

AGENDA REPORT

City Council

MEETING DATE: August 20, 2014

PREPARED BY: Richard Phillips,
Deputy City Manager

DEPT. DIRECTOR: Glenn Pruim

DEPARTMENT: Public Works
Department

CITY MANAGER: Gus Vina

SUBJECT:

INTRODUCTION OF ORDINANCE 2014-08 ADDING CHAPTER 11.26 "SINGLE-USE DISPOSABLE BAG REDUCTION" TO THE ENCINITAS MUNICIPAL CODE

RECOMMENDED ACTION:

Introduce Ordinance 2014-08

STRATEGIC PLAN:

Environmental Focus Area

FISCAL CONSIDERATIONS:

Retailer outreach and public education efforts may be funded through Solid Waste/Recycling Fund (214). Any necessary budget adjustments will be presented at the FY 2014/15 first quarter adjustment.

BACKGROUND:

At the June 25, 2014 City Council meeting, Council received a draft Single-Use Disposable Bag Reduction ordinance for review and an update on the environmental review process. At that meeting, Council directed preparation of a proposed ordinance for introduction regulating the distribution and use of single-use carry-out bags in the City and pursuing a categorical exemption.

ANALYSIS:

Proposed Ordinance 2014-08 is consistent with desired ordinance elements directed by the Council at the November 20, 2013 and June 25, 2014 City Council meetings. The proposed ordinance would implement restrictions on retail establishments' distribution of single-use disposable carry-out bags to consumers within the City of Encinitas. Encinitas' proposed ordinance is similar to the City of Solana Beach's single-use carry-out regulations as well as best practices from other California cities which have implemented single-use carry-out bag restrictions. As of July 1, 2014, 84 jurisdictions have adopted single-use bag ordinances in the state covering 113 California cities or counties

(http://www.cawrecycles.org/files/LocalBagOrdinances1Pager_070114.pdf).

Solana Beach is the only jurisdiction within San Diego County which currently has an ordinance restricting retail establishments' distribution of single-use disposable carry-out bags.

Key components of proposed Encinitas Ordinance 2014-08 include:

- Prohibits the distribution of single-use *plastic* carry-out bags by grocery stores, pharmacies, convenience stores, liquor stores, service station convenience markets and all City facilities six (6) months after ordinance's effective date;
- Prohibits the distribution of single-use *plastic* carry-out bags by other retail establishments and farmers markets twelve (12) months after ordinance's effective date;
- Provides exemptions and continues to allow single-use product bags, produce bags, bags used to protect or prevent product contamination and pet waste bags;
- Requires retail establishments, as defined in the ordinance, to provide customers with paper bags made from at least 40% post-consumer recycled materials or make available reusable bags for purchase if customers desire a bag;
- Requires affected retail establishments to charge a "recycled paper bag cost pass-through" fee of a minimum amount of 10 cents for each recycled paper bag with the fee retained by the retailer (exempts "product bags");
- Allows affected retailers to rebate/credit customers up to 5 cents per reusable bag per transaction - a business practice of some grocery stores in the region; and
- Provides exemptions for restaurants, customers participating in subsidized food programs, charitable organizations reusing or reselling donated goods, and product bags as defined in the proposed ordinance.

The proposed ordinance also provides a process for temporary exemption for retailers who demonstrate undue economic hardship or unique circumstances to comply with the ordinance.

Environmental Review

Pursuant to the California Environmental Quality Act (CEQA), a notice of categorical exemption has been prepared and will be transmitted to the San Diego County Clerk/Recorder upon adoption of the ordinance to initiate a 35 day posting period. The Notice of CEQA Exemption is contained in Attachment A.

Enforcement

The 6-month and 12-month phase-in periods are part of the proposed ordinance elements (§11.26.080). Enforcement of the ordinance, upon the operative dates would include written warnings followed by administrative fines for consecutive violations consistent with Encinitas Municipal Code (Chapter 1.08).

