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Approved as to Form and Legality

  
City Attorney

## OAKLAND CITY COUNCIL

ORDINANCE No. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBERS NANCY J. NADEL AND JEAN QUAN

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### ORDINANCE BANNING THE USE OF NON-BIODEGRADABLE PLASTIC CARRY-OUT BAGS AT POINT OF SALE BY RETAIL ESTABLISHMENTS IN THE CITY OF OAKLAND THAT GROSS ONE MILLION DOLLARS OR MORE ANNUALLY AND PROVIDING EDUCATION AND INCENTIVES FOR SHOPPERS TO USE RE-USEABLE BAGS AT AFFECTED RETAIL ESTABLISHMENTS IN THE CITY

**WHEREAS**, each year, 500 billion to 1 trillion plastic bags are used worldwide – one million per minute – the production and use of which have significant environmental impacts, including litter, the consumption of 12 million barrels of oil, and the deaths of thousands of marine animals; and

**WHEREAS**, according to Assembly Bill 2449, the 2006 legislation creating the At-Store Recycling Program, Californians use 19 billion disposable plastic bags every year and throw away 600 bags per second, and less than 50 tons of the 52,000 tons of disposable plastic bags used in California annually are recycled resulting in over 147,000 tons of waste going to landfills, at an annual cost of \$51 million; and

**WHEREAS**, according to the Algalita Marin Research Foundation, plastic bags do not biodegrade, but break down through abrasion and tearing into small toxic bits that contaminate soil, waterways, and the marine environment, where they are mistaken for food by animals, killing over one million seabirds, 100,000 marine mammals, and countless fish annually from ingestion of, or entanglement in, marine debris; and

**WHEREAS**, marine debris is ubiquitous and can be found from highly populated urban beaches to the most remote arctic beaches, such as the North Pacific Gyre, which is home to a floating island of trash twice the size of Texas; and

**WHEREAS**, in 2006, the California Coastal Commission determined that up to 80% of all marine debris is plastic and 80% comes from land-based sources; and

**WHEREAS**, the Department of Conservation, in its annual Coastal Cleanup and the 1999 Litter Study concludes that disposable retail bags represent some of the most commonly littered items, and plastic bags littered in Oakland streets are carried by wind and storm water into City storm drains that lead to Oakland's creeks, Lake Merritt, the Oakland estuary, and eventually into the San Francisco Bay; and

**WHEREAS**, on February 8th, 2007, the Ocean Protection Council unanimously adopted a marine debris resolution that calls for reduced use of single-use plastic food containers; and

**WHEREAS**, plastic bags contaminate recycling operations and are otherwise difficult to recycle due to the logistics of sorting, contamination of inks, and the low quality of the plastic used, resulting in an extremely low estimated recycling rate of 1 to 3% for plastic bags; and

**WHEREAS**, one of the strategies proposed in Oakland's Zero Waste Strategic Plan (Resolution 80286 C.M.S., December 2006), adopted by the Oakland City Council is to "ban the use or sale of problematic products;" and

**WHEREAS**, 10 percent of U.S. oil consumption – approximately 2 million barrels per day - is used to make plastic, so discouraging the use of single-use plastic bags promotes and aids the goal of "Oil Independent Oakland By 2020," the task force established by the Oakland City Council to develop a plan to reduce Oakland's reliance on oil (Resolution No. 80286 C.M.S., 2006); and

**WHEREAS**, retail outlet stores could educate and encourage their customers to use environmentally preferable alternatives to non-biodegradable plastic bags which are readily available, including reusable cloth bags and paper bags which, despite having an adverse impact on the environment, are collected by Oakland's curbside recycling program; and

**WHEREAS**, governments in several countries, including Australia, Singapore, Taiwan, South Africa, Bangladesh, and the Republic of Ireland have taken action to discourage the use of non-biodegradable plastic bags, resulting in substantial reductions in their use; and

