

**ORDINANCE NO. 3471 C.S.**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY**

**BAN PLASTIC SINGLE-USE CARRY-OUT BAGS AND PROHIBIT THE FREE DISTRIBUTION OF RECYCLED PAPER BAGS BY RETAIL ESTABLISHMENTS**

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

WHEREAS, the City of Monterey is very similar to the City of Manhattan Beach in terms of population, location, coastal community and sensitive marine species;

WHEREAS, the City of Manhattan Beach prepared and adopted a Negative Declaration on its proposed ordinance to prohibit single-use plastic carry-out bags and the Supreme Court of California concurred with the City of Manhattan Beach findings;

WHEREAS, the City of Monterey has only 27,810 persons according to the 2010 Census and City research shows less than 200 existing businesses that would be affected by the City's proposed ordinance;

WHEREAS, the population and affected businesses are less than that of the City of Manhattan Beach;

WHEREAS, it is the intent of the City of Monterey to eliminate the common use of single-use carry out bags, encourage the use of reusable bags by consumers and retailers, and to reduce the consumption of single-use bags. The use or benefits of paper bags rather than plastic bags is not the issue addressed by this Ordinance. Rather it is to urge the City of Monterey residents and visitors to the City of Monterey to avoid single-use bags altogether and be in favor of reusable bags when purchasing goods;

WHEREAS, the City of Monterey has an obligation to protect the environment, the economy and public health. Globally, an estimated 500 billion to one trillion petroleum-based plastic bags are used each year, which equals over one million per minute. Over 12 million barrels of oil are used to produce plastic bags. CalRecycle estimates that Californians use nearly 20 billion single-use plastic bags per year and discard over 100 plastic bags per second. Further, the EPA estimates that only 5% of the plastic bags in California and nationwide are currently recycled;

WHEREAS, 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;

WHEREAS, most plastic carry out bags do not biodegrade but instead persist in the environment for hundreds of years, slowly breaking down 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 believed to cause death or reproductive failure in fish, shellfish and wildlife and in the humans that ingest the fish;

WHEREAS, the US Marine Mammal Commission estimates that 257 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;

WHEREAS, while the exact numbers are unknown, there are many reported instances of marine animals being injured or dying from ingesting or choking on plastic debris in the ocean. It is reasonable to conclude from such information that the presence of plastic debris in the ocean provides a hazard for marine life. Furthermore, the Monterey Bay National Marine Sanctuary indicates that, "Marine pollution has been shown to be harmful to animals commonly seen in the Monterey Bay National Marine Sanctuary such as California Sea Lions, Common Nurses, Brandt's Cormorants, Common Loons, and endangered Leatherback Sea Turtles;"

WHEREAS, 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 County, from June 2007 to March 2010, it conducted 395 cleanups where volunteers removed a total of 19,080 plastic bags. Unchecked, this material would have likely entered the marine environment of the Monterey Bay National Marine Sanctuary;

WHEREAS, compostable plastic carry out bags, as currently manufactured, do not solve the above referenced issues of wildlife damage, litter, or resource use. Further, compostable carry-out bags are designed to remain intact until placed in a professional compost facility, so do not degrade as quickly as litter and do not degrade in a marine environment. Producing compostable bags consumes nearly as much fossil fuel as non-compostable bags. Mixing compostable bags with regular plastic bags prevents recycling or composting. Accordingly, the City has determined that it should not grant an exemption to this Ordinance *for compostable carry-out bags*;

WHEREAS, 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 grocer costs to offset the expense of nearly 1,000 "free" bags received from grocers;

WHEREAS, reusable bags are readily available with numerous sources and vendors for these bags. Many grocery and other retail stores throughout the City of Monterey already offer reusable bags for sale at a price as low as 99 cents;

WHEREAS, 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 fee on paper bags is indicated as an incentive to reduce their use and encourage reusable bags;

WHEREAS, paper shopping bags with 40% post consumer recycled content are easily available and such bags are in wide use by City of Monterey merchants. Paper bags that contain a minimum of 40% post-consumer recycled content have fewer negative impacts than

virgin paper bags;

WHEREAS, State law currently prohibits local jurisdictions from placing fees on single-use carry-out 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 fees on paper bags;

WHEREAS, this Ordinance directly impacts retail establishments throughout the City of Monterey, excluding Public Eating Establishments that receive 90% of its revenue from the sale of prepared food eaten on or off-premises, Nonprofit Charitable Re-users, and participants of the California Special Supplement Food Program, for Women, Infants, and Children;

WHEREAS, a Draft Initial Study and Negative Declaration were prepared according to the California Environmental Quality Act and circulated for public review for a required 20-day review period. All related documents were made available at the City of Monterey and on the City's website. The IS/ND concluded that the project will not have a significant impact on the environment. The City Council considered the IS/ND and public comment and determined that there is not substantial evidence, in light of the whole record, that the project has a significant effect on the environment which has not been avoided;

NOW THEREFORE, the Monterey City Council declares as follows:

#### **ARTICLE 4.**

A new Article 4 is hereby added to Chapter 14 of the Monterey City Code, commencing with section 14-21, as set forth below:

SECTION 14-21. After six (6) months from the ordinance's final passage and adoption, the following will be required:

- (a) No retail establishment, that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to the customer, shall provide a single-use carryout 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. A reusable bag or a recycled bag may be provided to the customer, pursuant to this Section.
  - (i) A "single-use carryout bag" is defined as a bag, other than a reusable bag or recycled 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 bags do not include bags, a maximum of 11" x 17", without handles provided to the customer (1) to transport produce, bulk food or meat from a product, 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 bag.
  - (ii) A "reusable bag" is defined as a bag made of cloth or other machine washable fabric that has handles, or a durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse.

