

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	X

DATE: MARCH 6, 2012

TO: CITY MANAGER/CITY COUNCIL

**FROM: BRAD FOWLER, DIRECTOR OF PUBLIC WORKS AND ENGINEERING SERVICES
KYLE BUTTERWICK, DIRECTOR OF COMMUNITY DEVELOPMENT**

SUBJECT: SECOND READING AND ADOPTION OF AN ORDINANCE ADDING A NEW CHAPTER 6.47 "PLASTIC CARRY-OUT BAGS" TO TITLE 6 OF THE DANA POINT MUNICIPAL CODE PROHIBITING THE DISTRIBUTION OF SINGLE-USE PLASTIC CARRY-OUT BAGS AT THE POINT OF SALE AT LOCAL RETAIL ESTABLISHMENTS

RECOMMENDED ACTION:

That the City Council hold second reading and adopt an Ordinance (Action Document A) entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADDING A NEW CHAPTER 6.47 "PLASTIC CARRY-OUT BAGS" TO TITLE 6 OF THE DANA POINT MUNICIPAL CODE PROHIBITING THE DISTRIBUTION OF SINGLE-USE PLASTIC CARRY-OUT BAGS AT THE POINT-OF-SALE AT LOCAL RETAIL ESTABLISHMENTS.

BACKGROUND:

The City is proposing to adopt a tailored Ordinance, aimed at limiting the distribution of single-use plastic bags at the point-of-sale. This proposed action was first considered and discussed at length by the City Council at its February 7, 2012 public meeting. Following public comment and further deliberation, the City Council provided staff with the following direction:

1. Amend the Ordinance so that the definition of "Reusable Bag" is consistent with the definition used by other cities in California; and
2. Amend the Ordinance so that small businesses are exempt from complying with its provisions for a period of approximately 18 months after the Ordinance is adopted; and
3. Provide the City Council with a report once a year with input from the relevant stakeholders; and

4. Reconsider whether to impose a mandatory fee or charge for paper bags once the relevant legal challenges have been resolved.

The Council's recommended revisions from the February 7th meeting have been implemented and the revised Ordinance was presented for consideration at the February 21, 2012 meeting.

In addition to the above-noted direction provided by the City Council on February 7th, Councilmember Schoeffel stated that he intends to propose a voluntary incentive program for small businesses to promote green tourism practices through the Dana Point Destiny Ad Hoc Committee. It is anticipated that this incentive program will help attract visitors and customers to our local businesses and will complement the T-BID's green tourism marketing efforts. It is expected that this incentive program will be developed in the coming months by working with the Dana Point Destiny Ad Hoc Committee and then will be presented to the City Council for consideration and subsequent adoption. The Dana Point Destiny Ad Hoc Committee conducts noticed open business meetings so interested parties can participate as well in the process.

To clarify the definition of "reusable bag" staff researched definitions used by other municipalities. The new definition provided below has been adopted by multiple cities and counties (including Los Angeles County) and was specifically recommended to the Council by several sources in correspondence received just prior to the February 7 Council meeting.

"Reusable Bag" is now defined as a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; (2) has a minimum volume of 15 liters; (3) is machine washable or is made from a material that can be cleaned or disinfected; (4) does not contain lead, cadmium, or any other heavy metal in toxic amounts; (5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and (6) if made of plastic, is a minimum of at least 2.25 mils thick."

With respect to the 18 month exemption for small businesses, the Ordinance has been amended to read as follows:

"For Affected Retail Establishments whose annual taxable sales exceed four million dollars (\$4,000,000.00), the provisions of this Chapter shall become operative on April 1, 2013. For all other Affected Retail Establishments, the provisions of this Chapter shall become operative on October 1, 2013. "

Items three and four from the City Council direction noted above will be returned to the City Council on the appropriate dates.

DISCUSSION:

The first reading of this ordinance was held on February 21, 2012. The following minor additional language in the legislative intent portion of the ordinance was inserted for the second reading as requested by City Council:

WHEREAS, the City Council has directed City Staff to work with the Dana Point Ad Hoc Committee to develop a voluntary program for small business to promote and reward green tourism practices, and in addition, to consider and discuss other programs and incentives that could be implemented in order to make Dana Point a trash free city. After considering these issues, the Committee shall make a recommendation to the City Council for their consideration; and

It is recommended that the City Council adopt the final ordinance at this time.

FISCAL IMPACT:

Ongoing Staff costs for public outreach to businesses and residents about the single-use plastic bag limitations would be expected to some degree but would taper off over time once the program is established and ongoing.

STRATEGIC PLAN IMPLEMENTATION:

The project is in compliance with the Strategic Planning Initiative to restore and maintain the integrity of our ocean waters and beaches and to maintain, modernize and beautify the City’s infrastructure and neighborhoods and to achieve total excellence in municipal services and City administration/planning with excellent customer service and cost-effectiveness.