Pending State Legislation:

Proposed State legislation SB 270 (Padilla, De León and Lara), at the writing of this agenda report, was in the Assembly Appropriations Committee. For the 2013-14 state legislative session, August 31st is the final day for the Assembly or Senate to pass bills. SB 270 would prohibit certain retail stores from distributing single-use carryout plastic bags and establish conditions and fees for recyclable paper bags. The proposed legislation would phase-in a prohibition on the distribution of single-use plastic bags and initiates a minimum charge of 10 cents for paper bags beginning July 1, 2015 by grocery stores, drug stores and large retailers selling dry groceries, perishable and non-food items. Restrictions on single-use bag distribution for convenience stores, mini-markets and other stores that sell food products and beer, wine or

distilled spirits would follow, beginning July 1, 2016. The proposed legislation would not prohibit single-use plastic bag distribution by all retailers, but would impact retail stores with gross annual sales of \$2.0 million or more, stores with retail space greater than 10,000 square feet, convenience stores, food stores and other stores that have a limited line of perishable and non-perishable food goods and hold a Type 20 or Type 21 alcohol license.

The proposed legislation contains a preemption clause that would *preempt* any city, county or other local public agency from implementing, amending or enforcing regulations related to single-use carryout bags and recycled paper bags unless the local jurisdiction has passed a first reading of an ordinance or resolution expressing intent to restrict single-use carry out bags by September 1, 2014 and conducted final adoption process of such an ordinance before January 1, 2015. Information and status on SB 270 can be accessed on the State Legislative Counsel website at: <http://www.leginfo.ca.gov/>.

ENVIRONMENTAL CONSIDERATIONS:

The City Council finds and determines that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to categorical exemptions under the CEQA Guidelines Section 15307 and 15308.

ATTACHMENTS:

- A. Notice of CEQA Exemption
- B. Proposed Ordinance 2014-08 of the City of Encinitas, California adding Chapter 11.26 "Single-Use Disposable Bag Reduction" to the Encinitas Municipal Code
- C. Power Point Presentation
- D. Communications received

Project Description:

The proposed ordinance would prohibit the distribution of single-use plastic carryout bags and regulate the distribution of recycled paper carryout bags. The following is a summary of the main provisions of the ordinance:

- Except as otherwise permitted in the ordinance, retail establishments would be prohibited from providing single-use plastic carryout bags to their customers.
- At the point of sale, retail establishments would be limited to providing reusable or recycled paper bags to their customers.
- The distribution of single-use plastic carryout bags at any City facility, City-managed concession, City-sponsored event, or City-permitted event would be prohibited.
- The distribution of single-use plastic carryout bag at any “Farmers Market” event would be prohibited.
- Retail establishments would be required to charge customers 10 cents for recycled paper bags.

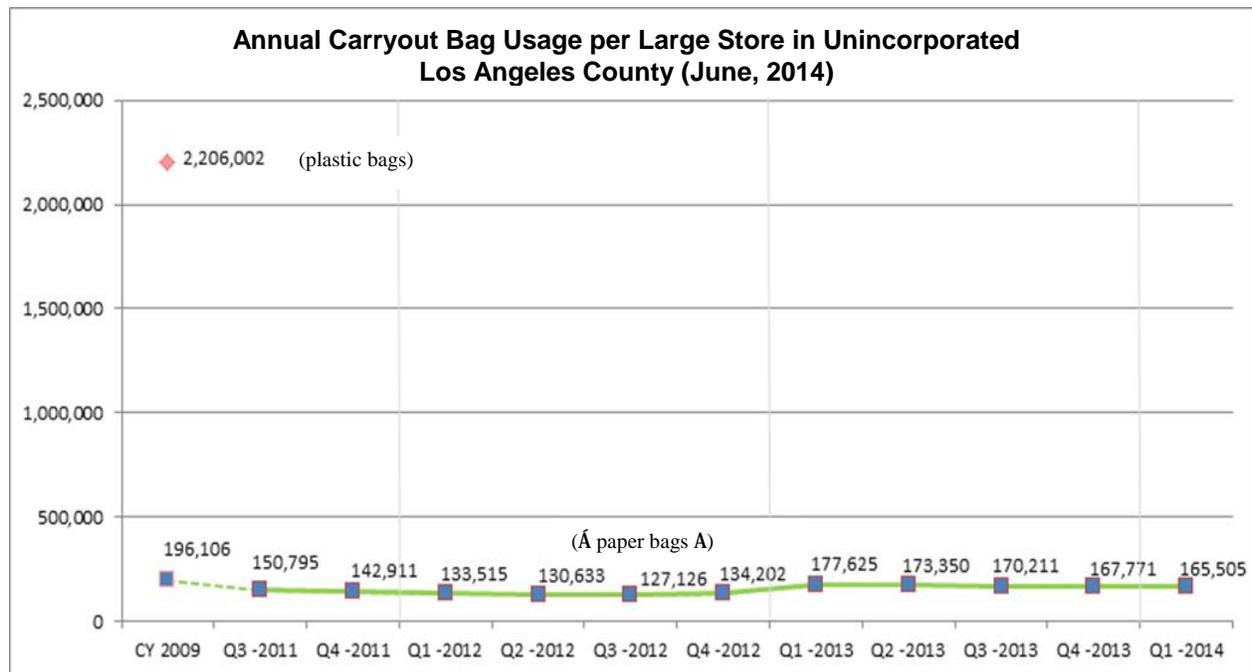
Reasons Why the Project is Exempt:

In 2010, a Master Environmental Assessment (MEA) on Single-Use and Reusable Bags was prepared by ICF International on behalf of Green Cities California. This MEA included research and studies demonstrating that:

- Other public entities have passed or considered passing similar types of ordinances with significant environmental benefits;
- In other regions of the world, fees on single-use bags, or single-use bag bans, have dramatically lowered consumer consumption of such bags;
- In California, 20 billion plastic bags are used annually (or approximately 527 bags per person, equivalent to 32 million plastic bags in Encinitas annually), with 81% of them ending up in landfills, which in turn generates 147,038 tons of waste and requires in excess of \$51 million annually of disposal costs;
- 247 million pounds of plastic bags are buried in landfills across California;
- In coastal communities such as Encinitas, improperly disposed of plastic bags find their way from the California shores and accumulate in the Pacific Ocean with adverse effects;
- Approximately 257 marine species, according to the U.S. Marine Mammal Commission, have ingested or have become entangled in marine debris, and,
- Improperly disposed of carryout plastic bags contribute to the adverse effects of litter.

Within Encinitas, the proposed ordinance would authorize actions by the City to enhance the protection of natural resources and enhance protection of the environment. These actions involve procedures that require city-wide affected retail establishments (approximately 300 stores) to limit the distribution of single-use carryout plastic bags. The ordinance would also regulate the distribution single-use carryout paper bags by charging 10 cents for each bag at the affected stores. As described below, reporting data for a similar ordinance adopted by Los Angeles County demonstrates that the 10 cent charge is expected to maintain or reduce the current consumption levels of carryout paper bags and reduce the environmental effects associated with the life cycle of such bags. Paper bag consumption under the City’s proposed ordinance would not result in significant environmental effects related to water consumption, wastewater, solid waste, air quality, or greenhouse gas emissions.

In 2010, the Los Angeles County Board of Supervisors adopted an ordinance prohibiting the use of single-use plastic carryout bags at certain stores in the County’s unincorporated area. This ordinance required the stores to charge 10 cents for each carry-out paper bag. All affected stores in Los Angeles County are also required to submit quarterly reports demonstrating their compliance with the ordinance. As shown in the table below, paper bag usage has largely stabilized at affected stores and continues to be lower than consumption levels prior to adoption of the ordinance.



(Source: <http://dpw.lacounty.gov/epd/aboutthebag/>)

Based on reports submitted by large stores since implementation of the Los Angeles County's Ordinance, each large store provided an average of between 127,000 and 178,000 paper bags annually, which is significantly less than the over 2.2 million single-use plastic bags and approximately 196,000 paper bags provided prior to the ban. Based upon the last quarterly report submitted this year, paper bag usage continues to decline in Los Angeles County with a 16 percent reduction since the ban was implemented.

The ordinance proposed by Encinitas would result in the increased use of reusable bags, which can be made from plastic or cloth and are designed to be used up to hundreds of times. The MEA indicates that, assuming the bags are reused at least a few times, reusable bags have significantly lower environmental impacts, on a per-use basis, than single-use bags. Some studies described in the MEA indicate that use of the non-woven plastic reusable bags result in particularly large environmental benefits.

Water Consumption

The proposed ordinance would increase the use of reusable bags as a result of prohibiting the distribution of single-use plastic bags by retailers and requiring a mandatory charge for recycled paper bags. No known manufacturers of carryout bags are located within the City of Encinitas. Therefore, manufacturing facilities would not utilize the water supplies provided within the City. In addition to water use from the production of reusable bags, the proposed ordinance may result in increased water use as reusable bags would be machine washable or made from a material that can be cleaned or disinfected, as defined by the proposed ordinance. Periodic washing of reusable bags for hygienic purposes would be the responsibility of the individual customers. It is assumed that individuals would generally continue to practice good hygiene and would wash reusable bags on a regular basis. Washing reusable bags used within Encinitas would utilize local water supplies. It is anticipated that most reusable bag users would simply include the bags in wash loads that would occur with or without the bags. Furthermore, according to studies that were referenced in the MEA, the manufacture of reusable bags would result in less per-use water consumption impacts than carryout plastic bags. Therefore, the proposed ordinance is not expected to result in significant effects on water consumption.

