

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

ORDINANCE NO. ORD-11-0009

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING CHAPTER 8.62 RELATING
TO REGULATING THE USE OF PLASTIC CARRYOUT
BAGS AND RECYCLABLE PAPER CARRYOUT BAGS
AND PROMOTING THE USE OF REUSABLE BAGS

The City Council of the City of Long Beach ordains as follows:

Section 1. Chapter 8.62 is added to the Long Beach Municipal Code to
read as follows:

Chapter 8.62

PLASTIC CARRYOUT BAGS

8.62.010 Definitions.

A. "Customer" means any person or persons, purchasing goods
from a store.

B. "Farmer's Market" has the meaning provided in Subsection
3.80.180.G of the Long Beach Municipal Code.

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. "Person" means any natural person, firm, corporation,
partnership, or other organization or group however organized.

E. "Plastic carryout bag" means any bag made predominantly of
plastic derived from either petroleum or a biologically-based source, such

1 as corn or other plant sources, which is provided to a customer at the point
2 of sale. Plastic carryout bag includes compostable and biodegradable bags
3 but does not include reusable bags, produce bags or product bags.

4 F. "Postconsumer recycled material" means a material that
5 would otherwise be destined for solid waste disposal, having completed its
6 intended end use and product life cycle. Postconsumer recycled material
7 does not include materials and by-products generated from, and commonly
8 reused within, an original manufacturing and fabrication process.

9 G. "Produce bag" or "product bag" means any bag without
10 handles used exclusively to carry produce, meats, or other food items to the
11 point of sale inside a store or to prevent such food items from coming into
12 direct contact with other purchased items.

13 H. "Recyclable" means material that can be sorted, cleansed,
14 and reconstituted using available recycling collection programs for the
15 purpose of using the altered form in the manufacture of a new product.
16 Recycling does not include burning, incinerating, converting, or otherwise
17 thermally destroying solid waste.

18 I. "Recyclable paper carryout bag" means a paper bag that
19 meets all of the following requirements: (1) contains no old growth fiber; (2)
20 is one hundred percent (100%) recyclable overall and contains a minimum
21 of forty percent (40%) postconsumer recycled material; (3) is capable of
22 composting, consistent with the timeline and specifications of the American
23 society of Testing and Materials (ASTM) Standard D6400; (4) is accepted
24 for recycling in curbside programs in the City; (5) has printed on the bag the
25 name of the manufacturer, the location where the bag was manufactured,
26 and the percentage of postconsumer recycled material used; and (6)
27 displays the word "Recyclable" in a highly visible manner on the outside of
28 the bag.

1 J. "Reusable bag" means a bag with handles that is specifically
2 designed and manufactured for multiple reuse and meets all of the following
3 requirements: (1) has a minimum lifetime of one hundred twenty-five (125)
4 uses, which for purposes of this Section, means the capability of carrying a
5 minimum of twenty-two (22) pounds one hundred twenty-five (125) times
6 over a distance of at least one hundred seventy-five (175) feet; (2) has a
7 minimum volume of fifteen (15) liters; (3) is machine washable or is made
8 from a material that can be cleaned or disinfected; (4) does not contain
9 lead, cadmium, or any other heavy metal in toxic amounts, as defined by
10 applicable state and federal standards and regulations for packaging or
11 reusable bags; (5) has printed on the bag, or on a tag that is permanently
12 affixed to the bag, the name of the manufacturer, the location where the
13 bag was manufactured, a statement that the bag does not contain lead,
14 cadmium, or any other heavy metal in toxic amounts, and the percentage of
15 postconsumer recycled material used, if any; and (6) if made of plastic, is a
16 minimum of at least 2.25 mils thick.

