

## ORDINANCE 435

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, ADDING CHAPTER 5.01 OF THE SOLANA BEACH MUNICIPAL CODE, ALL RELATED TO PLASTIC BAG USE REDUCTION**

**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 461 licensed retail businesses in the City of Solana Beach (“the City”); and,

**WHEREAS**, approximately 160 of these licensed retail businesses provide single use, disposable carry-out bags to their customers; and

**WHEREAS**, about 6.5 million single use carry-out bags are distributed by licensed 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, fouling beaches and the ocean environment; 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**, single use paper bags are made from renewable resources and are much less environmentally problematic than single use plastic bags, yet they do require 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 permits stores to implement incentives to generate a shift in consumer behavior toward the use of reusable bags and significantly reducing single-use bag consumption; and

**WHEREAS**, there are several alternatives to single-use carry out bags readily available in the City, including reusable bags produced from sustainable materials; 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 Solana Beach's residents and visitors; and

**WHEREAS**, the City Council of the City of Solana Beach conducted a noticed public hearing regarding the proposed ordinance at their regular scheduled meeting of April 25, 2012. The public hearing was advertised pursuant to applicable law and testimony was invited and received; and

**WHEREAS**, the proposed ordinance is exempt from review under the California Environmental Quality Act (CEQA) based upon the commonsense exemption under 14 CCR 15061(b)(3) and the reasoning in the California Supreme Court case *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal. 4th 155 (2011); and

**WHEREAS**, even though the proposed ordinance is exempt from CEQA, an Initial Environmental Study was prepared in an abundance of caution under the applicable provisions of CEQA. Based upon this study it was determined that the proposed ordinance is not an action involving any significant impacts upon the environment, and a Negative Declaration was prepared and is hereby adopted; and

**WHEREAS**, the proposed ordinance does not preempt compliance with the California Retail Food Code or any other state or federal law.

**WHEREAS**, the City Council desires to add Chapter 5.01 to the Solana Beach Municipal Code, entitled "Single-Use Carryout Bag Use Reduction" to provide for restrictions on the use of plastic bags within the City.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SOLANA BEACH DOES ORDAIN AS FOLLOWS:**

Section 1. Section 5.01.010 of the Solana Beach Municipal Code is hereby added as follows:

**Section 5.01.010 Definitions**

(a) "Food Vendor" means any person or establishment in the City of Solana Beach, 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.

(b) "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.

(c) "Non-Profit Vendor" means a recognized tax exempt organization which provides goods as a part of its services.

(d) "Paper Bag Cost Pass-Through" means the cost which may 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 such as produce, bulk items, meat, poultry, dry cleaning or laundry, to the point-of-sale within the Retail Establishment.

(g) "Recyclable Paper Bag" means a paper bag that meets all of the following requirements: (1) contains no old growth fiber; (2) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) postconsumer recycled material; (3) is capable of composting, consistent with the timeline and specifications of the American society of Testing and Materials (ASTM) Standard D6400; (4) is accepted for recycling in curbside programs in the City; (5) has printed on the bag the name of the manufacturer, the location where the bag was manufactured, and the percentage of postconsumer recycled material used; and (6) displays the word "Recyclable" in a highly visible manner on the outside of the bag.

(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.

(j) “Single-Use Plastic Carry-Out Bag” means any bag that is less than 2.25 mils thick and is made predominately of plastic derived from petroleum or from bio-based sources, such as corn or other plant sources 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. Single-Use Plastic Carry-Out Bags do not include Product Bags as defined in this Chapter.

(k) “Vendor” means any store, shop, restaurant, sales outlet or other commercial establishment located within or doing business within the City of Solana Beach, which provides perishable or nonperishable goods.

Section 2. Section 5.01.020 of the Solana Beach Municipal Code is hereby added as follows:

### **5.01.020 Prohibitions**

(a) No Retail Establishment in the City shall provide a Single-Use Plastic Carry-Out Bag to a customer at the point of sale unless otherwise permitted pursuant to Section 5.01.040.

(b) No Retail Establishment 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 5.01.040.

(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 5.01.040.

(d) No person shall distribute a Single-Use Plastic Carry-Out Bag at any Farmers Market within the City of Solana Beach.

(e) Nothing in this Chapter shall prohibit the provision of bags, including including Single-Use Plastic Carry-Out Bags, as may be necessary to comply with the California Retail Food Code or any other state or federal law.

Section 3. Section 5.01.030 of the Solana Beach Municipal Code is hereby added as follows:

### **5.01.030 Incentives for Use of Reusable Bags**

(a) Affected Retail Establishments are strongly encouraged to provide incentives for the use of Reusable Bags through passing through the cost of recycled bags, through credits or rebates for customers that use Reusable Bags, or through education. Such incentives may include one or more of the following:

(1) Paper Bag Cost Pass-Through

- A. Subject to subsection (B) of this Section, an affected Retail Establishment may 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.

(2) Rebate. An affected Retail Establishment may rebate or otherwise reimburse a customer for use of a Reusable Bag up to 5 cents per Reusable Bag per transaction.

(3) Each Retail Establishment is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging customers to use reusable bags.

Section 4. Section 5.01.040 of the Solana Beach Municipal Code is hereby added as follows:

**5.01.040 Exemptions**

Notwithstanding the requirements contained in Section 5.01.020:

(a) A Retail Establishment 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.

(b) The City Manager, or his or her designee, may exempt an Affected Retail Establishment, Vendor or Non-Profit Vendor from the requirements of this Chapter for a period of up to one additional year after the operative date of this Ordinance, upon sufficient showing by the applicant that the provisions of this Chapter would cause undue hardship. The phrase undue hardship includes:

- 1. Situations where there are no acceptable alternatives to Plastic Carry-Out Bags for reasons which are unique to the Retail Establishment, Vendor or Non-Profit Vendor;
- 2. Situations where compliance with the requirements of this Code would deprive a person of a legally protected right.”

(c) The provision of Product Bags as defined in this Chapter is not prohibited.

Section 5. Section 5.01.050 of the Solana Beach Municipal Code is hereby added as follows:

**5.01.050 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 Solana Beach Municipal Code Chapter 1.18.

(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, this Ordinance may be enforced through any remedy as provided for in this Section upon its Effective Date.

Section 6. Chapter 5.01 of the Solana Beach Municipal Code shall become effective and operative as to: 1) Grocery Stores, Food Vendors, Restaurants, Pharmacies and City facilities three (3) months after its adoption by the City Council, and 2) all remaining Affected Retail Establishments, Vendors and Non-Profit Vendors six (6) months after its adoption by the City Council.

Section 7. Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

SECTION 8: The City Council of the City of Solana Beach hereby declares that should any section, paragraph, sentence, phrase, term or word of this Ordinance,

hereby adopted, be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared invalid.

**INTRODUCED AND FIRST READ** at a regular meeting of the City Council of the City of Solana Beach, California, on the 25th day of April 2012; and

**THEREAFTER ADOPTED** at a regular meeting of the City Council of the City of Solana Beach, California, on the 9<sup>th</sup> day of May, 2012, by the following vote:

AYES: Councilmembers –  
NOES: Councilmembers –  
ABSTAIN: Councilmembers –  
ABSENT: Councilmembers –

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JOE G. KELLEJIAN, Mayor

APPROVED AS TO FORM:

ATTEST:

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JOHANNA N. CANLAS, City Attorney

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ANGELA IVEY, City Clerk