ALTERNATIVE ACTIONS:

As the City Council may suggest.

ACTION DOCUMENTS

PAGE NO.

A. [Action](#)4

ACTION DOCUMENT A: Ordinance**ORDINANCE NO. _____****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADDING A NEW CHAPTER 6.47 "PLASTIC CARRY-OUT BAGS" TO TITLE 6 OF THE DANA POINT MUNICIPAL CODE PROHIBITING THE DISTRIBUTION OF SINGLE-USE PLASTIC CARRY-OUT BAGS AT THE POINT OF SALE AT LOCAL RETAIL ESTABLISHMENTS**

WHEREAS, the City of Dana Point has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, there are currently approximately 240 individual retail establishments in the City; and

WHEREAS, plastic bags, a petroleum based product that retail establishments frequently distribute at the point of sale, enter various water bodies from both direct and indirect sources (such as storm drains), and negatively impact the overall quality of ocean waters and adjacent beach areas; and

WHEREAS, the litter problem resulting from single use plastic bags is becoming increasingly difficult to manage and has costly negative implications for tourism, wildlife, aesthetics, and most recently, the marine environment; and

WHEREAS, the Pacific Ocean contains a huge accumulation of debris known as the "Great Pacific Garbage Patch" which consists mostly of plastic debris, and some scientists estimate the density of plastic in this garbage patch as one million pieces of plastic per square mile; and

WHEREAS, the deterioration in the quality of the City's ocean waters and beaches threatens the public health, safety and welfare and negatively affects tourism and the local economy which depends on tourist trade; and

WHEREAS, while plastic does not biodegrade, it does "photo-degrade," breaking down into smaller pieces which can make their way into the food chain via animals such as jellyfish; and

WHEREAS, 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, and accordingly, it is reasonable to conclude from such information that the presence of plastic debris in the ocean is a hazard to marine life; and

WHEREAS, even when they have been disposed of properly, a primary and significant problem with single use plastic bags is that they do not biodegrade and are so light that they are easily carried by the wind, such that in a coastal city like the City of Dana Point, single use plastic bags often find their way into the marine environment

where, unlike paper bags, they do not break down and essentially remain indefinitely, creating aesthetic blight and potential hazard to marine life; and

WHEREAS, reusable bags and paper bags are alternatives to single use plastic bags; and

WHEREAS, although paper bags require more energy to manufacture and recycle and generate effluent during these processes, paper bags are heavier than single use plastic bags, and as a result, are less likely to get caught in the wind and find their way into the marine environment; and

WHEREAS, the City strongly encourages affected retail establishments to provide incentives for the use of reusable bags through education, credits or rebates for the use of reusable bags, and/or by charging customers for each paper bag distributed at the point of sale; and

WHEREAS, the City of Dana Point desires to reduce the amount of beach litter and marine pollution and to protect wildlife by reducing the amount of single use plastic bags that enter the City's storm drains, watershed, beaches and ocean waters; and

WHEREAS, the City Council has proposed a ban on the point of sale distribution of single use plastic bags in the City to reduce the prevalence of single use plastic bags in the City's storm drains, watershed, beaches and ocean waters; and

WHEREAS, the City Council has directed City Staff to work with the Dana Point Ad Hoc Committee to develop a voluntary program for small business to promote and reward green tourism practices, and in addition, to consider and discuss other programs and incentives that could be implemented in order to make Dana Point a trash free city. After considering these issues, the Committee shall make a recommendation to the City Council for their consideration; and

WHEREAS, the City Council of the City of Dana Point conducted multiple duly noticed hearings regarding the proposed ban at their regular scheduled meetings of February 7, 2012, February 21, 2012 and March 6, 2012 where public comment was invited and received; and

WHEREAS, because the proposed ban is not an activity that will result in an adverse physical change in the environment, the proposed ban does not qualify as a "project" under section 21065 of the Public Resources Code, and accordingly, is not subject to the California Environmental Quality Act (Pub. Res. Code §§ 21000–21177) ("CEQA"); and

WHEREAS, even if the proposed ban qualified as a "project" under section 21065 of the Public Resources Code, the project is exempt from the CEQA because (1) it is an activity undertaken "to assure the maintenance, restoration, enhancement and protection of the environment" (14 C.C.R. § 15308), and/or (2) "it can be seen with certainty that there is no possibility that the activity in question may have a significant [adverse] effect on the environment" (14 C.C.R. § 15061(b)(3)); and

WHEREAS, even though CEQA does not require it, the City is willing to and has prepared an Initial Environmental Study on the proposed ban, and based upon this study, the City determined that the proposed ban is not an activity that will have a significant adverse effect on the environment; and

WHEREAS, because the proposed ban is not an activity that will have a significant adverse effect on the environment, the City prepared a Negative Declaration pursuant to section 21080(c) of the Public Resources Code and hereby adopts this Negative Declaration; and

WHEREAS, the proposed ban will have no negative impact on Fish and Game resources pursuant to Section 21089(b) of the Public Resources Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The above recitations are true and correct and incorporated herein by reference.

