



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Steve Matarazzo, Interim Community Development Director

MEETING DATE: August 6, 2014

SUBJECT: First Reading of a Reusable Bag Ordinance
Categorically Exempt as defined under the California
Environmental Quality Act (CEQA) Sections 15307 and 15308 as
a Regulation for the Protection of Natural Resources and for the
Protection of the Environment

CEQA:

RECOMMENDATION

Introduce and hold first reading of a reusable bag ordinance banning single-use plastic bags and imposing a 10-cent fee for paper bags.

DISCUSSION

On three occasions this year, the City Council has reviewed the topic of prohibiting single-use carry out bags and requiring reusable bags at retail establishments. Council consensus thus far has focused on providing a “seamless” regulation between adjoining jurisdictions, if possible. On May 7th, the Council was presented with a chart illustrating the differences between regulations in Monterey and Carmel, with Carmel allowing retailers not to charge for paper bags.

The California Legislature is also considering Senate Bill 270 (Padilla), which would pre-empt local jurisdictions from regulating the reusable bag issue if local policy is not enacted by September 1, 2014. The Bill, with amendments already pending, now allows a local jurisdiction to adopt a resolution or ordinance by September 1, 2014 in order to allow its own regulation to take effect, instead of the State’s. SB 270 is still going through the legislative committee process.

A draft reusable bag ordinance is presented as Attachment 1. Based on City Council’s direction at its meeting on July 16, 2014, it has been revised to address the capability of reusable plastic bags to be sanitized, requiring an increase in mil size to 4.0 mils, and includes a 10-cent fee for paper bags and reusable bags being offered by retailers. The minimum thickness for a reusable plastic bag was increased to 4.0 mils in order to allow the bags to be washed or sanitized up to 125 times. This will help minimize the risk of contamination.

The basis for requiring a fee to be charged is not intended to increase a retailer’s profit. It is to encourage (incentivize) customers to bring their own reusable bags. An increase in fee from 10

cents to 25 cents could be chosen at a later date by the City Council, by further amending the ordinance, if the 10-cent fee proves ineffective. Although effective immediately upon adoption, the draft ordinance also allows a 90-day period for retailers to adjust to the new regulation.

OPTIONS

1. Take no action, awaiting the likely passage and implementation of the State legislation.
2. Charge a 25-cent fee for paper bags. A 25-cent fee would create consistency between Pacific Grove and Monterey. Vicki Pearse has provided the City with survey results, which showed that when a 25-cent per paper bag was charged, the use of reusable bags increased substantially: in Capitola usage went from 53% to 89%; in Santa Cruz went from 46% to 80%, and in the County of Santa Cruz went from 10% to 85%.

FISCAL IMPACT

None.

ATTACHMENTS

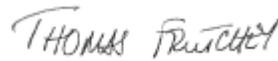
1. Draft Reusable Bag Ordinance

RESPECTFULLY SUBMITTED:



Steve Matarazzo, Interim
Community Development Director

REVIEWED BY:



Thomas Frutchey
City Manager

Ordinance No. 14-___

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE ADDING CHAPTER 11.98 TO THE MUNICIPAL CODE REGARDING REUSABLE BAGS AND THE REDUCTION OF SINGLE-USE PLASTIC AND PAPER CARRY OUT BAGS

WHEREAS, it is the intent of the City of Pacific Grove to eliminate the common use of plastic single-use carry out bags, to encourage the use of reusable bags by consumers and retailers, and to reduce the consumption of single-use bags in general; and

WHEREAS, by promoting reusable bags, the City will further its overall waste reduction goals as may be amended from time to time by the State of California; and

WHEREAS, there exists pending state legislation (Senate Bill 270) that may, if enacted, preempt local ordinances regulating reusable bags and single-use plastic bags unless said local regulations are adopted prior to September 1, 2014; and, therefore, this proposed ordinance is scheduled for first reading and adoption to avoid any state preemption; and

WHEREAS, the City of Pacific Grove finds that the addition of Chapter 11.98 to the municipal code qualifies as a Class 7 and 8, exemption, a regulation for the protection of natural resources and a regulation for the protection of the environment, respectively, as defined by the California Environmental Quality Act (CEQA), and further ruled by the appellate court decision of *Save the Plastic Bay Coalition v. City and County of San Francisco* (2014).

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. Municipal Code Chapter 11.98, entitled “Reduction of Single-Use Plastic and Paper Carryout Bags” is hereby added to the Pacific Grove Municipal Code as specified below.

Chapter 11.98--BAG REDUCTION

Sections:

11.98.010 Purpose and Findings

11.98.020 Definitions

11.98.030 Ban on plastic carryout bags and charge for other single-use carryout bags

11.98.040 Implementation

11.98.050 Enforcement

11.98.010 Purpose and Findings

A. It is the intent of the City of Pacific Grove in enacting this Chapter to eliminate the common use of plastic single-use carryout bags, to encourage the use of reusable bags by consumers and retailers, and to reduce the consumption of single-use bags in general. It is the further purpose of this Chapter that by promoting reusable bags, it will further the City's overall waste reductions goals as may be amended from time to time by the State of California.

