



CITY COUNCIL AGENDA REPORT



DEPARTMENT: Administration

MEETING DATE: July 1, 2014

PREPARED BY: Alice D. Atkins, CMC, City Clerk

AGENDA LOCATION: CC-10

TITLE: Amendment to Title 8 (Health & Safety) of the Monrovia Municipal Code, Adding Chapter 8.44 Regulating the Use of Plastic Carryout Bags and Recyclable Paper Bags and Promoting the Use of Reusable Bags, Adoption of Ordinance No. 2014-05

OBJECTIVE: To adopt Ordinance No. 2014-05

BACKGROUND: On June 17, 2014, the City Council introduced and waived further reading, and the City Attorney read by title only, Ordinance No. 2014-02, with Councilmembers Blackburn, Spicer, and Mayor Lutz voting in favor, and Councilmember Adams and Mayor Pro Tem Shevlin voting in opposition. This is the final adoption of the ordinance to amend Title 8 (Health and Safety) of the Monrovia Municipal Code, adding Chapter 8.44 Regulating the Use of Plastic Carryout Bags and Recyclable Paper Bags and Promoting the Use of Reusable Bags.

The attached ordinance reflects revisions as discussed and approved by motion at the meeting on June 17, 2014.

COUNCIL ACTION REQUIRED: If the City Council concurs, the appropriate action would be a motion to adopt Ordinance No. 2014-05.

CC-10

ORDINANCE NO. 2014-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONROVIA, CALIFORNIA, AMENDING TITLE 8 (HEALTH AND SAFETY) BY ADDING CHAPTER 8.44 RELATED TO REGULATING THE USE OF PLASTIC CARRYOUT BAGS AND RECYCLABLE PAPER BAGS AND PROMOTING THE USE OF REUSABLE BAGS

THE CITY COUNCIL OF THE CITY OF MONROVIA, CALIFORNIA, does ordain as follows:

SECTION 1. The City Council of the City of Monrovia hereby finds and declares that plastic carryout bags contribute to litter, which is unsightly, costly to clean up, and causes serious negative environmental impacts. The City has a substantial interest in protecting its residents and the environment from the negative impacts of plastic carryout bags. On November 16, 2010, the Los Angeles County Board of Supervisors approved an Environmental Impact Report (EIR) and adopted an ordinance banning single-use 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. The County's ordinance encouraged the 88 incorporated cities within the County to adopt similar ordinances.

SECTION 2. The custodian of records for all materials that constitute the record of the proceeding upon which this decision is based is the City Clerk. Those documents are available for public review in the City Clerk's office located at 415 South Ivy Avenue, Monrovia, California 91016.

SECTION 3. Title 8 of the Monrovia Municipal Code is hereby amended by adding Chapter 8.44 which reads as follows:

"Chapter 8.44
Plastic Carryout Bags

SECTIONS:

- 8.44.010 Definitions.
- 8.44.020 Plastic carryout bags prohibited.
- 8.44.030 Permitted bags.
- 8.44.040 Regulation of recyclable paper carryout bags.
- 8.44.050 Use of reusable bags.
- 8.44.060 Exemptions.
- 8.44.070 Operative Date.
- 8.44.080 Enforcement and violation – penalty.
- 8.44.090 No conflict with federal or state law.

8.44.010 Definitions.

For purposes of this chapter, the following definitions shall apply:

- (A) The term "Customer" refers to any person purchasing goods from a store.

(B) The term “Old Growth Forests” refers to forests having the following characteristics: a) they are largely naturally regenerated; b) less than 30% of the stand/forest area has been logged or cleared within the past century; c) they are relatively undisturbed such that human activities have not significantly altered native forest structure, composition or function; d) they are dominated by native tree species; e) they are relatively unmanaged although they may suffer from a history of fire suppression or grazing; and f) they are composed of individual or stands of trees of varying ages, with old growth components constituting at least half of the stand or forest unit, and having at least four trees per acre over 150 years of age.

(C) The term “Operator” refers to the person in control of, or having the responsibility for, the operation of the store, which may include, but is not limited to, the owner of the store.

(D) The term “Person” refers to any natural person, firm, corporation, partnership, or other organization or group however organized.

(E) The term “Plastic carryout bag” refers to any bag made predominately of plastic derived from either petroleum or a biologically-based source, such as corn or other plant sources, which is provided to the 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.

(F) The term “Postconsumer recycled material” refers to 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.

(G) The terms “Produce bag” or “Product bag” refer to 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.

