

ORDINANCE NO. 1408

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF NAPA COUNTY, STATE OF CALIFORNIA, ADDING A NEW CHAPTER 5.70 ENTITLED “SINGLE-USE PLASTIC CARRYOUT BAG REDUCTION” TO TITLE 5 OF THE NAPA COUNTY CODE

WHEREAS, the use of all single-use shopping bags causes severe environmental impacts, including greenhouse gas (GHG) emissions, litter, harm to wildlife, ground level ozone formation, atmospheric acidifications, water consumption, solid waste generation, and negative storm water impacts; and

WHEREAS, according to the California Integrated Waste Management Board’s 2009 study of single-use plastic bag recycling rates, in 2009, approximately Nineteen Billion (19,000,000,000) single-use plastic bags were used in California but less than 5% were recycled (<http://www.calrecycle.ca.gov/publications/Detail.aspx?PublicationID=1373>); and

WHEREAS, numerous studies such as the California Coastal Commission’s 2006 study titled “Eliminating Land-based Discharges of Marine Debris in California: A Plan of Action from The Plastic Debris Project” (http://www.plasticdebris.org/CA_Action_Plan_2006.pdf), have documented the prevalence of single-use plastic carryout bags littering the environment, blocking storm drains and fouling beaches; and

WHEREAS, according to the Natural Resources Defense Council, California cities spend about \$11 per resident to keep litter from ending up in our oceans as marine pollution, and clean-up of plastic bags is estimated to be between 8% to 25% of the litter clean-up costs (http://docs.nrdc.org/oceans/oce_13082701.asp), and the County’s General Fund must bear the brunt of the clean-up costs of this litter; and

WHEREAS, plastic bags are a significant source of marine debris and are hazardous to marine animals and birds which may confuse single-use plastic carryout bags for a source of food resulting in entanglement, suffocation, poisoning, and death to at least 267 species worldwide including sea turtles, birds, and marine animals (Laist, D. W., 1997. Impacts of marine debris: entanglement of marine life in marine debris including a comprehensive list of species with entanglement and ingestion records. In: Coe, J. M. and D. B. Rogers (Eds.), Marine Debris – Sources, Impacts and Solutions. Springer-Verlag, New York, pp. 99- 139); and

WHEREAS, of all single-use bags, single-use plastic bags have the greatest impacts on litter and marine life; and

WHEREAS, the various studies contained in the County’s legislative record suggest that from an overall environmental and economic perspective, a sustainable, practical and appropriate alternative to single-use plastic and paper carryout bags is a shift to reusable bags; and

WHEREAS, there are several alternatives to single-use plastic carryout bags readily available in the unincorporated area, including the use of reusable bags or the reuse of recycled paper bags; and

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

WHEREAS, it is the County’s desire to conserve resources, reduce the amount of GHG emissions, waste, litter and marine pollution and to protect the public health and welfare including wildlife, all of which increase the quality of life for the County’s residents and visitors; and

WHEREAS, studies such as the “Implementation of the County of Los Angeles Plastic and Paper Carryout Bag Ordinance” (<http://ladpw.org/epd/aboutthebag/PDF/Bag%20Ban%20Status%20Nov%202012.pdf>) document that prohibiting plastic bag distribution and placing a mandatory charge on paper bags will dramatically reduce the use of both types of bags; and

WHEREAS, the County will not receive any revenue from the paper bag charge, and therefore the charge is not a “tax” or a “fee” as defined by Section 1(e) of Article XIII C of the California Constitution; and

WHEREAS, the record contains, and the Board of Supervisors legislatively notices substantial evidence that prohibiting the sale of single-use plastic bags, requiring retailers to charge a nominal fee for the sale of recycled paper bags, and incentivizing the use of reusable bags will conserve resources, reduce the amount of greenhouse gas emissions associated with the production of single-use bags, reduce waste and marine pollution, protect sensitive local water resources and water quality, and enhance the quality of life for County residents, visitors and wildlife; and

WHEREAS, the Board of Supervisors has considered all information related to this matter, as presented at the public meeting of the County identified herein, including any supporting reports by County staff, and any information provided during public meetings.

NOW, THEREFORE, the Board of Supervisors of Napa County, State of California, ordains as follows:

SECTION 1. The Board of Supervisors hereby makes the following findings in support of the determination that the Single-Use Plastic Carryout Bag Reduction Ordinance is exempt from CEQA under CEQA Guidelines Sections 15307 and 15308, which exempt actions taken by a regulatory agency as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource or protection of the environment where the regulatory process involves procedures for protection of the environment, based on the following:

- The proposed project, adoption of an ordinance regulating single-use plastic carryout shopping bags, will serve to protect the environment and natural resources by reducing use of single-use plastic and paper carryout bags.

