

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HERMOSA BEACH
BANNING THE USE OF PLASTIC CARRYOUT BAGS AND
IMPOSING A CHARGE FOR RECYCLABLE PAPER BAGS

THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH DOES
HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 1.10.040 of Title 1, Chapter 1.10 of the
Hermosa Beach Municipal Code is amended to add a new paragraph
16 to read:

“Chapter 8.68: Plastic Carryout Shopping Bags”

SECTION 2. A new Chapter 8.68 is added to Title 8 of the Hermosa
Beach Municipal Code to read as follows:

Chapter 8.68 Plastic Carryout Shopping Bags

8.68.010 Definitions.

The following definitions apply to this Chapter:

- A. "Affected retail establishment" means any retail establishment located within or doing business within the geographical limits of the City of Hermosa Beach, including vendors at City-sponsored events, City-owned facilities, and events held on City property, but excluding dry cleaners.
- B. "Food provider" means any person or establishment in the City of Hermosa Beach, that provides prepared food for public consumption on or off its premises and includes, without limitation, any store, shop, sales outlet, restaurant, area within a grocery store where food is prepared for public consumption, delicatessen, or catering truck or vehicle.
- C. "Customer" means any person purchasing goods from a store.
- D. "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, and convenience stores, including convenience stores at gasoline stations.

E. "Operator" means the person in control of, or having the responsibility for, the operation of a store, which may include, but is not limited to, the owner of the store.

F. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.

G. "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

~~GH.~~ "Postconsumer recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. "Postconsumer recycled material" does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

~~HJ.~~ "Produce bag" or "product bag" means any bag without handles used exclusively to carry produce, meats, or other food items to the point of sale inside a store or to prevent such food items from coming into direct contact with other purchased items.

~~IJ.~~ "Recyclable" means material that can be sorted, cleansed, and reconstituted using 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 thermally destroying solid waste.

~~JK.~~ "Recyclable paper carryout 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 06400; (4) is accepted for recycling in curbside programs in the City (5) has printed on the bag the name of the manufacturer, the location (country) 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.

~~KL.~~ "Retail establishment" means any commercial retail facility that sells goods or provides merchandise directly to the ultimate consumer, including, but not limited to, food service providers, grocery stores, pharmacies, liquor stores, "mini-marts," clothing stores, newsstands, retail stores and vendors selling goods or merchandise from a kiosk.

LM. "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 made from a material that can be cleaned and disinfected; (4) does not contain lead, cadmium, or any other toxic material that may pose a threat to public health (a reusable bag manufacturer may demonstrate compliance with this requirement by obtaining a no objection letter from the federal Food and Drug Administration); (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; (6) bag care and washing instructions; (7) if made of plastic film, be at least 2.25 mils thick, measured according to the American Society of Testing and Materials (ASTM) Standard D6988-13; and (8) complies with Section 260.12 of Part 260 of Title 16 of the Code of Federal Regulations related to recyclable claims if the reusable grocery bag producer makes a claim that the reusable grocery bag is recyclable.

MN. "Single-use plastic carryout bag" or "plastic carryout bag" means any bag made predominantly of plastic derived from petroleum, natural gas, or a biologically-based source, such as corn or other plant sources, which is provided to a customer at the point of sale. "Plastic single-use carryout bag" includes compostable and biodegradable bags but does not include: (1) a bag provided to a customer to hold prescription medication dispensed from a pharmacy; (2) a nonhandled produce bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a single-use carryout bag, recycled paper bag or reusable grocery bag; (3) a bag provided to contain an unwrapped food item; or (4) a nonhandled bag that is designed to be placed over articles of clothing on a hanger.

8.68.020 Plastic single-use carryout bags prohibited.

No affected retail establishment shall provide plastic single-use carryout bags to customers for the purpose of carrying away goods from the point of sale. Nothing in this Chapter prohibits customers from using bags of any type that they bring to the store themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the store.

8.68.030 Permitted bags.

- A. Affected retail establishments may provide or make available to a customer recyclable paper carryout bags for the purpose of carrying away goods or other materials from the point of sale, subject to the

terms of this Chapter. Non-recyclable paper carryout bags shall not be provided to customers unless they meet the definition of reusable bag.

