

ORDINANCE NO. 5244

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADDING CHAPTER 10.43 TO THE MONTEREY COUNTY CODE RELATING TO SINGLE-USE CARRYOUT BAGS, RECYCLED PAPER BAGS, AND REUSABLE BAGS

County Counsel Summary

This ordinance adds Chapter 10.43 to the Monterey County Code to prohibit certain types of retail establishments within the unincorporated area of Monterey County from providing thin-film plastic single-use carryout bags to customers at the point of sale. This ordinance also requires retail establishments to charge a minimum of ten cents to provide a recycled paper bag or reusable bag to a customer, with exceptions made for customers who participate in certain governmental or non-profit programs. These regulations apply to retail establishments that sell perishable or nonperishable goods including clothing, food, and personal items and do not apply to restaurants, take-out food establishments, and wholesale agricultural produce packing and shipping businesses. A six month "grace period" is incorporated into the ordinance to allow retail establishments time to make necessary arrangements for compliance and to expend current stocks of plastic single-use carryout bags. The regulations would be enforced under the Monterey County Code.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1: Chapter 10.43 is added to the Monterey County Code to read as follows:

**CHAPTER 10.43
USE OF SINGLE-USE CARRYOUT BAGS, RECYCLED PAPER BAGS, AND
REUSABLE BAGS BY RETAIL ESTABLISHMENTS**

Sections:

- 10.43.010 Purpose and Findings**
- 10.43.020 Applicability**
- 10.43.030 Definitions**
- 10.43.040 Regulations**
- 10.43.050 Recordkeeping and Inspection**
- 10.43.060 Enforcement**

10.43.010 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 unincorporated area of the County of Monterey in order to reduce litter and protect the natural resources and environment of Monterey County.

B. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey 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. Monterey County is home to unique environmental resources, including the Monterey Bay National Marine Sanctuary and Elkhorn Slough National Estuarine Research Reserve. Bag litter that enter these and other coastal habitats of Monterey County 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 unincorporated Monterey County 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 Monterey County and surrounding areas outside of Monterey County'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 Board does, accordingly, find and declare that it should restrict single-use carryout bags and require a charge for recycled paper bags and reusable bags.

10.43.020 APPLICABILITY

This Chapter applies in the unincorporated area of the County of Monterey.

10.43.030 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 10.43 of the Monterey County Code.
- C. "County" means the County of Monterey.
- D. "Director" or "Director of Health" means the Director of the Monterey County Health Department or his/her designee.
- E. "Effective Date" means the effective date of the ordinance enacting Chapter 10.43.
- F. "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.

G. "Mils" is the thickness of a material measured in increments of one-thousandth (1/1000th) of an inch.

H. "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.

I. "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.

J. "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.

K. "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.

L. "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

M. "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 unincorporated areas of Monterey County. 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.

N. "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.

O. "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.

10.42.040 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 County 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 Board of Supervisors 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 CalFresh pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code.

10.42.050 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 County at no cost to the County during regular business hours. Unless the County 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 County, shall be a violation of this Chapter.

10.42.060 ENFORCEMENT

A. The Director of Health shall be primarily responsible for implementation and enforcement of this Chapter. The Director 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 County may in its discretion, in addition to all other remedies, take such enforcement action as is authorized under the Monterey County Code and any other action authorized by law.

C. If the County elects to utilize the administrative procedures set forth in Chapter 1.22 of the Monterey County Code to enforce this Chapter, the Director of Health shall serve as the Enforcement Official within the meaning of Chapter 1.22.

SECTION 2: SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held invalid by a court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases, be declared invalid.

SECTION 3: EFFECTIVE DATE. This Ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this 29th day of August, 2014, by the following vote:

AYES: Supervisors Calcagno, Parker and Potter
NOES: Supervisors Armenta and Salinas
ABSENT: None
ABSTAIN: None

 /s/ Louis R. Calcagno
Louis R. Calcagno, Chair
Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI, Clerk of the Board

By: /s/ Gail T. Borkowski
Deputy

<p>APPROVED AS TO FORM: /s/ Wendy S. Strimling</p> <p>WENDY S. STRIMLING Senior Deputy County Counsel</p>