**WHEREAS**, the California Legislature, by enacting Chapter 5.1, the At-Store Recycling Program (commencing with Section 42250), Part 3 of Division 30, of the Public Resources Code, encourages the use of reusable bags by consumers and retailers and discourages the consumption of single-use bags; now therefore

## **THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** Sections 2 through 9 of this Ordinance shall be codified as a new chapter of the Oakland Municipal Code under TITLE 8, HEALTH AND SAFETY entitled PLASTIC BAGS. Additions to the Code are indicated by underscoring

### **SECTION 2. Definitions**

- A. "Affected retail establishment" means any retail establishment located within the geographical limits of the City of Oakland that has gross annual sales of one million dollars (\$1,000,000) or more.
- B. "City sponsored event" means any event organized or sponsored by a City of Oakland Department or Agency.
- C. "Compostable or biodegradable bag" means a carry out bag that is certified and labeled as meeting the current ASTM-Standard Specification for compostability by a recognized verification entity such as the Biodegradable Product Institute.

- D. “Customer” means any person purchasing food or other materials from an affected retail establishment.
- E. “Operator” means a person in control of or having daily responsibility for, the daily operation of an affected retail establishment, which may include, but is not limited to, the owner of the affected retail establishment
- F. “Plastic carryout bag” means a non-biodegradable plastic bag provided by a store to a customer at the point of sale. These bags are often referred to as “t-shirt” bags.
- G. “Recyclable Paper Bag” means a paper carryout bag provided by an affected retail establishment to a customer at the point of sale for purposes of transporting groceries or other goods and meets all of the following requirements: (1) contains no old growth fiber, (2) is 100% recyclable, and (3) contains a minimum of 40% post-consumer recycled content.
- H. “Reusable Bag” means a bag that is specifically designed and manufactured for multiple reuse and is (1) made of cloth or other machine washable fabric, or (2) made of other durable material suitable for re-use.

### **SECTION 3. Prohibitions and Requirements.**

- A. Affected retail establishments are prohibited from providing plastic carry-out bags to their customers at the point of sale to transport purchased items. Reusable bags, recyclable paper bags and compostable or biodegradable bags, including biodegradable plastic bags, are allowed alternatives.
- B. Affected retail establishments are strongly encouraged to provide incentives for the use of re-usable bags through the use of education and credits, rebates or tokens for individuals who bring re-usable bags.
- C. If affected retail establishments choose to use biodegradable plastic bags, they are encouraged to use the compostable or biodegradable bags that are easily differentiated from non-biodegradable plastic carry-out bags, through color coding and other markings, when they become available.
- D. Nothing in this section shall be read to preclude affected retail establishments from making reusable bags available for sale or free to customers.
- E. Nothing in this section shall be read to preclude affected retail establishments from making compostable or biodegradable bags available for sale or free to customers.

### **SECTION 4. Liability and Enforcement.**

- A. The City Administrator or his/her designee will have primary responsibility for enforcement of this Chapter. The City Administrator or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, entering the premises of any affected retail establishment to verify compliance.

B. An affected retail establishment that is operated in violation of any of the requirements of this Chapter is deemed a public nuisance and is subject to the provisions of Chapter 1.08 of this code with the exception of the section 108.060 on assessments. Penalties assessed for violations of this chapter are specified herein.

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

## **SECTION 5. Violations – Penalties**

A. If the City Administrator or his/her designee determines that a violation of this Chapter occurred, he/she will issue a written warning notice to the operator of an affected retail establishment that a violation has occurred.

B. If the affected retail establishment has subsequent violations of this Chapter, the following penalties will apply.

- a. A fine, payable by the owner of the affected retail establishment or the corporation itself, not exceeding one hundred dollars (\$100.00) for the first violation after the warning notice is given.
- b. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the warning notice is given.
- c. A fine not exceeding five hundred dollars (\$500.00) for the third and any future violations after the warning notice is given.

C. Affected retail establishments may request an administrative hearing to adjudicate any penalties issued under this Chapter by filing a written request with the City Administrator, or his or her designee. The City Administrator, or his or her designee, will promulgate standards and procedures for requesting and conducting an administrative hearing under this Chapter. Any determination from the administrative hearing on penalties issued under this Chapter will be final and conclusive.