Wastewater

As noted above, reusable bags are expected to be washed periodically, but such bags are expected to be included with typical washloads. As such, any wastewater resulting from the inclusion of reusable bags in periodic washloads is not expected to result in significant effects on the local wastewater treatment system.

The manufacture of all types of carryout bags produces wastewater; however, because no known manufacturing facilities are located within the City of Encinitas, the use of single-use plastic bags does not currently affect wastewater conveyance or treatment facilities serving Encinitas and the projected increased use of reusable bags as a result

of the proposed ordinance would not affect wastewater conveyance facilities or local wastewater treatment plants.

Solid Waste

Implementation of the proposed ordinance would reduce impacts on landfills that are related to the current disposal of carryout plastic bags in Encinitas. As discussed above, due to the expected stabilized or decreased consumption of carryout paper bags, the ordinance is not anticipated to result in significant solid waste effects related to the disposal of such bags. In addition, carryout paper bags have the potential of being recycled. Reusable bags may be used hundreds of times and their use would not be expected to have to significant solid waste effects.

Air Quality/Greenhouse Gas Emissions

The manufacture, transport, and disposal of carryout bags result in air quality and greenhouse gas (GHG) emissions effects. As discussed in the MEA, of the three types of carryout bags (paper, plastic and reusable), the lifecycles of carryout paper bags have the greatest air quality effects related to GHG emissions, atmospheric acidification and criteria pollutants, and ground-level ozone. The lifecycle of reusable bags has the least air quality/GHG impacts. The 10 cent charge required by the proposed ordinance is anticipated to maintain or decrease the current consumption levels of carryout paper bags, which have the greatest air quality/GHG impacts. Implementation of the ordinance would significantly reduce air quality/GHG effects related to plastic carryout bags. Due to the lifespan and reusability of reusable bags, which are designed to be used hundreds of times, the increased use of such bags and their lifecycle effects on air quality and greenhouse gas emissions are not anticipated to be significant. Furthermore, the switch to reusable bags is predicted to result in decreased transport-related emissions due to less carryout plastic or paper bag manufacturing and collection at disposal.

Overall, the proposed ordinance would reduce the existing environmental effects of plastic carryout bags. These include effects on biological resources, aesthetics, air quality, GHG emissions, hydrology, and water quality effects. The proposed ordinance would eliminate the distribution of single use plastic carryout bags and is expected to maintain or reduce the current consumption levels of paper carryout bags. These actions would protect the environment and natural resources. Therefore, the proposed action is exempt from the provisions of CEQA per Sections 15307 and 15308 of the CEQA Guidelines.

Contact Person: Scott Vurbeff

Telephone: (760) 633-2692

City of Encinitas
Environmental Coordinator

July 31, 2014
Date

ORDINANCE NO. 2014-08**AN ORDINANCE OF THE CITY OF ENCINITAS, CALIFORNIA,
ADDING CHAPTER 11.26 "SINGLE-USE DISPOSABLE BAG REDUCTION"
TO THE ENCINITAS MUNICIPAL CODE PROHIBITING RETAIL
ESTABLISHMENTS FROM PROVIDING SINGLE-USE CARRYOUT BAGS
AND REGULATING THE DISTRIBUTION OF PAPER CARRYOUT BAGS**

WHEREAS, the City of Encinitas, California (City) has a strong interest in encouraging the conservation of resources, reducing beach litter and marine pollution, and protecting local wildlife, all of which increase the quality of life of and promote the health and welfare of Encinitas residents and visitors;

WHEREAS, an estimated 20 billion single-use bags are used annually in retail establishments in California, but less than 5 percent of those single-use bags are recycled;

WHEREAS, there are approximately 300 retail establishments that have retail sales greater than \$50,000 annually in the City which may distribute single-use, disposable carryout bags to their customers;

WHEREAS, it is estimated that 31.9 million single use carryout bags are distributed in the City each year;

WHEREAS, many of the local commercial and retail establishments use single-use carryout bags made from plastic or other materials that do not readily decompose;

