

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA ADDING CHAPTER 8.44, "SINGLE-USE CARRYOUT PLASTIC BAGS," TO TITLE 8 OF THE DESERT HOT SPRINGS MUNICIPAL CODE.

WHEREAS, about nineteen billion (19,000,000,000) single-use bags are used annually in California but less than 5% are recycled; and

WHEREAS, about a countless amount of single-use carryout plastic bags are distributed by retail establishments in the City each year; and

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

WHEREAS, numerous studies have documented the prevalence of single-use carryout plastic bags littering the environment and blocking storm drains, and in the Coachella Valley, single use plastic bags create a litter problem which is aggravated by windy conditions here; and

WHEREAS, taxpayers must bear the brunt of clean-up costs of said plastic bag litter; and

WHEREAS, this ordinance requires stores that decide to make recycled paper carryout bags available to their customers to pass-through the reasonable cost of providing these bags; and

WHEREAS, based on its analysis, the City has determined that a minimum cost pass-through of \$0.10 per paper bag would cover the reasonable cost to a store of providing the paper bags to its customers; and

WHEREAS, over 90 jurisdictions in California have approved ordinances that impose paper bag fees on the customers requesting those bags and these fees have proven very effective at generating a major shift in consumer behavior toward the use of reusable bags and significantly reducing bag consumption; and

WHEREAS, the proceeds from the collection of the paper bag pass-through would be retained by the retailer and this ordinance does not specify how the retailers must expend the monies collected; and

WHEREAS, customers can avoid this cost pass-through by using reusable bags; and

WHEREAS, no portion of the cost pass-through will be provided to the City and consequently, the City will not receive any revenues from the retailers' collection of the paper bag cost pass-through; and

WHEREAS, therefore, the cost pass-through is not a tax or fee subject to Proposition 26; and

WHEREAS, a paper bag cost pass-through is an essential element of the proposed ordinance as it is intended to provide a disincentive to customers to request paper bags when shopping at regulated stores and to promote a shift towards the use of reusable bags by City consumers; and

WHEREAS, the California Grocers Association, a non-profit trade association representing over 500 retail member companies, in an October 24, 2013 letter to the Coachella Valley Association of Governments ("CVAG", of which the City is a member) Executive Committee, has encouraged CVAG and its member jurisdictions to commit to a regional effort and move forward with an approach to regulate single use plastic bags that includes placing a charge on recyclable paper bags; and

WHEREAS, there are several alternatives to Single-Use Carryout Plastic Bags readily available in the City, including reusable bags produced from sustainable materials; and

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

WHEREAS, it is the City's desire to lead by example and whenever possible to conserve resources, reduce the amount of greenhouse gas emissions and solid waste, and to protect the public health and welfare including local wildlife, all of which increase the quality of life for the City's residents and visitors.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS DOES ORDAIN AS FOLLOWS:

Section 1. RECITALS

The above recitals are true and correct and are incorporated as though fully set forth herein.

Section 2. ADDITION OF CHAPTER 8.44, "SINGLE-USE CARRYOUT PLASTIC BAGS"

Chapter 8.44 of Title 8 of the City of Desert Hot Springs Municipal Code is hereby added as follows:

**CHAPTER 8.44
SINGLE-USE CARRYOUT PLASTIC BAGS**

Sections:

- | | |
|-----------------|---|
| 8.44.010 | Title. |
| 8.44.020 | Findings and Purpose. |
| 8.44.030 | Definitions. |
| 8.44.040 | Single-Use Carryout Plastic Bags Prohibited. |
| 8.44.050 | Permitted Bags. |

8.44.060	Carryout Bag Regulations.
8.44.070	Exempt Customers.
8.44.080	Operative Date.
8.44.090	Penalties and Enforcement.

8.44.010 Title.

This chapter shall be referred to as the “SINGLE-USE CARRYOUT PLASTIC BAGS” Ordinance.

8.44.020 Findings and Purpose.

- (a) The City Council finds and determines that the City is committed to protecting the public health, safety, welfare, and environment, and that in order to meet these goals, it is necessary for the City to promote the public purposes served by this Chapter and adopt the following regulations pursuant to these findings.
- (b) The City finds that ordinances limiting the use of Single-use Carryout Plastic Bags have been proven to reduce the amount of pollution and improve quality of life for its citizens.
- (c) The City finds that, except in unusual circumstances, it is feasible and reasonable for parties who provide Single-use Carryout Plastic Bags to easily transition to paper bags and move to a model that charges for paper bag use by consumers.
- (d) The City recognizes that plastic bags are a public nuisance and affect public health and impact tourism and quality of life to both residents and visitors in the City.

8.44.030 Definitions

For purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section:

“Customer” means any Person obtaining goods from a Store.

“Nonprofit Charitable Reuser” means 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 and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.

“Operator” means the person in control of, or having the responsibility for, the operation of a Store, which may include, but not be limited to, the owner of the Store.

“Paper Bag Cost Pass-Through” means the cost which must be collected by retailers from their Customers when providing a Recycled Paper Bag.

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

“Pharmacy” means any retail store, 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.

“Prepared Food” means 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.

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

“Public Eating Establishments” means a restaurant, take-out food establishment, or any other business that receives ninety percent (90%) or more of its revenue from the sale of Prepared Food to be eaten on or off its premises.

“Recycled Paper Bag” means a paper bag provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment that contains no old growth fiber and a minimum of forty percent (40%) post-consumer recycled content; is one hundred percent (100%) recyclable; and has printed in a highly visible manner on the outside of the bag the word “Recyclable,” the name and location of the manufacturer, and the percentage of post-consumer recycled content. The Recycled Paper Bag is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Material (ASTM) Standard Specification for Compostable Plastics D6400, as published in September 2004.

