

CITY COUNCIL OF THE CITY OF LARKSPUR

ORDINANCE NO. 996

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LARKSPUR
AMENDING TITLE 6 (HEALTH AND SANITATION) OF THE CITY OF
LARKSPUR MUNICIPAL CODE TO ADD CHAPTER 6.18, REGULATING
THE USE OF SINGLE-USE CARRYOUT BAGS**

WHEREAS, the use of all single-use shopping bags (plastic, paper, biodegradable) have 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, many of these single-use carryout bags are made from plastic or other material that does not readily decompose; and

WHEREAS, nearly twenty billion single-use plastic bags are used annually in California but less than 5% are recycled; and

WHEREAS, it is estimated that 6,383,151 single-use plastic bags are used annually in Larkspur; and

WHEREAS, numerous studies have documented the prevalence of single-use plastic carryout bags littering the environment, blocking storm drains and fouling waterways; 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 carryout bags as a food source , 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 carryout bags is a shift to reusable bags; and

WHEREAS, reusable carryout bags are readily available in the City of Larkspur; and

WHEREAS, it is the desire of the City of Larkspur to conserve natural resources, to protect wildlife and natural habitat, to reduce waste, litter and marine pollution and to protect the public health and welfare; and

WHEREAS, in 2013 the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) prepared a draft Model Single- Use Carryout Bag Reduction Ordinance that participating JPA member agencies within Marin County (including the City of Larkspur) can consider for adoption; and

WHEREAS, the JPA was assigned the role of administering the California Environmental Quality Act (“CEQA”) process and a determination was made that the JPA would prepare an Environmental Impact Report (“EIR”) through Final EIR completion for adoption of the model ordinance in all of the member municipalities; and

WHEREAS, on November 1, 2013 the Single Use Carryout Bag Reduction Ordinance Draft EIR was completed and published for public review (State Clearinghouse #2013062049); and

WHEREAS, on January 16, 2014 the JPA Board of Directors held a duly-noticed public hearing and adopted Resolution No. 2014-01 certifying the Single Use Carryout Bag Reduction Ordinance Final EIR (“Final EIR”); and

WHEREAS, following the certification of the Final EIR by the JPA Board of Directors, the City of Larkspur determined to proceed with one of the alternatives (Alternative 4: Mandatory Charge of \$0.10 for Recyclable Paper Carryout Bags) in the Final EIR as a basis for adoption of a citywide ordinance (Regulation of Single-Use Carryout Bags); and

WHEREAS, on April 16, 2014, the Larkspur City Council held a duly-noticed public hearing on the proposed ordinance, and did consider all oral and written public comment, the staff reports, the Final EIR, and the Record as a whole prior to making a determination on the proposed ordinance; and

WHEREAS, the City of Larkspur, prior to the adoption of this Ordinance adopted a Resolution certifying the Final EIR.

NOW THEREORE, the City Council of the City of Larkspur does hereby ordain as follows:

SECTION 1. FINDINGS. The City Council of the City of Larkspur finds as follows:

1. The proposed ordinance to regulate single-use carryout bags is consistent with Goal 6 (Reduce The Total Volume Of The City’s Waste Stream) of the City of Larkspur General Plan.
2. The proposed ordinance to regulate single-use carryout bags is consistent with Goal 3.6 (Waste Reduction, Recycling and Zero Waste) of the Larkspur Climate Action Plan.

3. The public health, safety and general welfare will not be adversely impacted by the proposed ordinance to regulate single-use carryout bags. Rather, the public health, safety and general welfare will be enhanced and further protected as the ban for use of this material would reduce land-filling of waste products, reduce long-lasting litter, and reduce public clean-up costs.

SECTION 2. AMENDMENT TO THE LARKSPUR MUNICIPAL CODE. Chapter 6.18 'Regulation of Single-Use Carryout Bags' is hereby added to Title 6 (Health and Sanitation) of the City of Larkspur Municipal Code to read as follows:

CHAPTER 6.18
REGULATION OF SINGLE-USE CARRYOUT BAGS

Sections:

- 6.18.010 Purpose.
- 6.18.020 Definitions.
- 6.18.030 Plastic Carryout Bags Prohibited.
- 6.18.040 Permitted Bags.
- 6.18.050 Regulation of Recyclable Paper Carryout Bags.
- 6.18.060 Use of Reusable bags.
- 6.18.070 Exempt Customers.
- 6.18.080 Operative Date.
- 6.18.090 Enforcement and Penalties.
- 6.18.100 Severability.
- 6.18.110 No Conflict with Federal or State Law.

6.18.010 Purpose.

The purpose of this chapter is to reduce the amount of plastic bag pollution in the environment, to reduce the impacts of paper bags which cause other forms of pollution and greenhouse gas emissions, and to encourage reusable bags by consumers and retailers.

6.18.020 Definitions.

For the purpose of this chapter, the following words and phrases are defined as follows:

- A. "Checkout bag" means a carryout bag intended to convey or protect goods, products or packaged food products provided by a store to a customer at the point of sale.
- B. "Customer" means any person purchasing goods from a store.
- C. "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.

