

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING CHAPTER 13 OF THE OCEANSIDE CITY CODE BY ADDING ARTICLE IV, SINGLE-USE CARRY-OUT BAGS

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

WHEREAS, an important goal of the City of Oceanside is to achieve zero waste; and

WHEREAS, an estimated 19 billion single-use bags are used annually in retail establishments in California, but less than 5 percent of those single-use bags are recycled; and

WHEREAS, there are approximately 1061 retail establishments in the City which distribute single-use carryout bags to their customers; and

WHEREAS, the use of single-use carryout bags (plastic, paper, and biodegradable) has negative environmental impacts, including GHG emissions, litter, water consumption, solid waste generation, litter and pollution, and effects on wildlife; and

WHEREAS, from an overall environmental and economic perspective, a shift to reusable bags is a better alternative to the continued use of single-use carryout bags; and

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

WHEREAS, studies and impacts from similar policies adopted in other jurisdictions have shown dramatic reduction in the use of single-use carryout bags as well as reduction of litter and therefore taxpayer clean-up costs; and

WHEREAS, the City has determined that adoption of the proposed ordinance will result in no significant environmental impacts, per the City's Negative Declaration pursuant to the provisions of the California Environmental Quality Act (CEQA) and Sections 15307 and 15308 of the CEQA Guidelines;

///

1 NOW, THEREFORE, the City Council of the City of Oceanside does ordain as follows:

2 SECTION 1. Article IV is hereby added to Chapter 13 of the Oceanside City Code and  
3 shall read as follows:

4 **“ARTICLE IV. - SINGLE-USE CARRYOUT BAGS**

5 **Section 13.42 Intent and Purpose**

6 It is the intent of this Article to encourage conservation of resources, reducing beach  
7 litter and marine pollution, and protecting local wildlife and waterways, all of which increases  
8 the quality of life of and promotes the health and welfare of Oceanside residents and visitors.

9 **Sec. 13.43. - Definitions.**

10 (a) Unless the context otherwise clearly indicates, the words and phrases used in this  
11 Article are defined as follows:

12 (b) *Checkout bag* means a carryout bag intended to convey or protect goods, products  
13 or packaged food products provided by a store to a customer at the point of sale.

14 (c) *Customer* means any person purchasing goods from a store.

15 (d) *Operator* means the person in control of, or having the responsibility for, the  
16 operation of a store, which may include, but is not limited to, the owner of the store.

17 (e) *Plastic carryout bag* means any bag made predominantly of plastic derived from  
18 either petroleum or a biologically-based source, such as corn or other plant sources, which is  
19 provided to a customer at the point of sale. Plastic carryout bag includes compostable and  
20 biodegradable bags but does not include recyclable paper bags, reusable bags, produce bags, or  
21 product bags.

22 (f) *Postconsumer recycled material* means a material that would otherwise be  
23 destined for solid waste disposal, having completed its intended end use and product life cycle.  
24 Postconsumer recycled material does not include materials and by-products generated from,  
25 and commonly reused within, an original manufacturing and fabrication process.

26 (g) *Product bag* or *Produce bag* means any bag without handles used to assist in the  
27 collection or transport of products such as liquid-based take-out foods, produce, bulk items,  
28 meat, fish, poultry, dry cleaning or laundry or to protect a purchased item from damaging or

1 contaminating other purchased items when placed together in a recycled paper bag or reusable  
2 bag.

3 (h) *Recyclable* means material that can be sorted, cleansed, and reconstituted using  
4 available recycling collection programs for the purpose of using the altered form in the  
5 manufacture of a new product. Recycling does not include burning, incinerating, converting, or  
6 otherwise thermally destroying solid waste.

7 (i) *Recycled paper carryout bag* means a paper bag that meets all of the following  
8 requirements: (1) contains no old growth fiber; (2) is one hundred percent (100%)  
9 recyclable overall and contains a minimum of forty percent (40%) post-consumer recycled  
10 material; (3) is capable of composting, consistent with the timeline and specifications of the  
11 American Society of Testing and Materials (ASTM) Standard D6400; (4) is accepted for  
12 recycling in curbside programs in the City of Oceanside; (5) has printed on the bag the name of  
13 the manufacturer, the location (country) where the bag was manufactured, and the percentage  
14 of postconsumer recycled material used; and (6) displays the word "Recyclable" in a highly  
15 visible manner on the outside of the bag.

