

ORDINANCE NO. 2014-05

AN ORDINANCE ADDING CHAPTER 8.60
RELATING TO SINGLE-USE CARRYOUT BAGS, RECYCLED PAPER BAGS,
AND REUSABLE BAGS BY RETAIL ESTABLISHMENTS TO
THE MUNICIPAL CODE

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THE CITY COUNCIL OF THE CITY OF MARINA DOES ORDAIN AS FOLLOWS:

1. Chapter 8.60 added. Chapter 8.60, entitled "Use of Single-Use Carryout Bags, Recycled Paper Bags, and Reusable Bags by Retail Establishments," is hereby added to the Municipal Code to read in its entirety as set forth on the attached five (5) pages, marked Exhibit "1" and incorporated herein by this reference thereto.
2. Environmental. This ordinance is categorically exempt from to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15307 and 15308 – as an action taken by a regulatory agency for protection of natural resources and the environment.
3. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its final passage.
4. Posting of Ordinance. Within fifteen (15) days after the passage of this ordinance, the City Clerk shall cause it to be posted in the three (3) public places designated by resolution of the City Council.
5. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Marina duly held on August 6, 2014 and was passed and adopted at a regular meeting duly held on August 19, 2014, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Brown, Delgado

NOES: COUNCIL MEMBERS: Morton, O'Connell

ABSENT: COUNCIL MEMBERS: None.

ABSTAIN: COUNCIL MEMBERS: None.

Bruce C. Delgado, Mayor

ATTEST:

Anita DeAmaral, Deputy City Clerk

CHAPTER 8.60

USE OF SINGLE-USE CARRYOUT BAGS, RECYCLED PAPER BAGS, AND REUSABLE BAGS BY RETAIL ESTABLISHMENTS

Sections:

8.60.010	Purpose and Findings
8.60.020	Applicability
8.60.030	Definitions
8.60.040	Regulations
8.60.050	Recordkeeping and Inspection
8.60.060	Enforcement

8.60.010 Purpose and findings.

- A. The purpose of this Chapter is to ban thin-film plastic single-use carryout bags and prohibit the free distribution of paper bags or reusable bags by certain types of retail establishments in the City in order to reduce litter and protect the natural resources and environment within the City.
- B. Pursuant to Article XI, section 7 of the California Constitution, the City may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety and welfare of its citizens.
- C. This ordinance protects and promotes the public health, safety and welfare by prohibiting the use of single-use carryout bags by consumers and promoting a shift to reusable bags and overall reduction of bag use at certain types of retail establishments.
- D. Single-use carryout bags contribute to environmental problems, including litter in storm drains, creeks, the Monterey Bay, and the ocean and environmental impacts caused by such litter.
- E. The City borders or is in close proximity to the Monterey Bay National Marine Sanctuary, a federal preserve that supports one of the most diverse and delicate ecosystems in the world. This sanctuary provides habitat for at least 33 mammals, 94 species of seabird, 345 species of fish, and contains the largest kelp forest in the nation. Bag litter that enter these and other coastal habitats can as a result of ingestion or entanglement adversely affect sensitive species that inhabit these coastal and marine environments, including leatherback sea turtles, seals, fish, sea otters, and bird species.
- F. Reducing the amount of single-use carryout bags in the City would result in an incremental reduction in the amount of litter that enters the storm drain system and local waterways, thereby improving water quality and natural resources within the City and surrounding areas outside of the City's jurisdictional boundaries.
- G. Prohibiting specified types of retail establishments from using thin-film plastic single-use carryout bags and requiring a charge for recycled paper bags and reusable bags

will reduce litter and benefit the environment by encouraging customers to use reusable bags and to reduce overall bag use.

H. This Council does, accordingly, find and declare that it should restrict single-use carry out bags and require a charge for recycled paper bags and reusable bags.

8.60.020 Applicability.

This Chapter applies in the incorporated area of the City of Marina.

8.60.030 Definitions.

Unless otherwise expressly stated, whenever used in this Chapter, the following terms shall have the meanings set forth below:

- A. "Customer" means any person obtaining goods from a retail establishment.
- B. "Chapter" means Chapter 8.60 of the Marina Municipal Code.
- C. "City" means the City of Marina.
- D. "Effective Date" means the effective date of the ordinance enacting Chapter 8.60.
- E. "Garment Bag" means a travel bag made of pliable, durable material with or without a handle, designed to hang straight or fold double and used to carry suits, dresses, coats, or the like without crushing or wrinkling the same.
- F. "Mils" is the thickness of a material measured in increments of one-thousandth (1/1000) of an inch.
- G. "Nonprofit Charitable Reuser" means a charitable organization which is tax- exempt under Section 501(c)(3) of the Internal Revenue Code, 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 of its revenues from the handling and sale of those donated goods or materials. Nonprofit Charitable Reusers are not considered Retail Establishments for the purpose of this Ordinance.
- H. "Person" means any individual, sole proprietorship, firm, association, organization, partnership (whether limited or general), corporation, limited liability corporation, political subdivision, government agency, municipality, industry, public or private corporation, trust, joint venture, regulatory authority, or any other entity.
- I. "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.
- J. "Public Eating Establishment" means a restaurant, take-out food establishment, or any other business that receives 90 percent or more of its revenue from the sale of prepared food, which is prepared on the premises, to be eaten on or off its premises.

Public eating establishments are not considered Retail Establishments for the purpose of this Ordinance.

- K. "Recycled Paper Bag" means a bag that contains no old growth fiber and a minimum of 40 percent post-consumer recycled content, is 100 percent 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.
- L. "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 that is located within or doing business within the City. The term "Retail Establishment" includes farmers' markets. The term "Retail Establishment" does not include Public Eating Establishments, Nonprofit Charitable Reusers, and wholesale agricultural produce packing and shipping businesses.
- M. "Reusable Bag" means a bag with handles that is specifically designed and manufactured to be reused at least 125 times and that is either (1) made of cloth or other washable natural or synthetic fibers that can be cleaned and disinfected, or, (2) made from plastic film that is at least four (4.0) mils thick and capable of being cleaned and disinfected.
- N. "Single-use Carryout Bag" means a bag, other than a Reusable Bag or Recycled 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 Retail Establishment. Single-use carryout bags do not include bags, a maximum of 11" x 17", without handles provided to the customer for the following purposes: (1) to transport produce, bulk food or meat from a product, bulk food or meat department within a store to the point of sale; (2) to transport produce, bulk food, or other items to the point of sale at a farmers' market; (3) to hold prescription medication dispensed from a pharmacy; (4) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a bag; or (5) a Garment Bag regardless of size.

8.60.040 Regulations.

- A. No Retail Establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to the customer, shall provide a Single-use Carryout 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 Chapter.
- B. To allow Retail Establishments an opportunity to make necessary arrangements for compliance and to use remaining stocks of plastic Single-use Carryout Bags, Retail Establishments shall have six (6) months from the Effective Date to comply with the regulations of this Chapter. During this period, it shall be the policy of the City to encourage voluntary adherence to the requirements of this Chapter.
- C. Six (6) months from the Effective Date and thereafter, a Retail Establishment may make Recycled Paper Bags or Reusable Bags available to customers only if the Retail Establishment charges a minimum charge of ten cents (\$0.10) per such bag. Only

Recycled Paper Bags and Reusable Bags as defined in this Chapter may be made available for purchase.

- D. No earlier than twelve (12) months from the Effective Date, the City Council may establish a higher minimum charge for a Recycled Paper Bag and Reusable Bag up to twenty-five cents (\$0.25) by amendment of this Chapter.
- E. Notwithstanding this Chapter, when a Recycled Paper Bag or a Reusable Bag is distributed to the customer, the amount of the sale of the Recycled Paper Bag or Reusable Bag shall be separately itemized on the sales receipt.
- F. These regulations do not apply to Public Eating Establishments as defined herein.
- G. Notwithstanding any other provision of this Chapter, a Retail Establishment may provide one or more Recycled Paper Bags or Reusable Bags at no cost to the following individuals: a customer participating in the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code; 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; and a customer participating in Cal Fresh pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code.

8.60.050 Recordkeeping and Inspection.

All Retail Establishments shall keep complete and accurate records or documents of the purchase and sale of any Recycled Paper Bag by the Retail Establishment. Such records shall be kept for a minimum period of one year from the date of purchase and sale, and such records shall be available for inspection by the City at no cost to the City during regular business hours. Unless the City and Retail Establishment mutually agree upon an alternative location or method of review, the records or documents shall be available at the Retail Establishment address. The provision of false information, including but not limited to incomplete records or documents to the City, shall be a violation of this Chapter.

8.60.060 Enforcement.

- A. The City Manager shall be primarily responsible for implementation and enforcement of this Chapter. The City Manager is authorized to establish guidelines and procedures to implement this Chapter and to take such action as may be necessary, including inspection of Retail Establishments, to monitor compliance with this Chapter.
- B. In the event of a violation of this Chapter or any requirement imposed pursuant to this Chapter, the City may in its discretion, in addition to all other remedies, take such enforcement action as is authorized under the Marina Municipal Code and any other action authorized by law.