B. The City of Pacific Grove finds that the addition of this Chapter to the municipal code qualifies as a regulation for the protection of natural resources and the environment as defined by the California Environmental Quality Act (CEQA).

11.98.020 Definitions

For the purposes of this Chapter, the following definitions apply:

“Exempted uses” means those point-of-purchase or delivery sales that have received a special exemption, through the Community Development Director or the Director's designee, allowing single-use bags.

“Plastic bag” or “plastic carryout bag” means a single-use carryout bag of any size that is provided at point of sale to customers by a retail establishment. Plastic bags include both compostable and non-compostable carryout bags.

“Recycled paper bag” is defined as a bag that contains no old growth fiber and a minimum of 40% post-consumer recycled content, is 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.

“Retail establishment” or “retail store” means all sales outlets, stores, shops, vehicles, or other places of business located within the City of Pacific Grove that operate primarily to sell or convey goods directly to the ultimate consumer. Restaurants as defined herein are exempt from the requirements of this Chapter. Also exempt from the requirements of this Chapter is prepared food sold at grocery and convenience stores' food counters.

“Restaurant” is defined as an establishment doing business in the City of Pacific Grove whose principal business is the sale of prepared food for consumption either on or off premises, which includes a restaurant, café, bakery, delicatessen, or catering truck.

“Single-use carryout bag” is defined as a bag, other than a reusable bag or recycled 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 bags do not include bags, a maximum size of 11” x 17”, without handles, provided to the customer to (1) transport produce, bulk food or meat from a product, bulk food or meat department within a store to the point of sale; (2) hold prescription medication dispensed from a pharmacy; or (3) segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a bag.

“Reusable bag” means any bag with handles that is specifically designed and manufactured for multiple reuse, and is either: (1) made of cloth or other washable woven fabric, or (2) made of durable material that is at least 4.0 mils thick that can be cleaned or disinfected at least 125 times. A “reusable bag” may be made of recyclable plastic such as high density polyethylene (HDPE), low density polyethylene (LDPE), or polypropylene.

11.98.030 Ban on plastic bags and charge for single-use carryout bags

A. No retail establishment shall provide plastic carryout bags to customers at the point of sale, except as permitted in this Chapter.

B. No City of Pacific Grove contractors, special events promoters, or their vendors, while performing under contract or permit, shall provide plastic carryout bags to customers at the point of sale.

C. Single-use paper carryout bags provided to customers shall contain a minimum of 40 percent post-consumer recycled paper fiber, and must be recyclable in the City of Pacific Grove’s curbside recycling program.

D. Retail establishments shall charge a minimum 10-cent fee for each single-use paper carryout bag provided to customers at the point of sale. Retail establishments shall keep annual records of paper bag distribution to be made available to the Community Development Director or designee upon request. From time-to-time, the City may review the annual records of paper bag distribution to ensure the effectiveness of these regulations.

E. The charge imposed pursuant to this Chapter shall not be charged to customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, the State Department of Social Services Food Stamp program, or other government-subsidized purchase programs for low-income residents.

F. The ban on single-use plastic bags and the charge for single-use paper bags do not apply to plastic or paper bags used to protect produce or meat, or otherwise used to protect items as they are put into a carryout bag at checkout. Other examples or exemptions include: paper bags to protect bottles, plastic bags around ice cream or other wet items, paper bags used to weigh candy, paper pharmacy bags, or paper bags used to protect greeting cards.

G. Retail establishments are strongly encouraged to make reusable bags available for sale to customers at a reasonable price.

H. Retail establishments shall indicate on the customer transaction receipt the number of paper carryout bags provided, and the total amount charged.

11.98.040 Implementation

A. To allow retail establishments an opportunity to make necessary arrangements for compliance, retail establishments shall have 90 days from the effective date of this ordinance 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.

B. Thirty days before this ordinance may be enforced, the City shall mail or deliver a copy of this Chapter to every retail establishment subject to such regulation within its jurisdiction.

C. The City will make available to each retail establishment within its jurisdiction the text of an initial placard designed to inform shoppers of its policies for carryout bags.

D. The City shall make available a copy of this Chapter, or a link to this Chapter on the City's website, to every new retail establishment that applies for a business license.

11.98.050 Enforcement

A. Violations of this Chapter may be enforced in accordance with Chapters 1.16 and 1.19 of the municipal code.

B. The City's Code Compliance program shall be responsible for enforcing this Chapter and shall have authority to issue citations for violations.

C. Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction.

D. The City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this Chapter.

E. The remedies and penalties provided in this Chapter are cumulative and not exclusive of one another.

F. The City may inspect any vendor's premises to verify compliance.

G. Violation of this Chapter will be considered a public nuisance. In addition to any other remedies or penalties that may be available, any violation described in the preceding paragraph shall be subject to abatement by the City, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by an injunction issued by the Superior Court in a civil action, based upon a showing by the City that said violation exists.

SECTION 3. This ordinance shall become effective immediately after second reading and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this ____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

ANN CAMEL, Interim City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney