

ORDINANCE O2014-10

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, ADDING A NEW CHAPTER 5.65, "SINGLE-USE CARRYOUT BAG REDUCTION," TO TITLE 5 OF THE NAPA MUNICIPAL CODE

WHEREAS, the use of all single-use shopping bags (plastic, paper, biodegradable) causes severe environmental impacts, including greenhouse gas (GHG) emissions, litter, harm to wildlife, ground level ozone formation, atmospheric acidification, water consumption, solid waste generation, and negative stormwater impacts; and

WHEREAS, according to the California Integrated Waste Management Board's 2009 study single-use plastic bag recycling rates, in 2009, approximately Nineteen Billion (19,000,000,000) single-use plastic bags were used in California but less than 5% were recycled (<http://www.calrecycle.ca.gov/publications/Detail.aspx?PublicationID=1373>); and

WHEREAS, the City Council takes legislative notice of a compilation of numerous studies that point to the economic and environmental benefits of recycling and waste reduction, including the benefits of such practices on governmental efficiency and public cost savings, assembled and indexed by Californians Against Waste at [www.cawrecycles.org/facts and stats](http://www.cawrecycles.org/facts_and_stats); and

WHEREAS, numerous studies such as the California Coastal Commission's 2006 study titled "Eliminating Land-based Discharges of Marine Debris in California: A Plan of Action from The Plastic Debris Project" ([http://www.plasticdebris.org/CA Action Plan 2006.pdf](http://www.plasticdebris.org/CA_Action_Plan_2006.pdf)), have documented the prevalence of single-use plastic carry-out bags littering the environment, blocking storm drains and fouling beaches; and

WHEREAS, according to the Natural Resources Defense Council, California cities spend about \$11 per resident to keep litter from ending up in our oceans as marine pollution, and clean-up of plastic bags is estimated to be between 8% to 25% of the litter clean-up costs ([http://docs.nrdc.org/oceans/oce\\_13082701.asp](http://docs.nrdc.org/oceans/oce_13082701.asp)), and the City of Napa's General Fund must bear the brunt of the clean-up costs of this litter; and

WHEREAS, plastic bags are a significant source of marine debris and are hazardous to marine animals and birds which may confuse single-use plastic carry-out bags for a source of food resulting in entanglement, suffocation, poisoning, and death to at least 267 species worldwide including sea turtles, birds, and marine animals (Laist, D. W., 1997. Impacts of marine debris: entanglement of marine life in marine debris including a comprehensive list of species with entanglement and ingestion records. In: Coe, J. M. and D. B. Rogers (Eds.), Marine Debris – Sources, Impacts and Solutions. Springer-Verlag, New York, pp. 99-139); and

**WHEREAS, of all single-use bags, single-use plastic bags have the greatest impacts on litter and marine life; and**

**WHEREAS, the use of single-use paper bags result in greater (GHG) emissions, atmospheric acidification, water consumption, and ground-level ozone production than single-use plastic bags; and**

**WHEREAS, the various studies contained in the City's legislative record suggest that from an overall environmental and economic perspective, a sustainable, practical and appropriate alternative to single-use plastic and paper carry-out bags is a shift to reusable bags; and**

**WHEREAS, there are several alternatives to single-use carry-out bags readily available in the City of Napa, including the use of reusable bags or the reuse of recycled paper bags; and**

**WHEREAS, an important goal of the City is to procure and use sustainable products and services; and**

**WHEREAS, it is the City's desire to conserve resources, reduce the amount of GHG emissions, waste, litter and marine pollution and to protect the public health and welfare including wildlife, all of which increase the quality of life for the City's residents and visitors; and**

**WHEREAS, studies such as the "Implementation of the County of Los Angeles Plastic and Paper Carryout Bag Ordinance" (<http://ladpw.org/epd/aboutthebag/PDF/Bag%20Ban%20Status%20Nov%202012.pdf>) document that prohibiting plastic bag distribution and placing a mandatory charge on paper bags will dramatically reduce the use of both types of bags; and**

**WHEREAS, the City will not receive any revenue from the paper bag charge, and therefore the charge is not a "tax" or a "fee" as defined by Section 1(e) of Article XIII C of the California Constitution; and**

