

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

**ORDINANCE ADDING CHAPTER 5.48 TO SANTA CRUZ COUNTY CODE  
RELATING TO THE REDUCTION OF SINGLE-USE PLASTIC  
AND PAPER CARRYOUT BAGS**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

**SECTION I**

Chapter 5.48 of the Santa Cruz County Code is enacted to read as follows:

**BAG REDUCTION ORDINANCE**

**Sections:**

**5.48.010 Purpose and Findings.**

**5.48.015 Definitions.**

**5.48.020 Ban on Plastic Carryout Bags and Store Charge for Other Single-Use Carry Out Bags.**

**5.48.025 Implementation.**

**5.48.030 Exemptions Allowing Single Use Bags.**

**5.48.035 Enforcement.**

**5.48.040 Violations.**

**5.48.045 Severability.**

**5.48.050 Effective Date.**

**5.48.055 No Conflict With Federal or State Law.**

**5.48.060 Preemption.**

**5.48.010 Findings and intent.**

- A. It is the intent of the County of Santa Cruz, in enacting Chapter 5.48 to eliminate the common use of plastic single-use carryout bags, encourage the use of reusable bags by consumers and retailers, and to reduce the consumption of single-use bags in general.
- B. Whereas the County of Santa Cruz has an obligation to protect the environment, the economy, and public health. The County of Santa Cruz has a 75 percent waste reduction goal, which is to be reached by waste reduction, reuse, recycling, and composting. The County of Santa Cruz makes the following findings:
  - 1. Globally, an estimated 500 billion to 1 trillion petroleum-based plastic bags are used each year, which equals over 1 million per minute, the production and use of which uses over 12 million barrels of oil. The California Integrated Waste Management Board estimates that Californians use nearly 20 billion single-use plastic bags per year and discard over 100 hundred plastic bags per second. Further the Environmental Protection Agency estimates that only 5 percent of the plastic bags in California and nationwide are currently recycled.
  - 2. The production and disposal of plastic bags causes significant environmental impacts, including contamination of the environment, the deaths of thousands of marine animals through ingestion and entanglement, widespread litter and debasement of the urban environment, and increased waste disposal costs.

3. Most plastic carryout bags do not biodegrade, but instead persist in the environment for hundreds of years; rather than breaking down, they slowly break up through abrasion, tearing, and photo degradation into toxic plastic bits that contaminate soil and water, while entering the food web when animals inadvertently ingest these materials. Toxic substances present in plastics are known to cause death or reproductive failure in fish, shellfish, wildlife, and in the humans ingesting the fish.
4. Plastic bits absorb dangerous compounds such as dichlorodiphenyldichloroethylene (DDE), polychlorinated biphenyls (PCB), and other toxic materials present in ocean water. Plastics have been found to concentrate these toxic chemicals at levels of up to 1 million times the levels found in seawater. Plastic bits have displaced plankton in the Pacific Gyre.
5. The U.S. Marine Mammal Commission estimates that 267 marine species have been reported entangled in or having ingested marine debris. Plastic can constrict the animals' movements or block their digestive system, killing the animals through starvation, exhaustion, or infection from deep wounds caused by tightening material.
6. According to Save Our Shores, a Santa Cruz based marine conservation non-profit that conducts beach, river, and inland cleanups in the coastal regions of Santa Cruz, San Mateo, and Monterey Counties; from June 2007 to May 2011 they conducted over 400 cleanups where volunteers removed a total of 26,000 plastic bags. Unchecked, this material would have likely entered the marine environment of the Monterey Bay National Marine Sanctuary.
7. Plastic bags returned to supermarkets may be recycled into plastic lumber; however, a very low percentage of bags are actually returned. Recycling bags into lumber does not reduce the impact of making new plastic carryout bags.
8. Compostable plastic carryout bags, as currently manufactured, do not solve the problems of wildlife damage, litter, or resource use addressed by this ordinance. Compostable carryout bags are designed to remain intact until placed in a professional compost facility, so they do not degrade quickly as litter or in a marine environment. Producing compostable bags consumes nearly as much fossil fuel as noncompostable bags. Mixing compostable bags with regular plastic bags prevents recycling or composting either of them. Therefore, there is no exemption in this ordinance for compostable carryout bags.
9. According to Californians Against Waste, Californians pay up to \$200 per household each year in State and Federal taxes to clean up litter and waste associated with single-use bags, on top of the \$40 per household per year in hidden grocery costs to offset the expense of the nearly 1,000 "free" bags received from grocers.
10. Reusable bags are readily available from numerous sources and vendors. Many grocery and other retail establishments throughout the County of Santa Cruz already offer reusable bags for sale at a price as low as 25 cents.
11. This ordinance recognizes that there are energy and environmental consequences of using paper bags. While paper bags do not have the end-of-use impacts of plastic bags, they may use comparable or more energy and resources to manufacture. For this reason, a store charge on paper bags is indicated, as an incentive to reduce their use and encourage reusable bags. Paper bags that contain a minimum of 40 percent post consumer recycled content have fewer negative impacts than virgin paper bags.

