

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

**AN ORDINANCE ADDING CHAPTER 6.26
(DISPOSABLE BAG REDUCTION) TO
TITLE 6 (HEALTH AND SANITATION) OF
THE FORT BRAGG MUNICIPAL CODE**

ORDINANCE NO. 903-2012

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

WHEREAS, there are retail establishments in the City of Fort Bragg (“City”) which provide single-use, disposable carryout bags to their customers; and

WHEREAS, many of these single-use carryout bags are made from plastic or other material that does not readily decompose; and

WHEREAS, billions of single-use plastic bags are used annually in California and less than 5% of these bags are recycled; and

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

WHEREAS, scientific evidence has shown that plastic bags are a significant source of marine debris and are hazardous to marine animals and birds which confuse single-use plastic fragments for a source of food resulting in injury and death to birds and marine animals; and

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

WHEREAS, single-use paper bags result in greenhouse gas emissions, atmospheric acidification, water consumption, and ozone production; and

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

WHEREAS, there are environmentally superior and economically feasible alternatives to single-use carryout bags readily available; and

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

WHEREAS, the City recognizes carryout bag regulation is a matter of statewide interest and concern that is best applied uniformly throughout the state; however in the absence of statewide regulation, the City Council finds that it is in the best interest of the City and its residents to regulate carryout bags as described herein; and

WHEREAS, it is the desire of City to conserve resources, reduce the amount of waste, litter and marine pollution that are attributable to the use of single use bags, and to protect the general health and welfare of the public as well as to protect wildlife, all of which activities increase the quality of life for the Fort Bragg residents and visitors; and

WHEREAS, studies document that banning plastic bags and placing fees on paper bags will dramatically reduce the use of both types of single-use bags.

NOW, THEREFORE, the City Council ordains as follows:

Section 1. Legislative Findings. The City Council hereby finds as follows:

1. While the City Council recognizes carryout bag regulation is a matter of statewide interest and concern that is best applied uniformly throughout the state, in the absence of statewide regulation, it is in the best interests of the City and its residents for the City to regulate carryout bags as described herein.
2. The regulation of single-use carryout bags as proposed herein promotes the general health and welfare of the public by reducing the amount of waste, litter and marine pollution that are attributable to single use bags.
3. Charging a fee for a Recycled-Content Paper Bag or a Reusable Carryout Bag, rather than spreading the cost among all customers by including the cost in the price charged for merchandise, will discourage the use of single use paper bags and encourage the use of reusable carryout bags. Section 6.26.020(D) is included in the Fort Bragg Municipal Code solely for this reason and not to raise revenue for a general or special purpose of the City.
4. Regulation of single-use carryout bags will have beneficial environmental impacts and no significant adverse environmental impacts.

Section 2. Chapter 6.26 entitled DISPOSABLE BAG REDUCTION is hereby added to Title 6 of the Fort Bragg Municipal Code as follows:

“CHAPTER 6.26: DISPOSABLE BAG REDUCTION

Section

- 6.26.010 Definitions
- 6.26.020 Carryout Bag Regulations
- 6.26.030 Effective Date
- 6.26.040 Violations and Penalties

§ 6.26.010 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CUSTOMER. Any person obtaining goods from a store.

PREPARED FOOD. Foods 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, uncooked meat product or fruits or vegetables which are chopped, squeezed, or mixed.

PUBLIC EATING ESTABLISHMENT. A restaurant, take-out food establishment, or any other business that receives 90% or more of its revenue from the sale of **PREPARED FOOD** to be eaten on or off its premises.

POSTCONSUMER RECYCLED CONTENT. A material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. **POSTCONSUMER RECYCLED CONTENT** does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

RECYCLED-CONTENT PAPER BAG. A paper carryout bag provided by a store to a Customer at the point of purchase that meets all of the following requirements:

A. Contains a minimum of 40 percent postconsumer recycled content, except a 350 cubic inch or smaller recycled-content paper bag shall contain a minimum of 20 percent postconsumer recycled content

B. Is accepted for recycling in the curbside program of the City.

C. Has printed on the bag the name of the manufacturer and the minimum percentage of postconsumer content.

REUSABLE CARRYOUT BAG. A bag with handles that is specifically designed and manufactured for multiple reuse, does not contain lead, cadmium, or any other heavy metal in toxic amounts, and is either:

A. Made of cloth or other machine washable fabric, or

B. Made of durable plastic that is at least 2.25 mils thick and is specifically designed for multiple reuse, meaning manufactured to carry a minimum of 22 pounds for at least 125 times over a distance of at least 175 feet.