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

WHEREAS, plastic bags are a significant source of marine debris and are hazardous to marine animals and birds which may often confuse single-use, plastic carryout bags as a source of food and the ingestion of these bags by wildlife can result in reduced nutrient absorption and death;

WHEREAS, single-use paper bags made from renewable resources are more environmentally friendly than single-use plastic bags, yet the manufacturing, transport, recycling and/or disposal of paper bags require environmental resources;

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

WHEREAS, other jurisdictions in the state require retail establishments to

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impose a paper bag cost pass-through on customers that are provided paper bags, and this cost pass-through has been effective in generating a shift in consumer behavior toward the use of reusable bags and reducing single-use bag distribution and use; and

WHEREAS, this Ordinance allows customers to avoid this cost pass-through by using their own reusable bags;

WHEREAS, the cost pass-through is not a fee subject to Proposition 26 because the monetary proceeds from the collection of the paper bag cost pass-through will be retained by the retail establishments and this Ordinance does not specify how the retailers must expend the monies collected;

WHEREAS, a paper bag cost pass-through is an essential element of this Ordinance because it is intended to provide a disincentive to consumers to request paper bags when shopping at regulated stores and to encourage a shift towards the use of reusable bags;

WHEREAS, there are several alternatives to single-use carryout bags available, including reusable bags produced from sustainable materials;

WHEREAS, the City has determined that the proposed Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15307 and 15308 of the CEQA Guidelines.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ENCINITAS DOES ORDAINS AS FOLLOWS:

SECTION ONE. A new Chapter 11.26 is hereby added to the Encinitas Municipal Code to read as follows:

**“CHAPTER 11.26
SINGLE-USE DISPOSABLE BAG REDUCTION**

11.26.010 Definitions.

"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. Carryout bags do not include Product Bags as defined in this chapter.

"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 station stores.

"Paper bag cost pass-through" means the cost which may be collected by retailers from their customers when providing a Recycled paper bag.

"Pharmacy" means any retail establishment, 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.

"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, or to protect a purchased item from damaging or contaminating other purchased items when placed together in a recycled paper bag or reusable bag; a bag provided by a pharmacy to a customer purchasing prescription medication.

"Recycled paper bag" means a paper carryout bag provided by a store to a customer at the point of sale for the purpose of transporting food and merchandise out of the store and that meets the following standards: (1) contains no old-growth fiber; (2) contains a minimum of forty percent (40%) post-consumer recycled materials; (3) is recyclable; (4) has printed in a highly visible manner on the outside of the bag the word "recyclable" and the percentage of post-consumer recycled content.

"Recycled paper bag cost pass-through" means the cost that this chapter requires grocery stores and pharmacies to collect from their customers whenever a *recycled* paper bag is provided to a customer.

"Restaurant" means any person or establishment doing business within the City of Encinitas that provides prepared food or beverages for consumption on or off its premises such as a restaurant, café, bakery, grocery or convenience store counter or delicatessen, or catering truck vehicle.

"Retail establishment" means any person, including a corporation, partnership, business, facility, vendor, organization or individual, that sells or provides merchandise, goods or materials, including, without limitation, clothing, food, or personal item of any kind, directly to a consumer. Retail establishment includes, without limitation, any grocery store, department store, hardware store, pharmacy, liquor store, convenience store, outdoor farmers' market, and any other retail store or vendor. Retail establishment does not include restaurants, catering trucks, mobile food trucks, and other similar food establishments.

"Reusable bag" means a bag with handles that is specially designed and manufactured for reuse and meets all of the following requirements: (1) has a minimum lifetime of one hundred and twenty-five (125) uses, which for purposes of this subsection, means the capability of carrying a minimum of twenty-two (22) pounds one-hundred and twenty-five (125) times over a distance of at least one-hundred and seventy-five (175)

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feet; (2) has a minimum volume of fifteen (15) liters; (3) is machine washable or 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; and (5) if made of plastic, is a minimum of at least two and one-quarter (2.25) mils thick.

"Single-use plastic carry-out bag" means any bag less than 2.25 mils thick and made predominately of plastic derived from petroleum or bio-based sources, such as corn or other plant source, and includes compostable, non-compostable, and biodegradable plastic bags. Single-use carry out bag does not include Product bag as defined in this chapter.

11.26.020 Prohibition on the Distribution of Single-Use Plastic Carryout Bags.

(A) No Retail Establishment in the City shall provide a single-use plastic carryout bag to a person except as otherwise permitted by this chapter.