12. Paper shopping bags with 40 percent post consumer recycled content are easily available, and such bags are in wide use by County of Santa Cruz merchants.
13. State law currently prohibits local jurisdictions from placing fees on single-use checkout plastic bags. Therefore, several California Cities have adopted or are pursuing a ban as the most effective remaining means to eliminate the impacts these plastic bags cause. State law does not prohibit jurisdictions from placing a store charge on paper bags.

#### **5.48.015 Definitions.**

- A. For the purposes of this Chapter, the following definitions apply:
1. "Carryout bags" means bags provided by retailers to customers at the point of sale to hold customers' purchases. "Carryout bags" do not include bags used to contain loose items prior to checkout, such as meat, produce, and bulk goods, and does not include prepackaged products.
  2. "Single-use plastic bag" or "single-use plastic carryout bag" means a single-use carryout bag of any size that is made from plastic and provided at the point of sale to customers by a retail establishment. Single-use plastic bags include both compostable and non-compostable carryout bags.
  3. "Single-use paper bag" means a checkout bag provided by a retail establishment at the point of sale that is made from paper and is not a reusable bag.
  4. "Recyclable" means material that can be sorted, cleansed, and reconstituted using the County's 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 destroying sold waste.
  5. "Reusable bag" means any bag with handles that is specifically designed and manufactured for multiple reuse, and is either 1) made of cloth or other washable woven fabric, or 2) made of durable material that is at least 2.25 mils thick. A "reusable bag" may be made of recyclable plastic such as high density polyethylene (HDPE), low density polyethylene (LDPE), or polypropylene.
  6. "Retail establishment" or "retail store" means all sales outlets, stores, shops, restaurants, vehicles, or other places of business located within the County of Santa Cruz, which operate primarily to sell or convey goods, including "to-go" food, directly to the ultimate consumer.
  7. "Exempted uses" means those point-of-purchase or delivery sales, which have received an exemption under Section 5.48.030 that allows the use of single-use bags.
  8. "Prepared food" means foods or beverages which are prepared on vendor's 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 and vegetables, which are not chopped, squeezed, or mixed.
  9. "Take-out food" means prepared food or beverages requiring no further preparation to be consumed, and which are generally purchased in order to be consumed off restaurant or retail food vendor's premises.

#### **5.48.020 Ban on plastic bags and store charge for single-use carryout bags and plastic reusable bags.**

- A. No retail establishment shall provide plastic carryout bags to customers at the point of sale, except as permitted in this chapter.
- B. Single-use paper carryout bags provided to customers shall contain a minimum of 40 percent post consumer recycled paper fiber, and be recyclable in the County of Santa Cruz's curbside recycling program.

- C. During the period of time starting on the date that this chapter takes effect and continuing for one year thereafter, retail establishments shall charge a minimum 10-cent fee for each single-use paper checkout bag provided to customers at the point of sale. At the completion of the initial one-year period established by this subdivision, the charge shall increase to a minimum 25 cents per bag provided. Retail establishments shall keep annual records of paper bag distribution to be made available to the Director of Public Works or designee upon request. The records shall be evaluated annually for the first five years by the County to ensure the effectiveness of the ordinance. If it is determined that single-use paper bag or plastic reusable bag use has increased beyond anticipated levels, the Board of Supervisors shall consider increasing the store charge to improve the effectiveness of the ordinance.
- D. The charge imposed pursuant to this section shall not be applied to customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, the State Department of Social Services Food Stamp program, or other government-subsidized purchase programs for low-income residents.
- E. Notwithstanding the fee to be charged in Section 5.48.020(C) on single-use paper carryout bags and notwithstanding the definition of "retail establishment" or "retail store" in Section 5.48.015, single-use paper carryout bags may be distributed by food vendors for the transportation of prepared take-out food intended for consumption off the food vendor's premises without charging a fee.
- F. The ban on single-use plastic bags and the charge on single-use paper bags would not apply to plastic or paper bags used to protect produce, meat, or otherwise used to protect items as they are put into a carryout bag at checkout. Other examples include: paper bags to protect bottles, plastic bags around ice cream or other wet items, paper bags used to weigh candy, paper pharmacy bags or paper bags to protect greeting cards.
- G. Retail establishments are strongly encouraged to make reusable bags available for sale to customers at a reasonable price. Reusable bags which meet the requirements of this ordinance may be distributed without charge during the limited-duration promotional events.
- H. Retail establishments shall indicate on the customer transaction receipt the number of carryout bags provided, and the total amount charged for those bags.
- I. County of Santa Cruz contractors and special events promoters, and their vendors, shall not provide single-use plastic carryout bags to participants while performing under a County of Santa Cruz contract or permit.

#### **5.48.025 Implementation.**

- A. Sixty days before this ordinance takes effect, the County of Santa Cruz shall post, mail or deliver a copy of it to retail establishments within the unincorporated County of Santa Cruz.
- B. The County of Santa Cruz will distribute to each store a reproducible placard designed to inform shoppers of the County of Santa Cruz policy for carryout bags.

#### **5.48.030 Exemptions allowing single use bags.**

- A. The Director of Public Works, or the director's designee, may exempt a retail establishment from the requirement set forth in Section 5.48.020 of this chapter for a one-year period upon the retail establishment showing, in writing, that this chapter would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The decision to grant or deny an exemption shall be in writing, and the Director's or the director's designee's decision shall be final.

- B. An exemption application shall include all information necessary for the Director of Public Works or the director's designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption.
- C. The Director of Public Works or director's designee may approve the exemption application in whole or in part, with or without conditions.

**5.48.035 Enforcement.**

Enforcement of this ordinance shall be as follows:

- A. The Director of Public Works, or designee, shall have primary responsibility for enforcement of this ordinance and shall have authority to issue citations for violation of this chapter. The Director, or designee, is authorized to establish regulations or administrative procedures to ensure compliance with this chapter.
- B. A person or entity violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction.
- C. The County of Santa Cruz may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulation or administrative procedure authorized by it.
- D. The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.
- E. The Director of Public Works, or designee may inspect any retail establishment's premises to verify compliance with this ordinance.

**5.48.040 Violations.**

Violations of this ordinance shall be enforced as follows:

- A. Violation of this chapter is hereby declared to be a public nuisance. Any violation described in the preceding paragraph shall be subject to abatement by the County of Santa Cruz, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by injunction, upon a showing of violation.
- B. Upon a first violation by a retail establishment, the Director of Public Works, or designee, shall mail a written warning to the retail establishment. The warning shall recite the violation, and advise that future violations may result in fines.
- C. Upon a second or subsequent violation by a retail establishment, the following penalties will apply:
  - 1. A fine not exceeding one hundred dollars (\$100) for the first violation that occurs 30 days or more after the first warning.
  - 2. A fine not exceeding two hundred dollars (\$200) for the second violation that occurs 60 days or more after the first warning.
  - 3. A fine not exceeding five hundred dollars (\$500) for the third violation that occurs 90 days or more after the first warning.
  - 4. A fine not exceeding five hundred dollars (\$500) for every 30 day period not in compliance, that occurs 90 days or more after the first warning.
- D. Special events promoters and their vendors who violate this ordinance in connection with commercial or non-commercial special events shall be assessed fines as follows:
  - 1. A fine not exceeding two hundred dollars (\$200) for an event of 1 to 200 persons.
  - 2. A fine not exceeding four hundred dollars (\$400) for an event of 201 to 400 persons.
  - 3. A fine not exceeding six hundred dollars (\$600) for an event of 401 to 600 persons.
  - 4. A fine not exceeding one thousand dollars (\$1,000) for an event of 601 or more persons.
- E. Remedies and fines under this section are cumulative.

**5.48.045 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The County of Santa Cruz hereby declares that it would have passed this title, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional.

**5.48.050 Effective date.**

This ordinance shall become effective six (6) months after the date of final passage by the County of Santa Cruz Board of Supervisors.

**5.48.055 No conflict with Federal or State law.**

Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any Federal or State law.

**5.48.060 Preemption.**

The provisions of this chapter shall be null and void if State or Federal legislation, or administrative regulation, takes effect with the same or substantially similar provisions as contained in this chapter. The Board of Supervisors shall determine whether or not identical or substantially similar Statewide legislation has been enacted or regulations issued.

**SECTION II**

This ordinance shall take effect and be in force six months from the date of adoption.

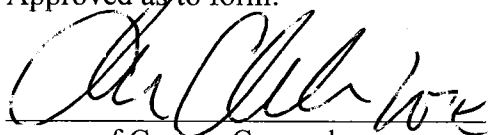
PASSED AND ADOPTED this 13th day of September, 2011, by the Board of Supervisors of the County of Santa Cruz by the following vote:

- AYES: SUPERVISORS
- NOES: SUPERVISORS
- ABSENT: SUPERVISORS
- ABSTAIN: SUPERVISORS

\_\_\_\_\_  
Chair of the Board of Supervisors

ATTEST: \_\_\_\_\_  
Clerk of the Board

Approved as to form:

  
\_\_\_\_\_  
e of County Counsel