- (iii) A "recycled paper bag" is defined as a bag that contains no old growth fiber and a minimum of 40% post-consumer recycled content, is 100% recyclable, and has printed in a highly visible manner on the outside of the bag the words "Reusable" and "Recyclable", the name and location of the manufacturer, and the percentage of post-consumer recycled content.
- (b) Public eating establishments, defined as restaurants, take-out food establishments, or any other business that receives 90% or more of its revenue from the sale of food which is prepared on the premises, to be eaten on or off its premises, are not considered retail establishments for the purpose of this Ordinance.
- (c) Nonprofit charitable re-users, which is 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 re-uses and recycles donated goods or materials and receives more than 50% of its revenues from the handling and sale of those donated goods or materials, are not considered retail establishments for the purpose of this Ordinance.
- (d) Six (6) months from the Ordinance's final passage and adoption, a retail establishment may make available for sale to a customer a recycled paper bag for a minimum charge of 10 cents (\$0.10). Twelve (12) months from the Ordinance final passage and adoption, a retail establishment shall raise the cost it charges a customer for a recycled paper bag to a minimum charge of twenty-five cents (\$0.25). A retail establishment may also make available to the customer, a reusable bag.
- (e) Notwithstanding this Section, when a recycled paper bag is distributed to the customer, the amount of the sale of the recycled paper bag shall be separately itemized on the sales receipt.
- (f) A retail establishment may provide a customer participating in the California Special Supplement 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; 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 Welfare and Institutions Code, with one or more recycled paper bags at no cost or reusable bags.

**SECTION 14-22. Recordkeeping and Inspection**

All retail establishments shall keep complete and accurate records or documents of the purchase and sale of any recycled paper bag by the retail establishment, for a minimum period of one year from the date of purchase and sale, which record shall be available for inspection at no cost to the City during regular business hours by any City employee authorized to enforce this Section. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the retail establishment address. The provision of false information, including incomplete records or documents to the City shall be a violation of this Section.

SECTION 14-23. Enforcement and Notice of Violation.

- (a) The remedies provided by this Ordinance are cumulative and in addition to any other remedies available at law or in equity.

SECTION 14-24. Penalties and Fines for Violations.

- (a) For the first violation, a written warning shall be issued to the provider specifying that a violation of this Ordinance has occurred, and which further notifies the provider of the appropriate penalties to be assessed in the event of future violations. The provider will have 14 days to comply.
- (b) Upon failure of the provider to comply within the 14 day period set forth in subsection (a) above, the City may pursue enforcement of this Ordinance utilizing any of the remedies set forth in the City's Administrative Fine Resolution.
- (c) Providers who violate this Ordinance in connection with special events, as defined in this Article, shall be assessed a graduated administrative fine which shall increase in amount depending upon the number of persons attending said special event. The amount of the graduated administrative fine shall be established and set forth in the City's Administrative Fine Resolution.

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 20th day of December, 2011, by the following vote:

AYES:	5	COUNCILMEMBERS:	Downey, Hafferman, Selfridge, Sollectio, Della Sala
NOES:	0	COUNCILMEMBERS:	
ABSENT:	0	COUNCILMEMBERS:	
ABSTAIN:	0	COUNCILMEMBERS:	

APPROVED:

ATTEST:

  
\_\_\_\_\_  
City Clerk thereof

  
\_\_\_\_\_  
Mayor of said City

STATE OF CALIFORNIA )  
COUNTY OF MONTEREY )  
CITY OF MONTEREY )

I, Bonnie L. Gawf, CITY CLERK OF THE CITY OF MONTEREY, AND EX-OFFICIO CLERK OF THE COUNCIL THEREOF, HEREBY CERTIFY THAT THE FOREGOING ORDINANCE WAS DULY PASSED TO PRINT IN THE OFFICIAL NEWSPAPER OF SAID CITY BY THE COUNCIL THEREOF ON THE 6<sup>th</sup> day of December 2011, BY THE FOLLOWING VOTE:

AYES: 5 COUNCILMEMBERS: Downey, Haferman, Selfridge, Sollecito, Della Sala

NOES: 0 COUNCILMEMBERS: None

ABSENT: 0 COUNCILMEMBERS: None



DATED: December 7, 2011

CITY CLERK OF SAID CITY