(B) No Retail Establishment in the City shall provide any type carry-out bag to a person at the point of sale unless it is a reusable bag or a recycled paper bag being provided pursuant to the terms of this chapter.

(C) No person shall distribute a single-use plastic carryout bag at any City facility, City-managed concession, City-sponsored event, or City-permitted event except as otherwise else permitted by this chapter.

(D) Nothing in this chapter is intended to prohibit the distribution of product bags, including plastic carry-out bags, as may be necessary to comply with California Retail Food Code or any other state or federal law.

(E) No person shall distribute single-use plastic carryout bag at any farmers market within the City of Encinitas.

11.26.030 Regulation of the Distribution of Recycled Paper Carryout Bags.

(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 recycled paper bag cost pass-through shall not be less than \$0.10 unless a Retail establishment has previously submitted a full accounting to the City, signed by a responsible manager under penalty of perjury, which identifies all costs including bag purchase, shipping, handling, and storage, showing a lesser actual cost to the store for each paper carry-out bag. Any such accounting shall expire one year from the date of original submission and a new accounting must be resubmitted.

(C) An affected Retail establishment may rebate or otherwise reimburse a customer for use of a reusable bag up to \$0.05 per reusable bag per transaction.

(D) All Retail Establishments shall indicate on the customer transaction receipts the number of recycled paper bags provided and the total amount of the recycled paper bag cost pass-through.

11.26.040 Exemptions.

Notwithstanding the requirements contained in Section 11.26.020

(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) This chapter shall not apply to a charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization that reuses and recycles donated goods or materials.

(C) The provision of Product bag as defined in this chapter is not prohibited.

(D) The provision of single-use plastic carry-out bags at Restaurants as defined in this Chapter is not prohibited.

(E) The provision of single-use bags for the collection and disposal of pet waste is not prohibited.

(F) The City Manager, or his or her designee, may exempt a retail establishment or nonprofit 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 if:

- (1) Circumstances or situations unique to the particular retail establishment are such that there are no reasonable alternatives to single-use, plastic carryout bags or a recycled paper bag cost pass-through charge; or
- (2) Circumstances or situations unique to the retail establishment are such that compliance with the requirements of this chapter would deprive a person of a legally protected right.

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(G) 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.

(H) 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.

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

11.26.050 Enforcement and Notice of Violation.

(A) The City Manager, or his/her designee, may establish regulations or administrative procedures to take any and all actions reasonable and necessary to further the purposes of this chapter or to obtain compliance with this chapter, including, without limitation, performing inspections in accordance with applicable law of a retail establishment's premises to verify compliance.

(B) Any violation of any of the requirements of this chapter, or of any regulation or administrative procedure authorized pursuant to this chapter shall constitute an infraction.

(C) Each violation of this chapter shall be considered a separate offense.

(D) The remedies and penalties provided in this chapter are cumulative and not exclusive, and nothing in this chapter shall preclude the City from pursuing any other remedies. The City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulation or administrative procedure developed pursuant hereto.

11.26.060 Administrative Remedies.

(A) Any person violating, causing or maintaining a violation of any provision of this chapter may be issued an administrative citation assessing a civil fine as provided in this section. The procedures for the imposition, enforcement, collection, and administrative review of civil fines shall be in addition to, and not in lieu of, any criminal, civil or other legal remedy established by law and available to the City to address violations of this chapter.

(B) Upon a first violation of any provision of this chapter, the City Manager or his/her designee shall issue a written warning Notice of Violation to the offending retail establishment. The warning Notice of Violation shall specify the violation(s), a date by which the violation(s) must be ceased and abated, and the penalties in the event of future violations. If, after the specified correction period following the written warning, the violation is not ceased or abated, the City Manager or his/her designee may issue an administrative citation assessing fines in accordance with this section.

(C) Each separate violation following the issuance of a warning Notice of Violation shall be subject to the following administrative fines which shall be cumulative with each day that a violation occurs constituting a separate violation:

- (1) A fine not exceeding one hundred dollars (\$100) for the first violation following the issuance of a warning notice.
- (2) A fine not exceeding two hundred dollars (\$200) for the second violation following the issuance of a warning notice.
- (3) A fine not exceeding five hundred (\$500) for each additional violations that occurs following the issuance of a warning notice.