SINGLE-USE CARRYOUT BAG. A bag made of plastic, paper, or other material, that is provided by a store to a Customer at the point of purchase and that is not a Reusable Carryout Bag. A Single-Use Carryout Bag does not include (1) a bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Cal. Business and Professions Code to a Customer purchasing a prescription medication; (2) a bag used by Customers before the point of purchase to (a) package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items; (b) contain or wrap frozen foods, meat, or fish, whether prepackaged or not; (c) contain or wrap flowers, potted plants, or other items where dampness may be a problem; (d) contain unwrapped prepared foods or bakery goods; or (e) separate or protect individual items prior to placing them in a carryout bag; or (3) a newspaper bag, door-hanger bag, laundry-cleaning bag, or bag sold in a multiple package of bags intended for use as garbage, pet waste, or yard waste bags.

STORE. A retail establishment that sells perishable or nonperishable goods, licensed to do business in the City. The term **STORE** does not include a Public Eating Establishment.

§ 6.26.020 CARRYOUT BAG REGULATIONS.

A. A Store shall not provide a Single-Use Carryout Bag to a Customer at the point of purchase, except as provided in this section.

B. Plastic Single-Use Carryout Bags are prohibited, except that Plastic Single-Use Carryout Bags may be used by Public Eating Establishments for “take-out” food and beverages.

C. A Store may provide Reusable Carryout Bags to Customers at no cost, until 18 months after the effective date of this Ordinance, only when combined with a time-limited Store promotional program to promote the use of Reusable Carryout Bags.

D. A Store may provide to a Customer a Recycled-Content Paper Bag or a Reusable Carryout Bag upon request but shall charge the Customer not less than 10 cents per bag, except as provided in subdivisions (C) and (E).

E. A Store will not be required to charge a customer for a Recycled-Content Paper Bag of less than 250 cubic inches capacity.

F. For any Recycled-Content Paper Bag or a Reusable Carryout Bag sold to a Customer, the amount of the sale of the bag shall be separately itemized on the sales receipt. No store shall rebate or otherwise reimburse a Customer any portion of the charge required for a Recycled-Content Paper Bag.

§ 6.26.030 EFFECTIVE DATE.

This Ordinance shall be in full force and effect for different classes of Stores as follows:

A. From and after one hundred and eighty (180) days from the effective date of this Ordinance for:

1. A full-line, self-service retail Store with gross annual sales of three million dollars (\$3,000,000) or more and which sells a line of dry groceries, canned goods, nonfood items and some perishable items; and

2. A Store with over 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and use Tax Law (Part 1.5 commencing with Section 7200 of Division 2 of the Revenue and Tax Code) and has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

B. From and after five hundred and forty-five (545) days from the effective date of this Ordinance for all other Stores.

§ 6.26.040 VIOLATIONS AND PENALTIES.

A. Any action to enforce this Ordinance shall be preceded by delivery of a written warning to the Store where a violation has occurred.

B. The owner(s) of any Store which violates this Ordinance shall be guilty of an infraction. If charged as an infraction, upon conviction thereof, said owner(s) shall be punished by (1) a fine not exceeding \$100.00 for a first violation, (2) a fine not exceeding \$200.00 for a second violation within the same year, and (3) a fine not exceeding \$500.00 for each additional violation within the same year.

C. Any violation of this Chapter 6.26 may be enforced through the administrative enforcement procedures in Chapter 6.12 of this Municipal Code. The City Manager, or his or her designee is authorized to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, investigating violations, imposing administrative fines in amounts as may be established from time to time by resolution of the City Council.

D. In addition to the administrative enforcement procedures described above, the City Council may authorize the City Attorney to pursue judicial enforcement of this Chapter through a civil action.

E. A violation of any provision of this Ordinance by any person, firm or corporation shall be subject to a civil action in any court of competent jurisdiction, including the small claims court, by the

City to recover any damages caused by the violation and a civil penalty of \$1,000 or 10% of actual damages, whichever is higher, for every such violation. For any willful violation, the City may recover treble damages. Nothing in this subsection shall prohibit the filing of an action as authorized herein as a class action. The prevailing party in any action filed pursuant to this subsection shall be entitled to recover its reasonable attorneys' fees to be determined by the court.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 4. Effective Date and Publication. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

The foregoing Ordinance was introduced by Councilmember Courtney at a regular meeting of the City Council of the City of Fort Bragg held on April 23, 2012, and adopted at a regular meeting of the City of Fort Bragg held on May 14, 2012, by the following vote:

**AYES:
NOES:
ABSENT:
ABSTAIN:**

**Dave Turner,
Mayor**

ATTEST:

**Cynthia M. VanWormer, CMC
City Clerk**

**PUBLISH: May 3, 2012 and May 24, 2012 by summary.
EFFECTIVE DATE: June 13, 2012.**