- B. ~~Affected retail establishments~~ Grocery stores, pharmacies, and any affected retail establishment that (1) has gross annual sales of at least two million dollars (\$2,000,000) or (2) has at least 10,000 square feet of retail space that generates sales or use tax shall make reusable bags available to customers either for sale or at no charge.
- C. Affected retail establishments may make available plastic produce bags for the purpose of preventing food items from coming into direct contact with other purchased items.
- D. Each affected retail establishment is encouraged to educate its staff to promote reusable bags and to post signs encouraging customers to use reusable bags, and may provide incentives to customers to encourage use of reusable bags.

8.68.040 Regulation of recyclable paper carryout bags.

Unless an exemption set forth in Section 8.68.050 applies:

- A. Any affected retail establishment that provides a recyclable paper carryout bag to a customer shall charge the customer ten (10) cents (\$0.10) for each bag provided, ~~except as provided in Section 8.68.050.~~
- B. No affected retail establishment shall rebate or otherwise reimburse a customer any portion of the 10 cent (\$0.10) charge required in Subsection A.
- C. All affected retail establishments shall indicate on the customer receipt the number of recyclable paper carryout bags provided and the total amount charged for the bags.
- D. All monies collected by a retail establishment under this Chapter shall be retained by the store and shall be used only for the following purposes: (1) costs associated with complying with the requirements of this Chapter, (2) actual costs of providing recyclable paper carryout bags, or (3) costs associated with a store's educational materials or education campaign encouraging the use of reusable bags, if any.

8.68.050 Exemptions from mandatory reusable and recyclable bag charge- customers.

- A. All affected retail establishments must provide at the point of sale, free of charge, either reusable bags or recyclable paper carryout bags, or both, at the store's option, to any customer participating in either 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 Health and Safety Code or in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the

Welfare and Institutions Code.

- B. No food provider shall be required to charge its customers for a bag provided for a customer's leftover food from sit-down restaurant dining.
- C. No affected retail establishment shall be required to charge its customers for paper product bags used to cover unwrapped food, such as baked goods, or used to hold prescription medication dispensed from a pharmacy.
- D. Any affected retail establishment that is not a grocery store or pharmacy and meets the following requirements is not required to charge customers for recyclable paper carryout bags, but may voluntarily do so in accordance with Section 8.68.040: (1) has gross annual sales of less than two million dollars (\$2,000,000) or (2) has less than 10,000 square feet of retail space that generates sales or use tax.

8.68.060 Enforcement and violation - penalties.

- A. The City Manager, or his or her designee, shall enforce the provisions of this Chapter. Nothing in this Chapter shall be construed to create a private cause of action. The City Manager or his/her designee, shall be 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. If the City Manager, or his/her designee, determines that a violation of this Chapter has occurred, he/she will issue a written warning notice to the operator of a store that a violation has occurred and the potential penalties that will apply for future violations.
- C. Any person that violates or fails to comply with any of the requirements of this Chapter after a written warning notice has been issued for that violation shall be subject to the Administrative Citation procedures in Chapter 1.10.
- D. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- 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.

8.68.070 No conflict with federal or state law.

Nothing in this ordinance is intended to create any requirement, power or

8.68.080 Operative date.

- A. This Ordinance shall become operative as to affected retail establishments that meet the definition of a "supermarket" as found in the California Public Resources Code, Section 14526.5 and affected retail establishments of at least 10,000 square feet, six (6) months after its effective date, unless the establishment provides documentation satisfactory to the City Manager or his or her designee showing that it entered into an agreement for the purchase of plastic carryout bags within the year prior to the effective date of this Ordinance. The City Manager or his or her designee may exempt such establishments from the provisions of this Ordinance for an additional six (6) months. This Ordinance shall become operative as to all remaining affected retail establishments, including establishments smaller than 10,000 square feet, twelve (12) months after its effective date.
- B. The City Manager, or his or her designee, may exempt an affected retail establishment 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 Ordinance would cause undue economic hardship. A request for an economic hardship exemption must be submitted in writing to the City along with supporting documentation within 60 days of the effective date of this Ordinance.

SECTION 3. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portions of this Ordinance, or its application to any other persons or circumstance.

SECTION 4. This Ordinance is effective thirty days following adoption.

SECTION 5. This Ordinance is categorically exempt from the California Environmental Quality Act pursuant to California Code of Regulations sections 15307 and 15308 describing projects that protect natural resources or protect the environment.

SECTION 6. The City Clerk shall certify to the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2015.

MAYOR

ATTEST:

City Clerk