17 K. "Store" means any of the following retail establishments
18 located within the City of Long Beach:

19 1. A full-line, self-service retail store with gross annual
20 sales of two million dollars (\$2,000,000), or more, that sells a line of dry
21 grocery, canned goods, or nonfood items and some perishable items;

22 2. A store of at least ten thousand (10,000) square feet of
23 retail space that generates sales or use tax pursuant to the Bradley-Burns
24 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section
25 7200) of Division 2 of the Business and Professions Code) and that has a
26 pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000)
27 of Division 2 of the Business and Professions Code; or

28 3. A drug store, pharmacy, supermarket, grocery store,

1 convenience food store, food mart, or other entity engaged in the retail sale
2 of a limited line of goods that includes milk, bread, soda, and snack foods,
3 including those stores with a Type 20 or 21 license issued by the
4 Department of Alcoholic Beverage Control.

5
6 8.62.020 Plastic carryout bags prohibited.

7 A. No store shall provide to any customer a plastic carryout bag.

8 B. This prohibition applies to bags provided for the purpose of
9 carrying away goods from the point of sale and does not apply to produce
10 bags or product bags.

11 C. No person shall distribute a plastic carryout bag or any paper
12 bag at the Long Beach Farmers' Markets, except produce bags or product
13 bags.

14
15 8.62.030 Permitted bags.

16 All stores shall provide or make available to a customer only
17 recyclable paper carryout bags or reusable bags for the purpose of carrying
18 away goods or other materials from the point of sale, subject to the terms of
19 this Chapter. Nothing in this Chapter prohibits customers from using bags
20 of any type that they bring to the store themselves or from carrying away
21 goods that are not place in a bag, in lieu of using bags provided by the
22 store.

23
24 8.62.040 Regulation of recyclable paper carryout bags.

25 A. Any store that provides a recyclable paper carryout bag to a
26 customer must charge the customer ten cents (\$0.10) for each bag
27 provided, except as otherwise provided in this Chapter.

28 B. No store shall rebate or otherwise reimburse a customer any

1 portion of the ten cent (\$.10) charge required in Subsection A, except as
2 otherwise provided in this Chapter.

3 C. All stores must indicate on the customer receipt the number of
4 recyclable paper carryout bags provided and the total amount charged for
5 the bags.

6 D. All monies collected by a store under this Chapter will be
7 retained by the store and may be used only for the following purposes:

- 8 1. Costs associated with complying with the requirements
9 of this Chapter;
- 10 2. Actual costs of providing recyclable paper carryout
11 bags; or
- 12 3. Costs associated with a store's educational materials
13 or education campaign encouraging the use of reusable bags, if any.

14 E. All stores shall keep complete and accurate records or
15 documents, for a minimum period of three years from the date of sale, of
16 the total number of recyclable paper carryout bags provided, the total
17 amount of monies collected for providing recyclable paper carryout bags,
18 which record shall be available for inspection at no cost to the City during
19 regular business hours by any City employee authorized to enforce this
20 Section. Unless an alternative location or method of review is mutually
21 agreed upon, the records or documents shall be available at the store's
22 address. A responsible agent or officer of the store shall confirm that the
23 information provided is accurate and complete.

24 F. The provision of false information, including incomplete
25 records or documents, to the City shall be a violation of this Section, and
26 such store shall be subject to the fines set forth in Section 8.62.080.

27
28 8.62.050 Use of reusable bags.

1 A. All stores must provide reusable bags to customers, either for
2 sale or at no charge.

3 B. Each store is strongly encouraged to educate its staff to
4 promote reusable bags and to post signs encouraging customers to use
5 reusable bags.

6 C. Each store is strongly encouraged to provide to the City and to the
7 public a summary of any efforts a store has undertaken to promote the use of
8 reusable bags by customers.

9

10 8.62.060 Exempt customers.

11 All stores must provide at the point of sale, free of charge, either
12 reusable bags or recyclable paper carryout bags or both, at the store's
13 option, to any customer participating either in the California Special
14 Supplemental Food Program for Women, Infants, and Children pursuant to
15 Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of
16 Division 106 of the Health and Safety Code or in the Supplemental Food
17 Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3
18 of Division 9 of the Welfare and Institutions Code.