## **SECTION 6. Exemptions**

A. Retail establishments in the City of Oakland with gross annual sales of less than one million dollars are exempted from the provisions of this Ordinance. All retail establishments in the City of Oakland are encouraged to comply with the provisions of this Ordinance.

B. This ordinance applies only to non-biodegradable carry out plastic bags provided at the point of sale, otherwise known as “t-shirt” bags. The provisions of this ordinance do not apply to single use plastic bags exclusively used to transport produce such as apples, oranges, grapes, carrots and other similar fruits or vegetables to the point-of-sale counter of the affected retail establishment.

## **SECTION 7. No Conflict With Federal or State Law.**

Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal or state law.

## **NOTICE AND DIGEST**

### **ORDINANCE BANNING THE USE OF NON-BIODEGRADABLE PLASTIC CARRY-OUT BAGS AT POINT OF SALE BY RETAIL ESTABLISHMENTS IN THE CITY OF OAKLAND THAT GROSS ONE MILLION DOLLARS OR MORE ANNUALLY AND PROVIDING EDUCATION AND INCENTIVES FOR SHOPPERS TO USE REUSEABLE BAGS AT AFFECTED RETAIL ESTABLISHMENTS IN THE CITY**

This ordinance codifies a new chapter of the Oakland Municipal Code under Title 8, Health And Safety, entitled "Plastic Bags" to protect and enhance the health of the residents of the city by promoting use of reusable bags and prohibiting the use of non-biodegradable plastic bags to transport customers' purchases from retail establishments that gross one million dollars or more annually.

ORDINANCE NO. 2115

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, ADDING A NEW SECTION 5.88.010 TO A NEW "ENVIRONMENTAL REGULATIONS" CHAPTER 5.88 TO TITLE 5 OF THE MANHATTAN BEACH MUNICIPAL CODE PROHIBITING THE USE OF PLASTIC CARRY-OUT BAGS

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach hereby finds as follows:

- A. As a coastal city Manhattan Beach has a strong interest in protecting the marine environment an element which contributes to the unique quality of life in the City;
- B. Plastic and paper bags each have negative impacts on the environment. It is well known that paper bags require more energy to manufacture and recycle and generate effluent during these processes. It is also known that paper bags are bulkier and heavier than plastic bags.
- C. However a primary and significant problem with plastic bags is that they do not biodegrade and are extremely light and easily caught in the wind. In a coastal city like Manhattan Beach even plastic bags which are properly discarded can find their way into the marine environment where they do not break down and essentially remain indefinitely.
- D. The Pacific Ocean contains a huge accumulation of debris known as the "Great Pacific Garbage Patch" which consists mostly of plastic debris. Some scientists estimate the density of plastic in this garbage patch as one million pieces of plastic per square mile. While plastic does not bio-degrade it does "photo-degrade" breaking down into smaller pieces which can make their way into the food chain vis such animals as jellyfish.
- E. 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.
- F. Because there is a strong possibility that plastic bags discarded in Manhattan Beach can end up in the ocean where they will last indefinitely and create an aesthetic blight and potential hazard to marine life (and paper bags will not do so because they biodegrade and are less likely to be blown out to sea) it is in the best interests of the public health, safety and welfare to adopt the proposed ban on distribution of plastic bags at point of sale within the boundaries of the City of Manhattan Beach.
- G. The City Council of the City of Manhattan Beach conducted a noticed public hearing regarding the project at their regular scheduled meeting of July 1, 2008. The public hearing was advertised pursuant to applicable law and testimony was invited and received.
- H. An Initial Environmental Study was prepared in compliance with the provisions of the California Environmental Quality Act. Based upon this study it was determined that the project is not an action involving any significant impacts upon the environment, and a Negative Declaration was prepared and is hereby adopted.
- I. The proposed amendments will have no negative impact on Fish and Game resources pursuant to Section 21089(b) of the Public Resources Code.