- Studies have shown that single-use plastic bags are harmful to natural ecosystems and a menace to the State’s waste diversion goals. Once discarded, they either enter our landfills or our marine ecosystem. Numerous studies such as the California Coastal Commission’s 2006 study titled “Eliminating Land-based Discharges of Marine Debris in California: A Plan of Action from The Plastic Debris Project” have documented the prevalence of single-use plastic carryout bags littering the environment, blocking storm drains and fouling marine environments.
- The production and degeneration of single-use plastic and paper bags produce CO2 emissions that are harmful to the climate. Studies have shown that use of single-use paper bags result in greater GHG emissions, atmospheric acidification, water consumption, and ground-level ozone production than reusable carryout bags.
- The proposed project will establish local regulations that will protect the environment and natural resources from the negative impacts of single-use plastic carryout bags by establishing procedures that will reduce the use of single-use plastic carryout bags and incentivize use of reusable carryout bags.
- The Board of Supervisors therefore finds that there exists ample evidence, in both the written and administrative record and contained in testimony and information presented by County staff and received by the Board of Supervisors as a part of the public hearing, that the proposed project will serve as a local regulation enacted for the purpose of protecting natural resources and the environment. The County’s environmental analysis, as set forth more specifically in these findings and within the written and administrative record, is supported by the holding in Save the Plastic Bag Coalition v. County of Marin, 218 Cal.App.4th 209 (2013).

SECTION 2. The Board of Supervisors hereby determines that this Single-Use Plastic Carryout Bag Reduction Ordinance is exempt from CEQA pursuant to CEQA Guidelines Sections 15307 and 15308, which exempt actions taken by a regulatory agency as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource or protection of the environment where the regulatory process involves procedures for protection of the environment.

SECTION 3. A new Chapter 5.70 entitled Single-Use Plastic Carryout Bag Reduction Ordinance, is hereby added to Title 5 (Business Taxes, Licenses and Regulations) of the Napa County Code, to read as follows:

CHAPTER 5.70

SINGLE-USE PLASTIC CARRYOUT BAG REDUCTION

Sections:

5.70.010	Title.
5.70.020	Purpose and Intent.
5.70.030	Definitions.
5.70.040	Single-Use Plastic Carryout Bags.
5.70.050	Exemptions.
5.70.060	Enforcement.

5.70.010 Title.

This chapter shall be known as the county's "Single-Use Plastic Carryout Bag Reduction Ordinance," and may be cited as such, and will be referred to herein as "this chapter."

5.70.020 Purpose and Intent.

The purposes of this chapter are to:

- A. Enact a bag reuse program that reduces waste and pollution, and that decreases the use of single-use plastic carryout bags in the county.
- B. Protect the environment from the negative impacts of single-use plastic carryout bags by reducing the use of single-use plastic carryout bags, with a provision that would require retail stores within the unincorporated area to charge customers who request recycled paper bags or reusable plastic bags.
- C. Provide an incentive for customers to use reusable bags or bring their own bags by exempting application of the bag charge from those customers who use reusable bags or bring their own bags.

5.70.030 Definitions.

For purposes of this chapter, the following definitions shall apply:

- A. "Customer" means any person obtaining merchandise from retail establishment.
- B. "Director" means the director of planning, building and environmental services, his/her designee, or county executive officer.
- C. "Merchandise" means any consumer goods as that term is defined by California Civil Code section 1791(a), except that "Merchandise" shall also include clothing and consumables, as those terms are defined by California Civil Code Sections 1791(c) and (d), respectively. "Merchandise" does not include Prepared Food. "Merchandise" includes, but is not limited to, liquor and beer, clothing, electronics and groceries that are not prepared food.
- D. "Post-consumer Recycled Material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Post-consumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
- E. "Public Eating Establishment" means a restaurant, take-out food establishment, or any other business that receives ninety percent or more of its revenue from the sale of prepared food to be eaten on or off its premises.
- F. "Prepared Food" means food 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 or uncooked meat product, or fruits and vegetables that are intended to be prepared for consumption off site.

G. “Recycled Paper Bag” means a paper bag provided by a retail establishment to a customer in accordance with this chapter, at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting merchandise out of the establishment that contains no old growth fiber and a minimum of forty percent post-consumer recycled material; is one hundred percent recyclable; and has printed on the outside of the bag the word “recyclable,” the name and location of the manufacturer, and the percentage of post-consumer recycled content.

H. “Retail Establishment” means any commercial establishment that sells merchandise at retail directly to the customer; and is located within or doing business within the geographical limits of Napa County, that is, the unincorporated area. Retail establishment does not include public eating establishments.

I. “Reusable Bag” means a bag made of cloth or other machine washable fabric that has handles, and is specifically designed and manufactured for multiple reuse.

