

ORDINANCE NO. 1271A

AN ORDINANCE OF THE CITY OF PALM DESERT AMENDING CHAPTER 5.12 RELATING TO SINGLE-USE CARRYOUT PLASTIC BAGS AND PROHIBITING THE FREE DISTRIBUTION OF REUSABLE PAPER BAGS, BY RETAIL ESTABLISHMENTS.

WHEREAS, about nineteen billion (19,000,000,000) single-use bags are used annually in California but less than 5% are recycled; and

WHEREAS, about twenty-two million (22,000,000) single-use carryout plastic bags are distributed by retail establishments in the City each year; and

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

WHEREAS, numerous studies have documented the prevalence of single-use carryout plastic bags littering the environment and blocking storm drains; in the Coachella Valley, single use plastic bags create a litter problem which is aggravated by windy conditions here; and

WHEREAS, the City taxpayers must bear the brunt of clean up costs; and

WHEREAS, the City Council of the City of Palm Desert is the decision-making body for the approval and adoption of this Ordinance; and

WHEREAS, this ordinance requires stores that decide to make reusable paper carryout bags available to their customers to pass-through the reasonable cost of providing these bags;

WHEREAS, based on this analysis, the City has determined that a minimum cost pass-through of \$0.10 per paper bag would cover the reasonable cost to a store of providing the paper bags to its customers; and

WHEREAS, over 90 jurisdictions in California have approved ordinances that impose paper bag fees on the customers requesting these bags and these fees have proven very effective at generating a major shift in consumer behavior toward the use of reusable bags and significantly reducing bag consumption; and

WHEREAS, the proceeds from the collection of the paper bag pass-through would be retained by the retailer and this ordinance does not specify how the retailers must expend the monies collected; and

WHEREAS, customers can avoid this cost pass-through by using reusable bags;
and

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WHEREAS, no portion of the cost pass-through will be provided to the City and consequently, the City will not receive any revenues from the retailers' collection of the paper bag cost pass-through; and

WHEREAS, therefore, the cost pass-through is not a fee subject to Proposition 26; and

WHEREAS, a paper bag cost pass-through is an essential element of the proposed ordinance as it is intended to provide a disincentive to customers to request paper bags when shopping at regulated stores and to promote a shift towards the use of reusable bags by City of Palm Desert consumers; and

WHEREAS, the California Grocers Association, a non-profit trade association representing over 500 retail member companies, in an October 24, 2013 letter to the CVAG Executive Committee, has encouraged CVAG and its member jurisdictions to commit to a regional effort and move forward with an approach to regulate single use plastic bags that includes placing a charge on recyclable paper bags; and

WHEREAS, there are several alternatives to Single-Use Carryout Plastic Bags readily available in the City, including reusable bags produced from sustainable materials; and

WHEREAS, an important goal of the City's Sustainability Plan is to procure and use sustainable products and services; and

WHEREAS, it is the City's desire to lead by example and whenever possible to conserve resources, reduce the amount of greenhouse gas emissions and solid waste, and to protect the public health and welfare including local wildlife, all of which increase the quality of life for City of Palm Desert residents and visitors.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM DESERT, CALIFORNIA, THAT THE FOLLOWING SECTION OF THE PALM DESERT MUNICIPAL CODE IS HEREBY AMENDED, AS SHOWN IN EXHIBIT A:

SECTION 1. Chapter 5 of the Palm Desert Municipal Code is hereby amended by adding a new Section 5.12 to be numbered and entitled and to read as shown in Exhibit A, attached:

SECTION 2. This ordinance shall become effective on October 1st, 2014. The ordinance provides a 6 month to 12 month operative date for compliance after the October 1st, 2014 effective date.

SECTION 3. The City of Palm Desert (City), in its capacity as the Lead Agency for this project under CEQA, evaluated the potential environmental impacts of the project under CEQA. Through the preparation of an

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Initial Study, the City has determined that the proposed project COULD NOT have a significant effect on the environment, and a Negative Declaration has been prepared. The Initial Study meets the requirements of the State of California CEQA, the State CEQA Guidelines, and the City of Palm Desert Guidelines for the Implementation of CEQA.

SECTION 4. That the City Clerk of the City of Palm Desert, California, is hereby directed to provide at City Hall and to publish a notice of this ordinance with the attached Exhibit A in the Desert Sun, a newspaper of general circulation, published and circulated in the City of Palm Desert, California. This ordinance shall be in full force and effect thirty (30) days after its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Palm Desert, California, at its regular meeting held on the _____ day of _____, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

VAN G. TANNER, MAYOR

ATTEST:

RACHELLE D. KLASSEN, CITY CLERK
CITY OF PALM DESERT, CALIFORNIA

EXHIBIT A

**CHAPTER 5.12
USE OF SINGLE-USE CARRYOUT PLASTIC BAGS**

SECTIONS: 5.12

5.12.010	Findings and Purpose
5.12.020	Definitions
5.12.030	Single-Use Carryout Plastic Bags Prohibited
5.12.040	Permitted Bags
5.12.050	Carryout Bag Regulations
5.12.060	Exempt Customers
5.12.070	Operative Date
5.12.080	Penalties and Enforcement
5.12.090	Severability

5.12.010 Findings and Purpose

- A. The City Council of the City of Palm Desert finds and determines that the City is committed to protecting the public health, safety, welfare, and environment, and that in order to meet these goals, it is necessary for the City to promote the public purposes served by this Chapter and adopt the following regulations pursuant to these findings.
- B. The City finds that ordinances limiting the use of Single-use Carryout Plastic Bags have been proven to reduce the amount of pollution and improve quality of life for the citizens of Palm Desert.
- C. The City finds that, except in unusual circumstances, it is feasible and reasonable for parties who provide Single-use Carryout Plastic Bags to easily transition to paper bags and move to a model that charges for paper bag use by consumers.
- D. The City of Palm Desert recognizes that plastic bags are a public nuisance and affect public health and impact tourism and quality of life to both residents and visitors in Palm Desert.

