

ATTACHMENT 4

City Council Meeting: January 25, 2011 Santa Monica, California

ORDINANCE NUMBER (CCS)

(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA PROHIBITING RETAIL ESTABLISHMENTS FROM PROVIDING SINGLE USE PLASTIC CARRYOUT BAGS AND REGULATING THE USE OF PAPER CARRY OUT BAGS

WHEREAS, about nineteen billion (19,000,000,000) single use bags are used annually in California but less than 5% are recycled; and

WHEREAS, there are approximately eighteen hundred and seventy-five (1875) commercial and retail establishments in the City of Santa Monica ("the City") most of which provide single use, disposable carry out bags to their customers; and

WHEREAS, about twenty-six million (26,000,000) single use carry out bags are distributed by retail establishments in the City each year; and

WHEREAS, most of these single use carry out bags are made from plastic or other material that does not readily decompose; and

WHEREAS, numerous studies have documented the prevalence of single use plastic carry out bags littering the environment, blocking storm drains and fouling beaches; and

WHEREAS, the City's taxpayers must bear the brunt of the clean-up costs; and

WHEREAS, plastic bags are a significant source of marine debris and are hazardous to marine animals and birds which often confuse single use plastic carry out bags for a source of food. The ingestion of these bags can result in reduced nutrient absorption and death to birds and marine animals; and

WHEREAS, even though single use paper bags are made from renewable resources and are much less environmentally problematic than single use plastic bags, they do require significant environmental resources to manufacture, transport, and recycle and/or dispose of; and

WHEREAS, from an overall environmental and economic perspective, the best alternative to single use plastic carryout bags is a major shift to reusable bags; and

WHEREAS, this ordinance requires stores that decide to make recycled paper carry out bags available to pass-through to their customers the reasonable cost of providing bags;

WHEREAS, the City has completed an analysis to determine the reasonable cost pass-through that would reimburse retailers for their costs of providing recycled paper carry out bags to their customers; and

WHEREAS, based on this analysis, the City has determined that a minimum cost pass-through of \$0.10 per paper bag would cover the reasonable cost to a store of providing the paper bags to its customers; and

WHEREAS, other jurisdictions have imposed paper bag fees on the customers requesting these bags and these fees have proven very effective at generating a major shift in consumer behavior toward the use of reusable bags and significantly reducing bag consumption; and

WHEREAS, the City has completed an analysis to determine the reasonable cost pass-through that would reimburse retailers for the their costs of providing recycled paper carry out bags to their customers; and

WHEREAS, the proceeds from the collection of the paper bag pass-through would be retained by the retailer and this ordinance does not specify how the retailers must expend the monies collected; and

WHEREAS, customers can avoid this cost pass-through by using reusable bags; and

WHEREAS, no portion of the cost pass-through will be provided to the City and consequently, the City will not receive any revenues from the retailers' collection of the paper bag pass-through; and

WHEREAS, therefore, the cost pass-through is not a fee subject to Proposition 26; and

WHEREAS, a paper bag cost pass-through is an essential element of the proposed ordinance as it is intended to provide a disincentive to customers to request paper bags when shopping at regulated stores and to promote a shift towards the use of reusable bags by Santa Monica consumers; and

WHEREAS, there are several alternatives to single use carry out bags readily available in the City, including reusable bags produced locally from sustainable materials; and

WHEREAS, an important goal of the City's Sustainable City Plan is to procure and use sustainable products and services; and

WHEREAS, it is the City's desire to whenever possible conserve resources, reduce the amount of green house gas emissions, waste, beach litter and marine pollution and to protect the public health and welfare including local wildlife, all of which increase the quality of life for Santa Monica's residents and visitors.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 5.45 is hereby added to the Santa Monica Municipal Code as follows:

CHAPTER 5.45 SINGLE-USE CARRYOUT BAG ORDINANCE

Section 5.45.010 Definitions

(a) "Carry Out Bag" means any bag that is provided by a Retail Establishment at the point of sale to a customer for use to transport or carry away purchases, such as merchandise, goods or food, from the retail establishment. Carry Out Bags do not include Product Bags as defined in this Chapter.

(b) "Food Provider" means any person or establishment in the City of Santa Monica, that provides prepared food for public consumption on or off its premises and includes, without limitation, any store, shop, sales outlet, restaurant, Grocery Store, delicatessen, or catering truck or vehicle.

(c) "Grocery Store" means any Retail Establishment that sells groceries, fresh, packaged, canned, dry, prepared or frozen food or beverage products and similar items, and includes, without limitation, supermarkets, convenience stores, liquor stores and gasoline stations.

(d) "Paper Bag Cost Pass-Through" means the cost which must be collected by retailers from their customers when providing a Recycled Paper Bag.

(e) "Pharmacy" means any retail store, where prescriptions, medications, controlled or over the counter drugs, personal care products or health supplement goods or vitamins are sold, but excluding any licensed pharmacy located within a hospital.

(f) "Product Bag" means any bag, provided to a customer for use within a Retail Establishment to assist in the collection or transport of products to the point-of-sale within the Retail Establishment.

(g) "Recycled Paper Bag" means a paper carryout bag provided by a store to a customer at the point of sale that meets all of the following requirements:

(1) Except as provided in subdivision (2) of this subsection (g), the paper carryout bag contains a minimum of 40 percent postconsumer recycled materials.

(2) An eight pound or smaller recycled paper bag shall contain a minimum of 20 percent postconsumer recycled material.

(3) The paper carryout bag is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the City.

(4) The paper carryout bag is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Material (ASTM) Standard Specification for Compostable Plastics D6400, as published in September 2004.

(5) Printed on the paper carryout bag is the minimum percentage of postconsumer content.

(h) "Retail Establishment" means any person, including any corporation, partnership, business, facility, vendor, organization or individual that sells or provides merchandise, goods or materials, including, without limitation, clothing, food, or personal items of any kind, directly to a customer; Retail Establishment includes, without limitation, any Grocery Store, department store, hardware store, Pharmacy, liquor store, restaurant, catering truck, convenience store, and any other retail store or vendor.

(i) "Reusable bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements:

(1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet;

(2) has a minimum volume of 15 liters;

(3) is machine washable or is made from a material that can be cleaned or disinfected;

(4) does not contain lead, cadmium, or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags;

(5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and

(6) if made of plastic, is a minimum of at least 2.25 mils thick."

5.45.020 Prohibitions

(a) No Retail Establishment in the City shall provide a Single-Use Plastic Carry Out Bag to a customer unless otherwise permitted pursuant to Section 5.45.040.

(1) "Single-Use Plastic Carry Out Bags may be distributed to customers by Food Providers for the purpose of safeguarding public health and safety during the transportation of take-out foods and prepared liquids intended for consumption away from the Food Provider's premises."

(b) No Grocery Store or Pharmacy in the City shall provide any type of bag to a customer at the point of sale except a Reusable Bag or a Recycled Paper Bag unless otherwise permitted pursuant to Section 5.45.040.

(c) No person shall distribute a Single-Use Plastic Carry Out Bag at any City Facility, City-managed concession, City sponsored event, or City permitted event unless otherwise permitted pursuant to Section 5.45.040.

(d) No person shall distribute a Single Use Plastic Carry Out Bag or any paper bag at the Santa Monica Farmers Markets, except eight pound or smaller Recycled Paper Bags for mushrooms may be distributed free of charge.

5.45.030 Recycled Paper Bags Cost Pass-Through

(a) Subject to subsection (b) of this Section, a Grocery Store or Pharmacy may only provide a Recycled Paper Bag to a customer if it collects a Paper Bag Cost Pass-through from the customer for each Recycled Paper Bag provided.

(b) The Paper Bag Cost Pass-through shall not be less than 10 cents unless a store has previously submitted a full accounting to the City, signed by a responsible manager under penalty of perjury that identifies all costs including bag purchase, shipping, handling and storage, showing a lesser actual cost to the store for each bag. Any such accounting shall expire one year from the date of original submission and a new accounting would need to be resubmitted.

(e) No Grocery Store or Pharmacy collecting a Paper Bag Pass-through pursuant to this Section shall rebate or otherwise reimburse a customer for any portion of this pass-through.

(f) All Grocery Stores and Pharmacies shall indicate on the customer transaction receipts the number of Recycled Paper Bags provided and the total amount of the Paper Bag Pass-through.

(g) On a semi-annual basis or as otherwise may be required by the Director of the Office of Sustainability and the Environment, or his or her designee, each Grocery Store and Pharmacy required to collect a Paper Bag Pass-through shall report to the City, on a form prescribed by the Office of Sustainability and the Environment, all payments of Paper Bag Pass-throughs received. The form shall be signed by a responsible officer or agent of the Grocery Store or Pharmacy who shall swear or affirm that the information provided on the form is true and complete. Every Grocery Store or Pharmacy shall also keep complete and accurate record or documents of the purchase and sale of any Recycled Paper Bag by the Grocery Store or Pharmacy for a minimum period of three (3) years 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 an City employee authorized to enforce this Chapter.

5.45.040 Exemptions

(a) Notwithstanding the prohibitions contained in Section 5.45.020:

(1) Single-Use Plastic Carry Out Bags may be distributed to customers by Food Providers for the purpose of safeguarding public health and safety during the transportation of hot prepared take-out foods and prepared liquids intended for consumption away from the Food Provider's premises.

(2) Retail Establishments may distribute Product Bags and may make Reusable Bags available to customers whether through sale or otherwise.

(b) Notwithstanding the requirements contained in Section 5.45.030:

A store shall provide a customer participating in the California Special Supplemental 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 California 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 a reusable bag or a recycled paper bag at no cost at the point of sale.

(c) The City Manager, or his or her designee, including the Director of the Office of Sustainability and the Environment (OSE), may exempt a Retail Establishment from the requirements of this Chapter for up to a one year period, upon a showing by the Retail Establishment that the conditions of this Chapter would cause undue hardship. An "undue hardship" shall only be found in:

1. Circumstances or situations unique to the particular Retail Establishment such that there are no reasonable alternatives to Single-Use Plastic Carryout Bags or a Paper Bag Pass-through cannot be collected; or

2. Circumstances or situations unique to the Retail Establishment such that compliance with the requirements of this Chapter would deprive a person of a legally protected right.

(d) If a Retail Establishment requires an exemption beyond the initial exemption period, the Retail Establishment must re-apply prior to the end of the exemption period and must demonstrate continued undue hardship if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

(e) An exemption application shall include all information necessary for the City to make its decision, including but not limited to documentation showing the factual support for the claimed exemption. The City Manager or his or her designee may require the applicant to provide additional information to permit the City to determine facts regarding the exemption application.

(f) The City Manager or his or her designee may approve the exemption application, in whole or in part, with or without conditions.

(g) Exemption decisions are effective immediately, are final and are not appealable.

(h) The City Council may by resolution establish a fee for exemption applications. The fee shall be sufficient to cover the costs of processing the exemption application.

5.45.050 Remedies.

(a) The City Manager, or his or her designee, is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this Chapter, including, but not limited to, inspecting any retail establishment's premises to verify compliance.

(b) Any person violating this Section shall be guilty of an infraction, which shall be punishable by a fine not exceeding two hundred fifty dollars, or a misdemeanor, which shall be punishable by a fine not exceeding one thousand dollars, or by imprisonment in the County Jail for a period not exceeding six months or by both such fine and imprisonment.

(c) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

(d) Administrative enforcement of this ordinance shall proceed pursuant to Santa Monica Municipal Code Chapter 1.09, with the fines to be graduated for repeat violations in amounts set forth by City Council resolution.

(e) Each violation of this Chapter shall be considered a separate offense

(f) The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in this Chapter shall preclude any person from pursuing any other remedies provided by law.

(g) Notwithstanding any other provision of this Ordinance, commencing on September 1, 2011, this Ordinance may be enforced through any remedy as provided for in this Section. Prior to September 1, 2011, this Ordinance shall not be enforced.

SECTION 2. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective thirty (30) days from its adoption.

APPROVED AS TO FORM:
MARSHA JONES MOUTRIE
City Attorney