(H) The term “Recyclable” refers to 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) The term “Recyclable paper carryout bag” refers to a paper bag that meets all of the following requirements: (1) contains no old growth forest 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; (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) The term “Reusable bag” refers to 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, refers to the capability of carrying a minimum of 22 pounds over a distance of at least 175 feet; (2) has a minimum volume of 15 liters; (3) is a 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 for packaging or reusable bags; (5) names the

manufacturer, location (country) of where the bag is manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and states the percentage of postconsumer recycled material used if any, printed on the bag or tag permanently affixed to the bag; and, (6) if made of plastic, is a minimum of at least 2.25 mils thick.

(K) The term "Store" refers to any of the following retail establishments located within 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;
- (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;

or

- (4) A retail store with gross annual sales of less than two million dollars (\$2,000,000) that sells a line of dry grocery, canned goods, or nonfood items, and some perishable items.

8.44.020 Plastic carryout bag prohibited.

(A) No store shall provide 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.

8.44.030 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.

8.44.040 Regulation of recyclable paper carryout bags.

(A) Any store that provides a recyclable paper carryout bag to a customer must charge the customer ten 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 ten 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 the store's educational materials or education campaign to encourage the use of reusable bags, if any.

(E) All stores must keep records of 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 year. Such records must be made available for the City to review at any time.

(F) If the reporting required in Subsection E is not timely submitted by the store, such store shall be subject to the fines set forth in Section 8.44.080.

8.44.050 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.

8.44.060 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.

8.44.070 Operative date.

Subject to the citation delay specified in Section 8.44.080(C), this Ordinance shall take effect thirty (30) days following the date of its adoption. ~~This Chapter shall not apply to Stores defined in Subsection K (3) and K (4) of Section 8.44.010, until January 27, 2015, although any Store may comply voluntarily prior to that date.~~

-8.44.080 Enforcement and violation-penalty.

(A) It shall be unlawful for any person to violate the provisions of this Chapter. A violation of this Chapter shall be punishable under the administrative citation procedures set forth in Section 1.17.050. The fine imposed for a particular violation shall be in the amount set forth in the administrative citation schedule established by resolution of the City Council pursuant to Section

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

(B) All fines collected pursuant to this Chapter shall be deposited into the Solid Waste Management Fund to assist the City with its costs of implementing and enforcing the requirements of this Chapter.

(C) Notwithstanding the foregoing, the City shall not issue an administrative citation to any Store that violates any provision of this Chapter ~~during the first one hundred twenty (120) calendar days following the date the Ordinance adopting this Chapter takes effect~~prior to January 1, 2015. During said period, City staff shall provide education regarding the requirements of this Chapter and issue written warnings to Stores that violate any provision of this Chapter.

8.44.090 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.”

SECTION 4. CEQA Findings. The City Council hereby finds that the adoption of this ordinance is exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code Sec. 21000 et seq., State CEQA Guidelines, 14 Cal. Code. Regs. 15000 et seq. (collectively “CEQA”). This ordinance constitutes a regulatory action of the City Council to assure the maintenance, restoration, or enhancement of a natural resource involving protection of the environment because it will minimize impacts associated with plastic bags on the environment of the City and region. Therefore, the project is found and determined to be exempt from CEQA pursuant to State CEQA Guidelines Section 15307. Further, this ordinance is a regulatory action of the City Council to assure the maintenance, restoration, enhancement and/or protection of the environment, which does not involve any construction activity or relaxation of any standards allowing environmental degradation. Therefore, as a separate and independent basis, the project also is found exempt from CEQA pursuant to CEQA Guidelines Section 15308. The findings and determinations on exemption from CEQA are, in part, based on the following: (1) plastic carryout bags create significant litter problems in Monrovia’s neighborhoods, parks, public streets, and sewer systems; (2) the production and disposal of plastic carryout bags has significant environmental impacts, including the contamination of the environment, the depletion of natural resources, use of non-renewable polluting fossil fuels, and the increased clean-up and disposal costs; and (3) studies document that banning plastic carryout bags and placing a mandatory charge on recyclable paper carryout bags will dramatically reduce the use of both types of bags and increase customers’ use of reusable bags.

SECTION 5. Severability. If any section, subsection, 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 portions of this Ordinance, or its application to any other persons or circumstance. The City Council of the City of Monrovia hereby declares that it would have adopted 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 invalidly.

SECTION 6. The City Clerk shall certify to the passage of this ordinance and shall cause same to be published pursuant to applicable law, and this ordinance shall become effective on July 31, 2014.

INTRODUCED this 17th day of June, 2014.

PASSED, APPROVED, AND ADOPTED this 1st day of July, 2014.

BY:

Mary Ann Lutz, Mayor
City of Monrovia

ATTEST:

APPROVED AS TO FORM:

Alice D. Atkins, CMC, City Clerk
City of Monrovia

Craig A. Steele, City Attorney
City of Monrovia