



City Council Staff Report

DATE: April 2, 2014 CONSENT CALENDAR
SUBJECT: SECOND READING AND ADOPTION OF ORDINANCE NO. 1849
ADOPTING REGULATIONS FOR THE USE OF SINGLE-USE
CARRYOUT PLASTIC BAGS BY RETAIL ESTABLISHMENTS
FROM: David H. Ready, City Manager
BY: Office of the City Clerk

SUMMARY:

The City Council will consider adoption of Ordinance No. 1849.

RECOMMENDATION:

Waive the reading of the ordinance text in its entirety and adopt Ordinance No. 1849, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADDING CHAPTER 6.09 TO THE PALM SPRINGS MUNICIPAL CODE, RELATING TO THE PROHIBITION OF SINGLE-USE CARRYOUT PLASTIC BAGS BY RETAIL ESTABLISHMENTS."

STAFF ANALYSIS:

On March 19, 2014, Ordinance No. 1849 was introduced for first reading, as noted below:

3.A. PROPOSED ORDINANCE ADOPTING REGULATIONS FOR THE USE OF SINGLE-USE CARRYOUT PLASTIC BAGS BY RETAIL ESTABLISHMENTS:

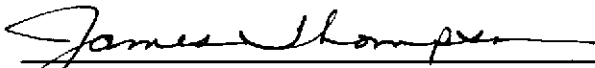
ACTION: Waive the reading of the ordinance text in its entirety and introduce by title only Ordinance No. 1849, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADDING CHAPTER 6.09 TO THE PALM SPRINGS MUNICIPAL CODE, RELATING TO THE PROHIBITION OF SINGLE-USE CARRYOUT PLASTIC BAGS BY RETAIL ESTABLISHMENTS."

AYES: Councilmember Foat, Councilmember Lewin, Mayor Pro Tem Hutcheson, and Mayor Pougnet.

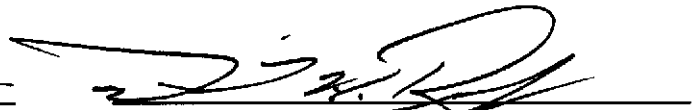
NOES: None.

ABSENT: Councilmember Mills.

This report provides for the City Council to waive further reading and adopt the ordinance. The ordinance shall be effective 30-days from adoption.



James Thompson
City Clerk



David H. Ready, Esq., Ph.D.
City Manager

/kdh

Attachment: Ordinance No. 1849

ORDINANCE NO. 1849

AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADDING CHAPTER 6.09 RELATING TO THE PALM SPRINGS MUNICIPAL CODE, RELATING TO THE PROHIBITION OF SINGLE-USE CARRYOUT PLASTIC BAGS BY RETAIL ESTABLISHMENTS.

City Attorney's Summary

This Ordinance bans single-use carryout bags by retail establishments in the City subject to certain exceptions. The prohibition would be implemented over specified periods of time.

The City Council of the City of Palm Springs ordains:

SECTION 1. Chapter 6.09 is added to the Palm Springs Municipal Code to read:

**CHAPTER 6.09
USE OF SINGLE-USE CARRYOUT PLASTIC BAGS**

- 6.09.010 Findings and Purpose**
- 6.09.020 Definitions**
- 6.09.030 Single-Use Carryout Plastic Bags Prohibited**
- 6.09.040 Permitted Bags**
- 6.09.050 Carryout Bag Regulations**
- 6.09.060 Exemptions**
- 6.09.070 Penalties and Enforcement**

6.09.010 Findings and Purpose

A. The City Council of the City of Palm Springs finds and determines that the City is committed to protecting the public health, safety, welfare, and environment, and the adoption of the regulatory program provided in this Chapter will help achieve these goals and promote the public purposes served by this Chapter.

B. The City Council finds that a regulatory program that limits the use of Single-use Carryout Plastic Bags will reduce the amount of pollution and improve the quality of life for the citizens of City of Palm Springs.

C. The City Council finds that, except in unusual circumstances, it is feasible and reasonable for parties who provide Single-use Carryout Plastic Bags to reasonably transition to paper bags where consumers are charged for paper bag use.

D. The City of Palm Springs recognizes that plastic bags are a public nuisance and affect public health and impact tourism and quality of life of residents and visitors in the City of Palm Springs.

6.09.020 Definitions

"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.

"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 words "Reusable" and "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 or 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 geographical limits of the City of Palm Springs. Retail Establishment does 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 categories of retail establishments located within the City limits of the City of Palm Springs:

Category 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;

Category 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

Category 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

Category 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).

The term “Store” does not include Public Eating Establishments or Nonprofit Charitable Reusers.

6.09.030 Single-Use Carryout Plastic Bags Prohibited

- A. No Store shall provide to any customer a Single-Use Carryout Plastic Bag.
- B. This prohibition applies to bags provided for the purpose of carrying away goods and does not apply to produce bags or product bags.

6.09.040 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.

6.09.050 Carryout Bag Regulations

A. No Store 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 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 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 a 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 to review at any time. These records may be kept at the retailer's corporate office.

6.09.060 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.

6.09.070 Penalties and Enforcement

A. The City Manager is authorized to promulgate rules and regulations regarding the interpretation, implementation, and enforcement of this Chapter and to take any and all actions reasonable and necessary to enforce this Chapter.

B. Failure to comply with any provision of this Chapter shall constitute an infraction and a violation of the Palm Springs Municipal Code and may be enforced pursuant to any applicable provisions of the Code, including without limitation, the administrative citation provisions of Section 1.06.040 of the Code.

SECTION 2. The provisions of Chapter 6.09 shall become operative six (6) months after its effective date for Category 1 and 2 Stores and for at any City facility, City-managed concession,

City-sponsored event, or City-permitted event, and shall become operative twelve (12) months after its effective date for Category 3 and 4 Stores.

SECTION 3. 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 [Title 14 California Code of Regulations, Sections 15307, 15308]. The City Council further finds that this Ordinance bans single-use plastic bags, and incentivizes the use of Reusable Bags within the City and therefore the adoption of this Ordinance will protect the environment and natural resources and will not have a significant adverse impact on the environment.

SECTION 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after passage.

PASSED AND ADOPTED at a regular meeting of the City Council on the ____ day of _____ 2014, by the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

Stephen P. Pougnet
Mayor

ATTEST:

James Thompson
City Clerk