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 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. "Product bag" means any bag without handles used exclusively to carry produce, meats, or other food items such as bulk foods to the point of sale inside a store or to prevent such food items from coming into direct contact with other purchased items.

G. "Public event" means an event which is open to and may be attended by the general public, including but not limited to such events as farmers' markets, parades, craft fairs, festivals, concerts, performances or other exhibitions, regardless of any fee or age requirement.

H. "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.

I. "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%) post-consumer 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 of Larkspur; (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.

J. "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; (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.

K. "Single-Use Carryout Bag" means a bag made of plastic, paper, or other material, that is provided by a store to a customer at the point of sale that is not a reusable bag and does not meet the requirements of a reusable bag. A "single-use carryout bag" does not include a "product bag" or a bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the California Business and Professions Code to a customer purchasing a prescription medication.

L. "Store" means a retail establishment located within the incorporated area of the City of Larkspur that meets any one or more of the following definitions:

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, as well as those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.

6.18.030 Plastic Carryout Bags Prohibited.

A. No operator of a 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 product bags.

C. No vendors at a public event shall provide to any customer a plastic carryout bag, except product bags.

6.18.040 Permitted Bags.

All operators of stores and vendors at a public event 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.

6.18.050 Regulation of Recyclable Paper Carryout Bags.

- A. Any operator of a store or vendor at a public event that provides a recyclable paper carryout bag to a customer shall charge the customer at least ten cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.
- B. The Larkspur City Council may increase the ten cent (\$0.10) minimum charge by Resolution.
- C. No operator of a store or vendor at a public event shall rebate or otherwise reimburse a customer any portion of the minimum charge required in Subsection A, except as otherwise provided in this Chapter.
- D. All operators of stores and vendors at public events shall post signage clearly indicating the per bag charge for recyclable paper carryout bags.
- E. All operators of stores shall indicate on the customer receipt the number of recyclable paper carryout bags provided and the total amount charged for the bags.
- F. All monies collected by an operator of a store or a vendor at a public event for recyclable paper bags under this Chapter shall be retained by the operator of the store or the vendor.

6.18.060 Use of Reusable bags.

- A. All stores shall make reusable bags available for purchase by a customer for at least five cents (\$0.05) for each bag provided, except as otherwise provided in this Chapter.
- B. The Larkspur City Council may increase the five cent (\$0.05) minimum charge by Resolution.
- C. A store may provide reusable bags to customers at no cost until three (3) months after the effective date of the ordinance. On and after three (3) months after effective date of the ordinance, a store may provide reusable bags to customers at no cost only when combined with a time-limited store promotional program. Such events shall not exceed a total of 60 days within any consecutive 12-month period.
- D. Each store is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging customers to use reusable bags.
- E. No store shall rebate or otherwise reimburse a customer any portion of the minimum charge required in Subsection A, except as otherwise provided in this Chapter.
- F. All stores must post signage clearly indicating the per bag charge for reusable bags.

G. All stores must indicate on the customer receipt the number of reusable bags provided and the total amount charged for the bags.

H. Each store is strongly encouraged to charge for a reusable bag at least what it cost to procure the reusable bags in order to encourage maximum reusability and not cause them to be treated as throw-away.

I. All monies collected by a store for reusable bags under this Chapter will be retained by the store.

6.18.070 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.

6.18.080 Operative Date.

This Chapter shall become operative on and after November 5, 2014.

6.18.090 Enforcement and Penalties.

A. The City Manager, or his/her designee, shall have 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 person, firm, or corporation violating any provision of this title after a written warning notice has been issued for that violation, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as specified in Section 1.01.110 of this code. Such person, firm, or corporation shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this title is committed, continued, or permitted. In addition, to the penalties hereinabove described, any condition caused or permitted to exist in violation of any provision of this title is a public nuisance and shall be regarded as a new and separate offense.

6.18.100 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/Town 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.

6.18.110 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 3: Severability. If any article, section, subsection, subdivision, paragraph, sentence, clause, phrase, or word of this ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The City Council of the City of Larkspur hereby declares that it would have adopted each article, section, and sentence thereof, irrespective of the fact that any one or more of said provision be declared unconstitutional or invalid.

SECTION 4. Effective Date and Publication. This ordinance of the City of Larkspur shall be effective thirty (3) days after the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance or a summary thereof as provided in California Government Code Section 36933, shall be published at least once in a newspaper of general circulation published and circulated in the City of Larkspur, along with the names of the members of the City Council voting for and against its passage.

[signature page immediately follows]

IT IS HEREBY CERTIFIED that the foregoing ordinance was duly introduced at a regular meeting of the Larkspur City Council held on the 16th day of April, 2014, and thereafter passed and adopted by the Larkspur City Council on the 7th day of May, 2014 by the following vote, to wit:

AYES: COUNCILMEMBERS

NOES: COUNCILMEMBERS

ABSTENTIONS: COUNCILMEMBERS

ABSENT: COUNCILMEMBERS

ATTEST:

MAYOR

CITY CLERK

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