“Retail Establishment” means any commercial establishment that sells perishable and nonperishable goods including but not limited to, clothing, food, and personal items directly to the Customer and is located within or doing business within the City. Retail Establishments do not include Public Eating Establishments or Nonprofit Charitable Reusers.

“Reusable Bag” means a bag that has handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) is machine washable or is made of material that can be cleaned or disinfected; (2) has a minimum lifetime of one hundred twenty-five (125) uses, which for purposes of this subsection, means the capability of carrying a minimum of twenty-two (22) pounds one hundred twenty-five (125) times over a distance of at least one hundred seventy-five (175) feet; (3) if made of a plastic, it must be at least two and one-quarter (2.25) mil thick; (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.

“Single-Use Carryout Plastic Bag” means a bag other than a Reusable Bag provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. Single-Use Carryout Plastic Bags do not include bags without handles provided to the Customer (1) to transport produce, bulk food,

or meat from a produce, bulk food, or meat department within a Store to the point of sale; (2) to hold prescription medication dispensed from a Pharmacy; or (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Paper Bag.

“Store” means any of the following Retail Establishments located within the City:

- (1) A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;
- (2) A store of at least 10,000 square feet of retail space that sells any perishable or non-perishable goods including, but not limited to clothing, food, or personal items, and 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 Taxation Code); or
- (3) A drug store, Pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control; or
- (4) A store of less than 10,000 square feet of retail space that sells any perishable or non-perishable goods including, but not limited to, clothing, food, or personal items, and 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 Taxation Code).

8.44.040 Single-Use Carryout Plastic Bags Prohibited

- (a) No Store shall provide to any Customer a Single-Use Carryout Plastic Bags.
- (b) This prohibition applies to bags provided for the purpose of carrying away goods and does not apply to Produce Bags, Product Bags, or bags provided by Public Eating Establishments.

8.44.050 Permitted Bags

All Stores shall provide or make available to a Customer only Recyclable paper carryout bags or Reusable Bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this Chapter. Nothing in this Chapter prohibits Customers from using bags of any type that they bring to the Store themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the Store.

8.44.060 Carryout Bag Regulations

- (a) No Store, to include grocery store or Pharmacy, shall provide a Single-Use Carryout Plastic Bag to a Customer, at the check stand, cash register, point of

sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this Section.

- (b) No Person shall distribute a Single-Use Carryout Plastic Bag at any City facility, City-managed concession, City-sponsored event, or City-permitted event unless otherwise provided in this Section.
- (c) Single-use Carryout Plastic Bags may be distributed to Customers by food providers for the purpose of safeguarding health and safety during the transportation of Prepared Foods, including take-out foods and liquids intended for consumption away from the food provider's premises.
- (d) A Store shall make Recycled Paper Bags available to Customers for a minimum charge of ten cents (\$.10) per bag (the Paper Bag Cost Pass-Through). The sale of each bag shall be separately itemized on the sale receipt.
- (e) All Stores must keep records of the total number of Recycled Paper Bags provided, the total amount of monies collected for providing Recycled Paper Bags, and a summary of any efforts the Store has undertaken to promote the use of Reusable Bags by Customers in the prior calendar year. Such records must be made available for the City Manager, or his/her designee, to review within a reasonable period of time upon request. These records may be kept at the retailer's corporate office.

8.44.070 Exemptions

A Store may 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 Section 2 of Division 106 of the 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 one (1) or more Recycled Paper Bags or Reusable Bags at no cost.

8.44.080 Operative Date

This Chapter shall become operative six (6) months after its effective date for Stores defined in Subsections N(1) and N(2) of the Definitions Section. This Chapter shall become operative twelve (12) months after its effective date for Stores defined in Subsections N(3) and N(4) of the Definitions Section, Section 8.44.030.

8.44.090 Penalties and Enforcement

- (a) If the City Manager, or his/her designee, determines that a violation of this Chapter has occurred, he/she will issue a written warning notice to the Operator of a Store that a violation has occurred and the potential penalties that will apply for future violations.
- (b) Any Store that violates or fails to comply with any of the requirements of this Chapter after a written warning notice has been issued for that violation by the City shall be

guilty of an infraction, and subject to the provisions of Chapter 4.28 of the Desert Hot Springs Municipal Code, including any and all available civil fines and/or criminal penalties.

Section 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City has found and determined that this plastic bag ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to categorical exemptions under the CEQA Guidelines Sections 15307 and 15308 (Cal. Code Regs., tit. 14, §§ 15307, 15308.) The City finds that since the proposed project bans single-use plastic bags and imposes a mandatory charge on Recycled Paper Bags at "Stores" in the City that the proposed project would eliminate single-use plastic bags at "Stores", disincentivize use of single-use paper bags, and incentivize use of Reusable Bags within the City. Therefore, the proposed project will protect the environment and natural resources and not have a significant impact on the environment.

Section 4. AMENDING OF BAIL SCHEDULE

The City Attorney's Office is hereby directed to determine whether this ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

Section 5. SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 6. REPEAL OF CONFLICTING PROVISIONS

All the provisions of the Municipal Code as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this ordinance are hereby repealed.

Section 7. EFFECTIVE DATE

This ordinance shall take effect thirty (30) days after its second reading.

Section 8. CERTIFICATION

The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the 18th day of March, 2014 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Jerryl Soriano, CMC
City Clerk

Adam Sanchez, Mayor

APPROVED AS TO FORM:

Steven B. Quintanilla, City Attorney