

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING THE HUNTINGTON BEACH MUNICIPAL
CODE BY ADDING CHAPTER 5.95 REGULATING THE
USE OF PLASTIC CARRYOUT BAGS AND RECYCLABLE PAPER
CARRYOUT BAGS AND PROMOTING THE USE OF REUSABLE BAGS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. The Huntington Beach Municipal Code is hereby amended to add Chapter 5.95, said chapter to read as follows:

Chapter 5.95

USE OF PLASTIC CARRYOUT BAGS AND RECYCLABLE PAPER

Sections:

- 5.95.010 Definitions.
- 5.95.020 Plastic carryout bags prohibited
- 5.95.030 Permitted bags
- 5.95.040 Regulation of recyclable paper carryout bags.
- 5.95.050 Use of reusable bags
- 5.95.060 Exempt customers
- 5.95.070 Operative date
- 5.95.080 Enforcement and violation - penalty
- 5.95.090 Severability
- 5.95.100 No conflict with federal or state law

5.95.010 Definitions. The following definitions apply to the use of these terms for the purposes of this chapter:

- a. "Customer" means any person or persons purchasing goods from a store.
- b. "Certified Farmer's Market" has the meaning provided in Section 8.04.10(a) of the Huntington Beach Municipal Code.
- c. "Operator" means the person in control of, or having the responsibility for, the operation of a store, which may include, but is not limited to, the owner of the store.
- d. "Person" means any natural person, firm, corporation, partnership, or other organization or group, however organized.
- e. "Plastic carryout bag" means any bag made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or other plant sources, which is

APPROVED FOR INTRODUCTION

3 - 18 - 2013

VOTE 4-3

(SULLIVAN, HARPER, CARRILLO - NO)

provided to a customer at the point of sale. Plastic carryout bag includes compostable and biodegradable bags but does not include reusable bags, produce bags or product bags.

- f. "Postconsumer recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.
- g. "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.
- h. "Recyclable" means material that can be sorted, cleansed, and reconstituted using 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.
- i. "Recyclable paper carryout bag" means a paper bag that meets all of the following requirements:
 - (1) contains no old growth fiber;
 - (2) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) postconsumer recycled material;
 - (3) is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400;
 - (4) is accepted for recycling in curbside programs in the City;
 - (5) has printed on the bag the name of the manufacturer, the location where the bag was manufactured, and the percentage of postconsumer recycled material used; and
 - (6) displays the word "Recyclable" in a highly visible manner on the outside of the bag.
- j. "Reusable bag" means 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 one hundred twenty-five (125) uses, which for purposes of this Section, 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;
 - (2) has a minimum volume of fifteen (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, as defined by applicable state and federal standards and regulations for packaging or reusable bags;
- (5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location 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.

k. "Store" means any of the following retail establishments located within the City of Huntington Beach:

- (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 ten thousand (10,000) square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue & Taxation Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or
- (3) A drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, 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.

5.95.020 Plastic carryout bags prohibited.

- a. No store shall provide to any customer a plastic carryout bag.
- b. This prohibition applies to bags provided for the purpose of carrying away goods from the point of sale and does not apply to produce bags or product bags.
- c. No person shall distribute a plastic carryout bag or any paper bag at the Farmers' Markets, except produce bags or product bags.

5.95.030 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.

5.95.040 Regulation of recyclable paper carryout bags.

- a. Any store that provides a recyclable paper carryout bag to a customer must charge the customer ten cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.
- b. No store shall rebate or otherwise reimburse a customer any portion of the ten cent (\$0.10) charge required in Subsection a, except as otherwise provided in this Chapter.
- c. All stores must indicate on the customer receipt the number of recyclable paper carryout bags provided and the total amount charged for the bags.
- d. All monies collected by a store under this Chapter will be retained by the store and may be used only for the following purposes:
 - (1) Costs associated with complying with the requirements of this Chapter;
 - (2) Actual costs of providing recyclable paper carryout bags; or
 - (3) Costs associated with a store's educational materials or education campaign encouraging the use of reusable bags, if any.
- e. All stores shall keep complete and accurate records for a minimum period of three years from the date of sale, of the total number of recyclable paper carryout bags provided and the total amount of monies collected for providing recyclable paper carryout bags, which record shall be available for inspection at no cost to the City during regular business hours by any City employee authorized to enforce this Section. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the store's address. A responsible agent or officer of the store shall confirm that the information provided is accurate and complete.
- f. Any store that fails to maintain complete records or documents, maintains false, inaccurate or misleading records, or otherwise fails to comply with this section be in violation of this Section and such store shall be subject the fines set forth in Section 5.95.080.

5.95.050 Use of reusable bags.

- a. All stores must provide reusable bags to customers, either for sale or at no charge.
- b. Each store is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging customers to use reusable bags.
- c. Each store is strongly encouraged to provide to the City and to the public a summary of any efforts a store has undertaken to promote the use of reusable bags by customers.

5.95.060 Exempt customers. All stores must provide at the point of sale, free of charge, either reusable bags or recyclable paper carryout bags or both, at the store's option, to any customer participating in either 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 Health and Safety Code or in the Supplemental Food Program pursuant to

Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code.

5.95.070 Operative date. This Chapter shall become operative six months from the effective date of this Ordinance.

5.95.080 Enforcement and violation - penalty.

- a. The City Manager has primary responsibility for enforcement of this Chapter. The City Manager or designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, investigating violations, issuing fines and entering the premises of any store during business hours. If the City Manager or 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 shall be guilty of an infraction.
- c. If a store has subsequent violations of this Chapter that are similar in kind to the violation addressed in a written warning notice, the following penalties will be imposed and shall be payable by the operator of the store:
 - (1) A fine not exceeding one hundred dollars (\$100) for the first violation after the written warning notice is given;
 - (2) A fine not exceeding two hundred dollars (\$200) for the second violation after the written warning notice is given; or
 - (3) A fine not exceeding five hundred dollars (\$500) for the third and any subsequent violations after the written warning notice is given.
- d. A fine shall be imposed for each day a violation occurs or is allowed to continue.
- e. All fines collected pursuant to this Chapter shall be used to assist with the implementation and enforcement of the requirements of this Chapter.
- f. Any store operator who receives a written warning notice of fine may request an administrative review of the accuracy of the determination or the propriety of any fine issued, by filing a written notice of appeal with the City Manager no later than thirty (30) days after receipt of a written warning notice or fine, as applicable. The notice of appeal must include all facts supporting the appeal and any statements and evidence, including copies of all written documentation and a list of any witnesses that the appellant wishes to be considered in connection with the appeal. The appeal will be heard by a hearing officer designated by the City Manager. The hearing officer will conduct a hearing

concerning the appeal within forty-five (45) days from the date that the notice of appeal is filed, or on a later date if agreed upon by the appellant and the City, and will give the appellant ten (10) days prior written notice of the date of the hearing. The hearing officer may sustain, rescind, or modify the written warning notice or fine, as applicable, by written decision. The hearing officer will have the power to waive any portion of the fine in a manner consistent with the decision. The decision of the hearing officer is final and effective on the date of service of the written decision, is not subject to further administrative review, and constitutes the final administrative decision.

5.95.09 Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the ordinance.

5.95.100 No conflict with federal or state law. Nothing in this ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

SECTION 2. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2013.

Mayor

ATTEST:

City Clerk

INITIATED AND APPROVED:

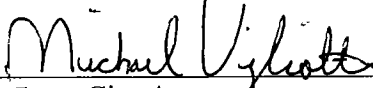


Deputy City Manager

REVIEWED AND APPROVED:

City Manager

APPROVED AS TO FORM:



City Attorney