**WHEREAS, the City Council finds that the record contains substantial evidence that prohibiting the sale of single-use plastic bags, requiring retailers to charge a nominal fee for the sale of recycled paper bags, and incentivizing the use of reusable bags will conserve resources, reduce the amount of greenhouse gas emissions associated with the production of single-use bags, reduce waste and marine pollution, protect sensitive local water resources and water quality, and enhance the quality of life for City of Napa residents, visitors and wildlife; and**

**WHEREAS, the City Council has considered all information related to this matter, as presented at the public meeting of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.**

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Napa as follows:

**SECTION 1:** The City Council hereby makes the following findings in support of the determination that the "Single Use Carry-Out Bag Reduction" ordinance is exempt from CEQA under CEQA Guidelines Sections 15307 and 15308:

- The proposed project, adoption of an ordinance regulating single-use carryout shopping bags, will serve to protect the environment and natural resources by reducing use of single-use plastic and paper carryout bags.
- Studies have shown that single-use plastic bags are harmful to natural ecosystems and a menace to the State's waste diversion goals. Once discarded, they either enter our landfills or our marine ecosystem. Numerous studies such as the California Coastal Commission's 2006 study titled "Eliminating Land-based Discharges of Marine Debris in California: A Plan of Action from The Plastic Debris Project" have documented the prevalence of single-use plastic carry-out bags littering the environment, blocking storm drains and fouling marine environments.
- The production and degeneration of single-use plastic and paper bags produce CO2 emissions that are harmful to the climate. Studies have shown that use of single-use paper bags result in greater greenhouse gas emissions, atmospheric acidification, water consumption, and ground-level ozone production than reusable carryout bags.
- The proposed project will establish local regulations that will protect the environment and natural resources from the negative impacts of single-use carryout bags by establishing procedures that will reduce the use of single-use carryout bags and incentivize use of reusable carryout bags.
- The City Council therefore finds that there exists ample evidence, in both the written and administrative record and contained in testimony and information presented by City staff and received by the City Council as a part of the public hearing, that the proposed project will serve as a local regulation enacted for the purpose of protecting natural resources and the environment. The City's environmental analysis, as set forth more specifically in these findings and within the written and administrative record, is supported by the holding in Save the Plastic Bag Coalition v. County of Marin, 218 Cal. App.4<sup>th</sup> 209 (2013), 159 Cal. Rptr. 3d 763.

**SECTION 2:** The City Council hereby determines that this Single Use Carry-Out Bag Reduction ordinance is exempt from CEQA pursuant to CEQA Guidelines Sections 15307 and 15308, which exempt actions taken by a regulatory agency as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a

natural resource or protection of the environment where the regulatory process involves procedures for protection of the environment.

**SECTION 3: Amendment.** A new Chapter 5.65, "SINGLE-USE CARRYOUT BAG REDUCTION," is hereby added to Title 5 of the Napa Municipal Code, to read as follows:

### **Chapter 5.65 SINGLE-USE CARRYOUT BAG REDUCTION**

#### **5.65.010 TITLE**

This chapter shall be known as the City's "Single-Use Carryout Bag Reduction" ordinance, and may be cited as such, and will be referred to herein as "this chapter."

#### **5.65.020 PURPOSE AND INTENT**

The purposes of this chapter are to:

- A. Enact a bag reuse program that reduces waste and pollution, and that decreases the use of Single-Use Carryout Bags in the City of Napa.
- B. Protect the environment from the negative impacts of Single-Use Carryout Bags by reducing the use of Single-Use Carryout Bags, with a provision that would require retail stores within the City of Napa to charge customers who request Recycled Paper Bags.
- C. Provide an incentive for customers to use reusable bags or bring their own bags by exempting application of the bag charge from those customers who use reusable bags or bring their own bags.

#### **5.65.030 DEFINITIONS**

For purposes of this chapter, the following definitions shall apply:

- A. "Customer" means any Person obtaining Merchandise from a Retail Establishment.
- B. "Director" means the Community Development Director of the City of Napa, or a designee of the Community Development Director or City Manager.
- C. "Merchandise" means any consumer goods as that term is defined by California Civil Code section 1791(a), except that "Merchandise" shall also include clothing and consumables, as those terms are defined by California Civil Code Sections 1791(c) and (d), respectively. "Merchandise" does not include Prepared Food. "Merchandise" includes, but is not limited to, liquor and beer, clothing, electronics and groceries that are not Prepared Food.