SECTION 2. A new Chapter 6.47 “Plastic Carry-Out Bags” is hereby added to Title 6 of the Dana Point Municipal Code to read as follows:

CHAPTER 6.47 PLASTIC CARRY-OUT BAGS

Section 6.47.010 Definitions.

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

“Affected Retail Establishment” means any Retail Establishment, Vendor, or Non-Profit Vendor located within or doing business within the geographical limits of the City of Dana Point, and which is subject to the provisions of this Chapter.

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

“Customer” means any person obtaining goods from an Affected Retail Establishment.

“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.

“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 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 Dana Point’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, and “mini-marts.” The term “Retail Establishment” shall also include any retail store, Vendor, and Non-Profit Vendor selling clothing, food or personal items.

“Reusable Bag” a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; (2) has a minimum volume of 15 liters; (3) is machine washable or is made from a material that can be cleaned or disinfected; (4) does not contain lead, cadmium, or any other heavy metal in toxic amounts; (5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and (6) if made of plastic, is a minimum of at least 2.25 mils thick.

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

6.47.020 Single-Use Plastic Carry-Out Bags Prohibited.

- (a) No Affected Retail Establishment 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 Chapter shall be read to preclude Affected Retail Establishments from making Reuseable Bags and Recyclable Paper Bags available to Customers.
- (c) Affected Retail Establishments are strongly encouraged to provide incentives for the use of Reusable Bags through education, credits, or rebates for Customers that use Reusable Bags at the point of sale for the purpose of carrying away goods, and/or by charging Customers for each Paper Bag distributed at the point of sale.
- (d) No person shall distribute Plastic Carry-Out Bags at any City Sponsored Event, or at any City facility or any event held on City property.

6.47.030 Operative Date.

For Affected Retail Establishments whose annual taxable sales exceed four million dollars (\$4,000,000.00), the provisions of this Chapter shall become operative on April 1, 2013. For all other Affected Retail Establishments, the provisions of this Chapter shall become operative on October 1, 2013.

6.47.040 Exemptions.

- (a) 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, meats, fish, and/or poultry to the point of sale.
- (b) Upon receipt of a written application, 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 Section would cause undue hardship.
 - (1) 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 Affected Retail Establishment;
 - (B) Situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.

(2) The written application shall include all information necessary for the making of a decision on the application, including but not limited to documentation showing the factual support for the claimed exemption. The applicant may be required to provide additional information to permit the determination of facts regarding the exemption application.

(3) An exemption application may be approved in whole or in part, with or without conditions.

(4) An Affected Retail Establishment granted an exemption must reapply in writing prior to the end of the one-year exemption period and demonstrate continued undue hardship if it wishes to have the exemption extended.

(c) The City Manager and/or his designee may also determine to exempt from the requirements of this Chapter the procurement of supplies or services in the event of a proclaimed emergency or when otherwise deemed necessary by the City Manager for the immediate preservation of the public health, safety, or general welfare.

6.47.050 Enforcement.

(a) Whenever the City Manager or his or her designee finds that any provision of this Chapter has been violated, the City Manager shall give notice of such violation by means of a written warning. In any such warning, the City Manager shall:

(1) Set forth the specific violation or violations found;

(2) Establish a specific and reasonable period of time for the correction of the violation or violations; and

(3) State that failure to comply with any notice issued in accordance with the provisions of this subsection shall be punishable by a fine in an amount consistent with subsection (b) of this Section.

(b) Following the issuance of a written warning, an offense under this Chapter shall be punishable by a fine of not more than one hundred dollars (\$100.00) for the first conviction, and a fine of not more than two hundred fifty dollars (\$250.00) for the second and any subsequent conviction.

(c) Each and every day that a violation occurs shall constitute a separate violation of this Chapter.

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

SECTION 3. Severability.

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

PASSED, APPROVED and ADOPTED this _____ day of _____, 2012.

Lara Anderson, Mayor

ATTEST:

Kathy M. Ward, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF DANA POINT)

I, _____, City Clerk of the City of Dana Point, do hereby certify that the foregoing Ordinance No. _____ was introduced at a regular meeting of the City Council of the City of Dana Point held on the _____ day of _____, 2012, and was thereafter duly and regularly passed and adopted by the Council of the City of Dana Point at its regular meeting held on the _____ day of _____, 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN: