreted as conflicting with any federal or state law or regulation.

11.26.080 Operative Date.

(A) This Ordinance shall become operative as to: Grocery stores, Pharmacies and City facilities six (6) months after its effective date, and 2) all remaining affected Retail Establishments and Farmers' Markets within twelve (12) months after the effective date.

(B) Within fifteen (15) days of the date of adoption of this Ordinance, the City Clerk shall post a copy of said Ordinance in places designated for such posting and shall certify to the same. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be published as required by law.

11.26.090 Severability. If any section, subsection, subdivision, paragraph, sentence,

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clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this Ordinance irrespective of the fact that one or more, sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional To this end, the provisions of this Ordinance are declared severable.”

SECTION TWO:

This Ordinance shall take effect and be in force thirty (30) days after its passage and the City Clerk of the City of Encinitas is hereby authorized to use summary publication procedures pursuant to Government Code Section 36933 utilizing the Coast News, a newspaper of general circulation published in the City of Encinitas.

This Ordinance was introduced on _____, 2014.

PASSED AND ADOPTED this ____ day of _____ 2014, by the following vote, to wit:

AYES:
NOES:
ABSTAIN
ABSENT:

Kristin Gaspar, Mayor

ATTEST AND CERTIFICATE:

I certify that this is a true and correct copy of Ordinance No. 2014-08, which has been published pursuant to law.

Kathy Hollywood, City Clerk

APPROVED AS TO FORM:

Glenn Sabine, City Attorney