19

20 8.62.070 Operative date.

21 This Chapter shall become operative on August 1, 2011, for stores
22 defined in Subsections K.1. and K.2. of Section 8.62.010. For stores
23 defined in Subsection K.3. of Section 8.62.010, this Chapter shall become
24 operative on January 1, 2012. For Farmers' Markets as defined in
25 Subsection B of Section 8.62.010, this Chapter shall become operative on
26 January 1, 2012.

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1 8.62.080 Enforcement and violation – penalty.

2 A. The City Manager has primary responsibility for enforcement
3 of this Chapter. The City Manager or designee is authorized to promulgate
4 regulations and to take any and all other actions reasonable and necessary
5 to enforce this Chapter, including, but not limited to, investigating violations,
6 issuing fines and entering the premises of any store during business hours.
7 If the City Manager or designee determines that a violation of this Chapter
8 has occurred, he/she will issue a written warning notice to the operator of a
9 store that a violation has occurred and the potential penalties that will apply
10 for future violations.

11 B. Any store that violates or fails to comply with any of the
12 requirements of this Chapter after a written warning notice has been issued
13 for that violation shall be guilty of an infraction.

14 C. If a store has subsequent violations of this Chapter that are
15 similar in kind to the violation addressed in a written warning notice, the
16 following penalties will be imposed and shall be payable by the operator of
17 the store:

18 1. A fine not exceeding one hundred dollars (\$100) for the
19 first violation after the written warning notice is given;

20 2. A fine not exceeding two hundred dollars (\$200) for the
21 second violation after the written warning notice is given; or

22 3. A fine not exceeding five hundred dollars (\$500) for the
23 third and any subsequent violations after the written warning notice is given.

24 D. A fine shall be imposed for each day a violation occurs or is
25 allowed to continue.

26 E. All fines collected pursuant to this Chapter shall be used to
27 assist with the implementation and enforcement of the requirements of this
28 Chapter.

1 F. Any store operator who receives a written warning notice or
2 fine may request an administrative review of the accuracy of the
3 determination or the propriety of any fine issued, by filing a written notice of
4 appeal with the City Manager no later than thirty (30) days after receipt of a
5 written warning notice or fine, as applicable. The notice of appeal must
6 include all facts supporting the appeal and any statements and evidence,
7 including copies of all written documentation and a list of any witnesses that
8 the appellant wishes to be considered in connection with the appeal. The
9 appeal will be heard by a hearing officer designated by the City Manager.
10 The hearing officer will conduct a hearing concerning the appeal within
11 forty-five (45) days from the date that the notice of appeal is filed, or on a
12 later date if agreed upon by the appellant and the City, and will give the
13 appellant ten (10) days prior written notice of the date of the hearing. The
14 hearing officer may sustain, rescind, or modify the written warning notice or
15 fine, as applicable, by written decision. The hearing officer will have the
16 power to waive any portion of the fine in a manner consistent with the
17 decision. The decision of the hearing officer is final and effective on the
18 date of service of the written decision, is not subject to further administrative
19 review, and constitutes the final administrative decision.

20
21 8.62.090 Severability.

22 If any section, subsection, sentence, clause, or phrase of this
23 ordinance is for any reason held to be invalid by a decision of any court of
24 competent jurisdiction, that decision will not affect the validity of the
25 remaining portions of the ordinance.

26
27 8.62.100 No conflict with federal or state law.

28 Nothing in this ordinance is intended to create any requirement,

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power or duty that is in conflict with any federal or state law.


Section 2. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of May 24, 2011, by the following vote:


Ayes: Councilmembers: Garcia, Lowenthal, DeLong, Johnson, Neal.

Noes: Councilmembers: O'Donnell, Schipske, Gabelich.

Absent: Councilmembers: Andrews.


City Clerk

Approved: 6/3/11
(Date)


Mayor