16 (j) *Reusable bag* means a bag with handles that is specifically designed and  
17 manufactured for multiple reuse and meets all of the following requirements: (1) has a  
18 minimum lifetime of 125 uses, which for purposes of this subsection, means the capacity of  
19 carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; (2) has a  
20 minimum volume of 15 liters; (3) is machine washable or is made from a material that can be  
21 cleaned or disinfected; (4) does not contain lead, cadmium, or any other heavy metal in toxic  
22 amounts; (5) has printed on the bag, or on a tag that is permanently affixed to the bag, the  
23 name of the manufacturer, the location (country) where the bag, was manufactured; and (6) if  
24 made of plastic, is a minimum of at least 2.25 millimeters thick, is made from a minimum of  
25 40% postconsumer recycled materials, and is recyclable at the stores subject to this ordinance.

26 (k) *Single-Use carryout bag* means a bag made of plastic, paper or other material that  
27 is provided by a store to a customer at the point of sale that is not a recyclable paper bag or  
28 reusable bag and does not meet the requirements of a recyclable paper bag or a reusable bag.

1 (l) *Store* means a retail establishment that meets any one or more of the following  
2 definitions:

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

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

11 3. A retail establishment where any person, including any corporation,  
12 partnership, business, facility, vendor, organization or individual, sells or provides  
13 merchandise, goods or materials (including without limitation, clothing, food, or personal  
14 items of any kind) directly to a customer. Such retail establishment includes, without  
15 limitation, any grocery store, department store, hardware store, pharmacy, liquor store,  
16 restaurant, catering truck, convenience store, and any other retail store or vendor including  
17 those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage  
18 Control.

19 **Sec. 13.43. General Prohibition.**

20 (a) On and after January 1, 2017, a Store as defined in Sections 13.43(1)(1) and  
21 13.43(1)(2) shall not provide a Single-use carryout bag at the point of sale.

22 (b) On and after January 1, 2018, a Store as defined in Section 13.43(1)(3) shall not  
23 provide a Single-use carryout bag at the point of sale.

24 (c) This prohibition applies to bags provided for the purpose of carrying away goods  
25 from the point of sale and does not apply to Produce or Product bags.

26 (d) On or after January 1, 2017, no person shall distribute a Single-use carryout bag at  
27 any City facility, City managed concession, City sponsored event, or City permitted event.  
28

1           **Sec. 13.44. Permitted Bags.**

2           All Stores shall provide or make available to a customer only Recyclable paper carryout  
3 bags or Reusable bags for the purpose of carrying away goods or other materials from the point  
4 of sale on the effective dates specified in Sections 13.43 (a), (b) and (d) above. Nothing in this  
5 Article prohibits customers from using bags of any type that they bring to the Store themselves  
6 or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the  
7 store.

8           **Sec. 13.45. Use of Recyclable paper carryout bags.**

9           (a)     Following the Effective dates specified in Sections 13.43(a),(b), and (d), any  
10 Store that provides a recyclable paper carryout bag to a customer shall charge the customer at  
11 least ten cents (\$0.10) for each bag provided, except as otherwise provided in this Article.

12           (b)     The Oceanside City Council may increase the ten cents (\$0.10) minimum charge  
13 by Resolution.

14           (c)     No Store shall rebate or otherwise reimburse a customer any portion of the  
15 minimum charge required in Subsection (a), except as otherwise provided in this Article.

16           (d)     All Stores must post signage clearly indicating the per bag charge for recyclable  
17 paper carryout bags.

18           (e)     All Stores must indicate on the customer receipt the number of Recyclable paper  
19 carryout bags provided and the total amount charged for the bags.

20           (f)     All monies collected by a Store for Recyclable paper bags under this Article will  
21 be retained by the Store.

22           **Sec. 13.46. Use of Reusable Bags.**

23           (a)     Following the Effective dates specified in Sections 13.43 (a), (b), and (d), all  
24 Stores shall make Reusable bags available for purchase by a customer for at least ten cents  
25 (\$0.10) for each bag provided, except as otherwise provided in this Article.

26           (b)     The Oceanside City Council may increase the ten cent (\$0.10) minimum charge  
27 by Resolution.