(D) Each administrative citation issued for a violation of this chapter shall at a minimum contain the information specified in chapter 1.08.080 of the Encinitas Municipal Code, Administrative Citations, and any person receiving an administrative citation may contest the citation, and shall be entitled to an administrative hearing, pursuant to the procedures set forth in that chapter.

11.26.070 No Conflict with Federal or State Law

Nothing in this chapter is intended to or shall be interpreted as conflicting with any federal or state law or regulation.

11.26.080 Operative Date.

(A) This Ordinance shall become operative as to: Grocery stores, Pharmacies and City facilities six (6) months after its effective date, and 2) all remaining affected Retail Establishments and Farmers' Markets within twelve (12) months after the effective date.

(B) Within fifteen (15) days of the date of adoption of this Ordinance, the City Clerk shall post a copy of said Ordinance in places designated for such posting and shall certify to the same. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be published as required by law.

11.26.090 Severability. If any section, subsection, subdivision, paragraph, sentence,

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clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this Ordinance irrespective of the fact that one or more, sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional To this end, the provisions of this Ordinance are declared severable.”

SECTION TWO:

This Ordinance shall take effect and be in force thirty (30) days after its passage and the City Clerk of the City of Encinitas is hereby authorized to use summary publication procedures pursuant to Government Code Section 36933 utilizing the Coast News, a newspaper of general circulation published in the City of Encinitas.

This Ordinance was introduced on _____, 2014.

PASSED AND ADOPTED this ____ day of _____ 2014, by the following vote, to wit:

AYES:
NOES:
ABSTAIN
ABSENT:

Kristin Gaspar, Mayor

ATTEST AND CERTIFICATE:

I certify that this is a true and correct copy of Ordinance No. 2014-08, which has been published pursuant to law.

Kathy Hollywood, City Clerk

APPROVED AS TO FORM:

Glenn Sabine, City Attorney

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Introduction of Single-Use Disposable Bag Reduction Ordinance 2014-08

Encinitas City Council Meeting
August 20, 2014

Single-Use Disposable Bag Reduction Ordinance

Background:

- ❖ Report & recommendation received from Environmental Commission on November 20, 2013.
- ❖ Council directed preparation of draft ordinance.
- ❖ Draft ordinance & environmental review process update on June 25, 2014.
- ❖ Prepare ordinance for consideration of introduction and categorical exemption CEQA process.

Single-Use Disposable Bag Reduction Ordinance

Local Single Use Bag Ordinances:

- ❖ 84 ordinance adopted as of July 1, 2014
- ❖ Covers 113 California cities or counties

SB 270 Legislation

- ❖ Phased-in prohibition of single use plastic bags
 - ❖ July 1, 2015 for grocery & drug stores & larger retailers;
 - ❖ July 1, 2016 for convenience stores, mini-marts that hold Type 20 & 21 alcohol licenses
- ❖ Preemption clause restricting new local regulations on single use bags unless introduced before Sept 1, 2014 and final adoption before January 1, 2015.
- ❖ All legislative bills must be off floor before August 31st for 2014 to go to Governor's desk

Single-Use Disposable Bag Reduction Ordinance

Key components of Ordinance 2014-08:

- ❖ Prohibition on distribution of single-use plastic bags
- ❖ Phased-in implementation:
 - 6 months for grocery stores, drug stores, convenience/liquor stores & city facilities;
 - 12 months for all other retail establishments & farmers markets
- ❖ Retailers may provide recycled paper bags at a minimum 10 cent fee retained by retailer
- ❖ Allows retailers to provide rebate/credit for customer use of reusable bags
- ❖ Excludes restaurants, prepared food vendors, non-profits using donated bags, product bags, customers participating in subsidized food programs & pet waste bags.



Single-Use Disposable Bag Reduction Ordinance

❖ Environmental Review

- Notice of Categorical Exemption prepared and following adoption of ord. will be forwarded to SD County Clerk/Recorder & initiate 30 posting period.