J. “Reusable Plastic Bag” means a bag made of durable plastic with handles that is at least 2.25 millimeters thick and is specifically designed and manufactured for multiple reuse.

K. “Single-Use Plastic Carryout Bag” means a bag, provided by a retail establishment to a customer at the check stand, cash register, point of sale or other point of departure, for the purpose of transporting merchandise out of the establishment, provided that “Single-Use Plastic Carryout Bag” specifically excludes any reusable bag or recycled paper bag and excludes any bag provided to the customer to (1) transport produce, bulk food or meat from a produce, bulk food or meat department within a store to the point of sale; (2) hold prescription medication dispensed from a pharmacy; (3) segregate merchandise that could damage or contaminate other merchandise when placed together in a reusable bag or recycled paper bag; or (4) contain or wrap meat, fish, or frozen foods, whether prepackaged or not.

L. “Specialty bag or gift bag” means a paper shopping bag made of a minimum one hundred seventy-five grams per square meter paper weight, with a flat bottom, side gussets, reinforced turn top, and ribbon, rope or cord handles.

5.70.040 Single-Use Plastic Carryout Bags.

A. On and after July 1, 2016, no retail establishment shall provide a single-use plastic carry-out bag to a customer for the purpose of transporting merchandise out of the establishment.

B. On and after July 1, 2016, no retail establishment shall provide a recycled paper bag or a reusable plastic bag to a customer for the purpose of transporting merchandise out of the establishment unless: (1) the retail establishment charges the customer an amount of ten cents or more per bag, and (2) the amount of the charge for each recycled paper bag or reusable plastic bag is separately itemized on the sales receipt provided by the retail establishment to the customer. Retail establishments that provide a durable bag made of cloth or other machine washable fabric may do so at no charge to their customers at the retail establishment’s discretion.

C. Retailers shall retain the proceeds from the collection of the charge required by subsection (B) of Section 5.70.040 for the point of sale purchase of a recycled paper bag or reusable plastic bag. This chapter does not restrict how retailers use these monies.

D. Specialty or gift bags are exempt from the requirements of this chapter.

E. Nothing in this chapter shall prohibit customers from using bags of any type that they bring to a retail establishment themselves or from carrying away goods that are not placed in a bag.

5.70.050 Exemptions.

A retail establishment may provide a reusable bag or a recycled paper bag at no cost at the point of sale for the following purposes:

A. To a customer who is participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code, or a customer who is participating in the Supplemental Food Program pursuant to Chapter 10 of Part 3 of Division 9 of the Welfare and Institutions Code.

B. To transport produce, bulk food or meat from a produce, bulk food or meat department within a store to the point of sale.

C. To hold prescription medication dispensed from a pharmacy.

D. To segregate merchandise that could damage or contaminate other merchandise when placed together in a reusable bag or recycled paper bag.

E. To contain or wrap meat, fish, or frozen foods, whether prepackaged or not.

F. To contain food from a public eating establishment.

5.70.060 Enforcement.

The director shall have primary responsibility for enforcement of this chapter. The director is authorized to make all necessary and reasonable rules and regulations with respect to the enforcement of this chapter. All such rules and regulations shall be consistent with the provisions of this chapter.

It is a violation of this code, subject to punishment and prosecution pursuant to chapters 1.24 and 1.28 of this code, for any retail establishment to violate or fail to comply with any provision of this chapter.

SECTION 4. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors of Napa County hereby declares it would have passed and adopted this ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

SECTION 5. This ordinance shall be effective on July 1, 2016.

SECTION 6. A summary of this ordinance shall be published at least once 5 days before adoption and at least once before the expiration of 15 days after its passage in the Napa Valley

Register, a newspaper of general circulation published in Napa County, together with the names of members voting for and against the same.

The foregoing ordinance was introduced and read at a regular meeting of the Board of Supervisors of Napa County, State of California, held on the 5th day of January, 2016, and passed at a regular meeting of the Board of Supervisors of Napa County, State of California, held on the 12th day of January, 2016, by the following vote:

AYES:	SUPERVISORS	DILLON, WAGENKNECHT and PEDROZA
NOES:	SUPERVISORS	NONE
ABSTAIN:	SUPERVISORS	NONE
ABSENT:	SUPERVISORS	CALDWELL and LUCE

 ALFREDO PEDROZA, Chairman of the
 Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Silva Darbinian</u> Deputy County Counsel</p> <p>By: <u>Sue Ingalls</u> County Code Services</p> <p>Date: <u>December 29, 2015</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: January 12, 2016 Processed By:</p> <p>_____ Deputy Clerk of the Board</p>	<p>ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors</p> <p>By: _____</p>
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I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON _____.

_____, DEPUTY
 GLADYS I. COIL, CLERK OF THE BOARD