28

1 (c) A Store may provide Reusable bags to customers at no cost until three (3) months  
2 after the Effective dates specified in Sections 13.43 (a), (b), and (d). On and after three (3)  
3 months after Effective dates specified in Sections 13.43 (a), (b), and (d), a Store may provide  
4 Reusable bags to customers at no cost only when combined with a time-limited store  
5 promotional program. Such events shall not exceed a total of sixty (60) days within any  
6 consecutive twelve (12)-month period.

7 (d) Each Store is strongly encouraged to educate its staff to promote Reusable bags  
8 and to post signs encouraging customers to use Reusable bags.

9 (e) No Store shall rebate or otherwise reimburse a customer any portion of the  
10 minimum charge required in Subsection (a), except as otherwise provided in this Article.

11 (f) All Stores must post signage clearly indicating the per bag charge for Reusable  
12 bags.

13 (g) All Stores must indicate on the customer receipt the number of Reusable bags  
14 provided and the total amount charged for the bags.

15 (h) Each Store is strongly encouraged to charge for a Reusable bag at least what it  
16 cost to procure the Reusable bags in order to encourage maximum reusability.

17 (i) All monies collected by a Store for reusable bags under this Article will be  
18 retained by the Store.

19 **Sec. 13.47. Exemptions**

20 Notwithstanding any other law, a Store shall provide a customer participating in the  
21 California Special Supplemental Food Program for Women, Infants, and Children pursuant to  
22 Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the  
23 California Health and Safety Code and a customer participating in the Supplemental Food  
24 Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of  
25 the California Welfare and Institutions Code, with a Reusable bag or a Recycled paper carryout  
26 bag at no cost at the point of sale.

1           **Sec. 13.48. Enforcement and Violation - Penalty**

2           (a) The City Manager or designee is authorized to establish regulations and to take any  
3 and all actions reasonable and necessary to obtain compliance with this Article, including but  
4 not limited to, inspecting any Store’s premises to verify compliance.

5           (b) The City Attorney is authorized to pursue all available administrative, civil and  
6 criminal remedies set forth in the Oceanside City Code to enforce this ordinance, including but  
7 not limited to Oceanside City Code Sections 1.7 (criminal remedies), 1.7(g) (injunctive relief),  
8 1.14-1.14.8, (administrative remedies) and 17.3 (specifying that any violation of the Oceanside  
9 City Code is a public nuisance). The City Attorney may seek legal, injunctive, or other equitable  
10 relief to enforce this Ordinance.

11           (c) Each violation of this Article shall be considered a separate offense.

12           (d) The remedies and penalties provided in this Section are cumulative and not exclusive,  
13 and nothing in this Article shall preclude any person from pursuing any other remedies provided  
14 by law.

15           **Sec. 13.49 No Conflict with Federal or State Law.**

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

18           SECTION 2. In the event that Senate Bill 270 is approved by the electorate on  
19 November 8, 2016, this Ordinance shall not become effective and shall have no further force or  
20 effect.

21           SECTION 3. If any section, sentence, clause or phrase of this Ordinance is for any  
22 reason held to be invalid or unconstitutional by a decision of any court of competent  
23 jurisdiction, such decision shall not affect the validity of the remaining portions of this  
24 Ordinance. The City Council hereby declares that it would have passed this Ordinance and  
25 adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the  
26 fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid  
27 or unconstitutional.

28           ///

1 SECTION 4. The City Clerk of the City of Oceanside is hereby directed to publish this  
2 ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15)  
3 days after its passage in a newspaper of general circulation published in the City of Oceanside.

4 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,  
5 California, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016 and, thereafter,

6 PASSED AND ADOPTED at a regular meeting of the City Council of the City of  
7 Oceanside, California, held on this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by  
8 the following vote:

9  
10 AYES:

11 NAYS:

12 ABSENT:

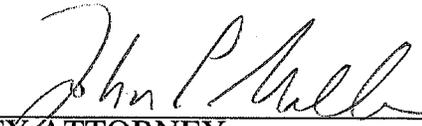
13 ABSTAIN:

14  
15 MAYOR OF THE CITY OF OCEANSIDE

16 ATTEST:

17 APPROVED AS TO FORM:

18 \_\_\_\_\_  
19 CITY CLERK

20   
21 \_\_\_\_\_  
22 CITY ATTORNEY

23  
24 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING CHAPTER  
25 13 OF THE OCEANSIDE CITY CODE ADDING ARTICLE IV, SINGLE-USE CARRY-OUT BAGS  
26  
27  
28