❖ Implementation

- Phase 1 - Apx 80 retail establishments & City facilities
- Phase 2 – Apx 220 additional retail est & farmers markets
- Retailer and public outreach/education efforts may be funded by Solid Waste/Recycling Fund - 214

❖ Enforcement

- Phase-in periods
- Initial violation written notice
- Subsequent violations potential fines consistent with EMC

Single-Use Disposable Bag Reduction Ordinance

Recommendation:

Introduce Ordinance 2014-08

#

Communications

(received prior to publication of agenda report)



August 7, 2014

The Honorable Kristin Gaspar
 Mayor, City of Encinitas
 505 S. Vulcan Ave.
 Encinitas, CA 92024

RE: Single-Use Carryout Bag Ordinance

Dear Mayor Gaspar,

On behalf of the California Grocers Association, I write to applaud the City of Encinitas for considering regulating the use of single-use carryout bags. Grocery industry experience has shown that this type of carryout bag ordinance maximizes environmental gain and minimizes impacts to businesses.

The California Grocers Association is a non-profit, statewide trade association representing the food industry since 1898. CGA represents approximately 500 retail member companies operating over 6,000 food stores in California and Nevada, and approximately 300 grocery supplier companies. Retail membership includes chain and independent supermarkets, convenience stores and mass merchandisers. CGA members include numerous grocery companies operating throughout Burbank.

The model of banning single-use plastic bags and allowing recyclable paper bags for a charge has shown to encourage reusable bag use, provide consumers no-cost and low-cost carryout options, and minimize operational and financial impacts to retailers. Over 110 California jurisdictions have passed this type of ordinance successfully including Long Beach, Huntington Beach and the City and County of Los Angeles.

By banning single-use plastic bags and placing a charge on single-use paper bags consumers are encouraged to use reusable bags while still retaining a choice at checkout. Since passing a similar ordinance in 2010, Los Angeles County has seen all single-use bag consumption reduced by more than 90 percent. They also found that consumers quickly adapted and businesses felt minimal impact.

Experience has shown after implementation of an ordinance which bans single-use plastic bags and places a charge on single-use paper bags few consumers choose to pay for a single-use paper bag. Grocery industry experience shows the use of reusable bags or no bag at all by consumers increases from less than 15% before ordinance implementation to over 75% immediately after implementation. Within the first year the rate of reusable bag use by consumers rises above 90%.

In jurisdictions which chose to partially regulate carryout bags by only banning single-use plastic bags grocers have experienced dramatic cost increases. Without regulating all single-use carryout bags consumers are not encouraged to use reusable bags and instead simply switch from one type of single-use bag to another single-use bag which provides no environmental benefit and increases operational costs for retailers.

It is important to recognize the significant price differential between plastic bags (\$0.01) and paper bags (\$0.06 to over \$0.012). When San Francisco chose to only regulate single-use plastic bags consumers switched to using single-use paper bags. This consumer reaction cost an average San Francisco grocery store \$80,000 dollars per store per year.

Single-Use Carryout Bag Ordinance

August 7, 2014

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As an industry which averages a 1% profit margin an unnecessary regulatory cost increase in the tens of thousands of dollars can determine the success of a store. It is important to note that the City of San Francisco, along with other jurisdictions, have amended their original ordinances which only banned single-use plastic bags to now include a charge on single-use paper bags.

We believe it is critical neighboring jurisdictions adopt similar carryout bag ordinances in order avoid a patchwork of regulation. Industry experience has shown inconsistent regulation confuses consumers and creates competitive disadvantages for retailers operating near neighboring jurisdictions, as well as for retailers with multiple store locations in different jurisdictions.

Again, we applaud the city council in Encinitas for considering this important issue and we urge you to move forward with the recommended ban/charge approach to regulate carryout bags. Thank you for your consideration and please consider CGA a partner as you encourage reusable bag use.

Sincerely,



LAURA PERALTA

Director, Local Government Relations

cc: Councilmembers, City of Encinitas
Gustavo Vina, City Manager, City of Encinitas
Glenn Pruum, Deputy City Manager, City of Encinitas
Kathy Hollywood, City Clerk, City of Encinitas
Brandi Lewis, Council Executive Secretary, City of Encinitas

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MEMO

2014 JUL 31 PM 3:1

TO: The Mayor and City Council
of Encinitas
505 S. Vulacan
Encinitas, CA 92024

DATE: July 21st 2014
SUBJECT: Plastic Bags !
CITY COUNCIL

MESSAGE

To Mayor Kristin Gaspar and the City Council:
Please vote AGAINST the motion to eliminate plastic bags.
I know I am a small voice representing the "SILENT MAJORITY",
but we need to be heard.
As a point of interest, there is more poison and toxic gasses from
the exhausts of commercial trucks going thru' our beautiful city
on Highway 5.
Please do not make the same mistake as Del Mar.
Sincerely

Sidney Djanogly 