SECTION 2. A new Section 5.88.010 is hereby added to a new Chapter 5.88 "Environmental Regulations" in Title 5 of the Manhattan Beach Municipal Code to read as follows:

**“CHAPTER 5.88 ENVIRONMENTAL REGULATIONS”**

**Section 5.88.010 Prohibition Of Plastic Carry-Out Bags**

(a). Definitions:

For purposes of this chapter, the following terms shall have the following meanings:

“Affected Retail Establishment” means any retail establishment located within or doing business within the geographical limits of the City of Manhattan Beach.

“City Sponsored Event” means any event organized or sponsored by the City of Manhattan Beach or any Department of the City of Manhattan Beach.

“Customer” means any person obtaining goods from an Affected Retail Establishment, Vendor or Non-Profit Vendor.

“Grocery Store” means any dealer in staple foodstuffs, meats, produce and dairy products and usual household supplies.

“Non-Profit Vendor” means a recognized tax exempt organization which provides goods as a part of its services.

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

“Pharmacy” means a retail use where the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescription medications are offered for sale.

“Plastic Carry-Out Bag” or “Plastic Bag” means any bag made from plastic (including compostable and biodegradable plastic), excluding reusable bags, provided by an Affected Retail Establishment, Vendor or Non-Profit Vendor to a customer at the point of sale for the purpose of carrying away goods.

“Recyclable” means material that can be sorted, cleansed, and reconstituted using Manhattan Beach’s 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.

“Recyclable Paper Bag” means a paper bag that meets all of the following requirements: (1) contains no old growth fiber; (2) is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content; and (3) displays the words “Reusable” and “Recyclable” in a highly visible manner on the outside of the bag.

“Retail Establishment” means any commercial business facility that sells goods directly to the ultimate consumer including but not limited to grocery stores, pharmacies, liquor stores, “mini-marts,” and retail stores and vendors selling clothing, food and personal items.

“Reusable Bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and is either: (1) made of cloth or other machine washable fabric; or (2) made of other durable material suitable for reuse.

“Vendor” means any store, shop, restaurant, sales outlet or other commercial establishment located within or doing business within the City of Manhattan Beach, which provides perishable or non-perishable goods.

## (b). Plastic Carry-Out Bags Prohibited

- A. No Affected Retail Establishment, Restaurant, Vendor or Non-Profit Vendor shall provide Plastic Carry-Out Bags to customers at the point of sale. Reusable Bags and Recyclable Paper Bags are allowed alternatives.
- B. Nothing in this section shall be read to preclude Affected Retail Establishments, Restaurants, Vendors and Non-Profit Vendors from making Recyclable Paper Bags available to customers.
- C. Affected Retail Establishments are strongly encouraged to provide incentives for the use of Reusable Bags through education and through credits or rebates for customers that use Reusable Bags at the point of sale for the purpose of carrying away goods.
- D. No person shall distribute Plastic Carry-Out Bags at any City facility or any event held on City property.
- E. This Chapter shall apply only to Plastic Carry-Out Bags provided at the point of sale for the purpose of carrying away goods. This Chapter shall not apply to single-use plastic produce bags distributed in a grocery store exclusively for the purpose of transporting produce to the point of sale.

## (c). Exemption.

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:

- A. 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;
- B. Situations where compliance with the requirements of this Code would deprive a person of a legally protected right."

SECTION 3. All other provisions of Manhattan Beach Municipal Code shall remain unchanged and continue in full force and effect.

SECTION 4. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinances of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 5. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 6. This Ordinance shall become operative as to: 1) Grocery Stores, Food Vendors, Restaurants, Pharmacies and City facilities six (6) months after its effective date; and 2) all remaining Affected Retail Establishments, Vendors and Non-Profit Vendors one (1) year after its effective date.

SECTION 7. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the



City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 17th day of June, 2008.

Ayes:  
Noes:  
Absent:  
Abstain:

\_\_\_\_\_  
Mayor, City of Manhattan Beach, California

ATTEST:

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