5.12.020 Definitions

- A. "Customer" means any Person obtaining goods from a Store.
- B. "Food Bank" means is a non-profit, charitable organization that distributes food to those who have difficulty purchasing enough food to avoid hunger.

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- C. “Nonprofit Charitable Reuser” means 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 and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.
- D. “Operator” means the person in control of, or having the responsibility for, the operation of a Store, which may include, but not be limited to, the owner of the Store.
- E. “Paper Bag Cost Pass-Through” means the cost which must be collected by retailers from their customers when providing a Reusable Paper Bag.
- F. “Person” means any natural person, firm, corporation, partnership, or other organization or group however organized.
- G. “Pharmacy” means any retail store, 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.
- H. “Prepared Food” means foods or beverages which are prepared on the premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed. Prepared Food does not include any raw, uncooked meat product or fruits or vegetables which are chopped, squeezed, or mixed.
- I. “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.
- J. “Public Eating Establishments” means a restaurant, take-out food establishment, or any other business that receives ninety percent (90%) or more of its revenue from the sale of Prepared Food to be eaten on or off its premises.
- K. “Reusable Paper Bag” means a paper bag provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment.
- L. “Reusable Bag” means either a bag made of cloth or other machine washable fabric that has a handle, or a durable plastic bag with handles that is at least 2.25 mil thick and is specifically designed and manufactured for multiple reuse. A reusable bag must 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.

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- M. "Single-Use Carryout Plastic Bag" means a bag other than a Reusable Bag provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. Single-Use Carryout Plastic Bags do not include bags without handles provided to the Customer (1) to transport produce, bulk food, or meat from a produce, bulk food, or meat department within a Store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; or (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Reusable Paper Bag.
- N. "Store" means any of the following retail establishments located within the City limits of the City of Palm Desert.
- (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 sells any perishable or non-perishable goods including, but not limited to clothing, food, or personal items, and 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); 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; or
 - (4) A store of less than 10,000 square feet of retail space that sells any perishable or non-perishable goods including, but not limited to, clothing, food, or personal items, and 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).
 - (5) Store does not include Public Eating Establishments or Nonprofit Charitable Reusers.

5.12.030 Single-Use Carryout Plastic Bags Prohibited

- A. No Store shall provide to any customer a Single-Use Carryout Plastic Bag.

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- B. This prohibition applies to bags provided for the purpose of carrying away goods and does not apply to produce bags or product bags.

5.12.040 Permitted Bags

All Stores shall only provide, or make available to, a customer Reusable Bag or a Reusable Paper Bag 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.

5.12.050 Carryout Bag Regulations

- A. No Store, to include grocery store or pharmacy, shall provide a Single-Use Carryout Plastic Bag to a customer, at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this Section.
- B. No person shall distribute a Single-Use Carryout Plastic Bag at any City facility, City-managed concession, City-sponsored event, or City-permitted event unless otherwise provided in this Section.
- C. Single-use Carryout Plastic Bags may be distributed to customers by food providers for the purpose of safeguarding health and safety during the transportation of prepared take-out foods and liquids intended for consumption away from the food provider's premises.
- D. A Store shall make Reusable Paper Bags available to Customers for a minimum charge of ten cents (\$.10) per bag. The sale of each bag shall be separately itemized on the sale receipt.
- E. All Stores must keep records of the total number of Reusable Paper Bags provided; the total amount of monies collected for providing Reusable Paper Bags, and a summary of any efforts a Store has undertaken to promote the use of reusable bags by customers in the prior calendar year. Such records must be made available for the City Manager or his/her designee, to review at any time. These records may be kept at the retailer's corporate office.

5.12.060 Exemptions

A Store may 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 Section 2 of Division 106 of the 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

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Welfare and Institutions Code, with one (1) or more Reusable Paper Bags or Reusable Bags at no cost.

5.12.070 Operative Date

This Chapter shall become operative six (6) months after its effective date for Stores defined in Subsections N(1) and N(2) of the Definitions Section. This Chapter shall become operative twelve (12) months after its effective date for Stores defined in Subsections N(3) and N(4) of the Definitions Section.

5.12.080 Penalties and Enforcement

- A. The City Manager, or his/her designee, has primary responsibility for enforcement of this Chapter. The City Manager, or his/her designee, is authorized to promulgate regulations and take any and all other actions reasonable and necessary to enforce this Chapter.
- 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. All administrative civil fines shall be established and set forth by resolution of the City Council. Established fines may be modified as appropriate by City resolution.
- E. Remedies under this Chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

5.12.090 Severability

The City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

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