- D. "Person" means the same as that term is set forth under Napa Municipal Code 1.04.030.
- E. "Post-consumer Recycled Material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Post-consumer Recycled Material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
- F. "Public Eating Establishment" 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. "Prepared Food" means food 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 or uncooked meat product, or fruits and vegetables that are intended to be prepared for consumption off site.
- G. "Recycled Paper Bag" means a paper bag provided by a Retail Establishment to a Customer in accordance with this Chapter, at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting merchandise out of the establishment that contains no old growth fiber and a minimum of forty percent (40%) Post-consumer Recycled Material; is one hundred percent (100%) recyclable; and has printed in a manner on the outside of the bag the word "Recyclable," the name and location of the manufacturer, and the percentage of Post-consumer Recycled content.
- H. "Retail Establishment" means any commercial establishment that sells Merchandise at retail directly to the Customer; and is located within or doing business within the geographical limits of the City of Napa. Retail Establishment does not include Public Eating Establishments.
- I. "Reusable Bag" means either 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 mil thick and is specifically designed and manufactured for multiple reuse.
- J. "Single-Use Carryout Bag" means a bag, provided by a Retail Establishment to a Customer at the check stand cash register, point of sale or other point of departure, for the purpose of transporting merchandise out of the establishment; provided that "Single-Use Carryout Bag" specifically excludes any Reusable Bag or Recycled Paper Bag and excludes any bag 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; (3) to segregate merchandise that could damage or contaminate other merchandise when

placed together in a Reusable Bag or Recycled Paper Bag; or (4) to contain or wrap meat, fish, or frozen foods, whether prepackaged or not.

#### **5.65.040 Single-Use Carryout Bags**

- A. On and after January 1, 2015, no Retail Establishment shall provide a Single-Use Carryout Bag to a Customer
- B. On and after January 1, 2015, no Retail Establishment shall provide a Recycled Paper Bag to a Customer for the purpose of transporting Merchandise out of the establishment unless: (1) the Retail Establishment charges the Customer an amount of not less than ten cents (\$0.10) per bag, and (2) the amount of the charge for each Recycled Paper Bag is separately itemized on the sales receipt provided by the Retail Establishment to the Customer.
- C. Retailers shall retain the proceeds from the collection of the charge required by 5.65.040(B) for the point of sale purchase of a Recycled Paper Bag. This chapter does not restrict how retailers use these monies.
- D. Nothing in this chapter shall prohibit Customers from using bags of any type that they bring to a Retail Establishment themselves or from carrying away goods that are not placed in a bag.

#### **5.65.050 Exemptions**

A Retail Establishment may provide a Reusable Bag or a Recycled Paper Bag at no cost at the point of sale to a customer who is participating in the California Special Supplemental Food Program for Women, infants, and children pursuant to Article 2 of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code, or a customer who is participating in the Supplemental Food Program pursuant to Chapter 10 of Part 3 of Division 9 of the Welfare and Institutions Code.

#### **5.65.060 Enforcement**

The Director shall have primary responsibility for enforcement of this chapter. The Director is authorized to make all necessary and reasonable rules and regulations with respect to the enforcement of this chapter. All such rules and regulations shall be consistent with the provisions of this chapter.

It is a violation of this Code, subject to enforcement pursuant to Chapter 1.16 of this Code and punishment and prosecution pursuant to Chapter 1.20 of this Code, for any Retail Establishment to violate or fail to comply with any provision of this chapter.

**SECTION 4: Severability.** If any section, sub-section, subdivision, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or

portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 5: Publication.** This Ordinance shall be printed and published twice in the Napa Valley Register, a newspaper of general circulation, printed and published in the City of Napa.

**SECTION 6: Effective Date.** This Ordinance shall become effective thirty (30) days following adoption.

City of Napa, a municipal corporation

MAYOR: Tee Techel

ATTEST: Dorothy Roberts  
CITY CLERK OF THE CITY OF NAPA

STATE OF CALIFORNIA }  
COUNTY OF NAPA } SS:  
CITY OF NAPA }

I, Dorothy Roberts, City Clerk of the City of Napa, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the regular meeting of the City Council on the 22<sup>nd</sup> day of July, 2014, and had its second reading and was adopted and passed during the regular meeting of the City Council on the 5th day of August, 2014, by the following vote:

- AYES: Sedgley, Inman, Pedroza, Techel
- NOES: None
- ABSENT: Mott
- ABSTAIN: None

ATTEST: Dorothy Roberts  
Dorothy Roberts  
City Clerk

Approved as to Form:

Michael W. Barrett

Michael W. Barrett  
City Attorney