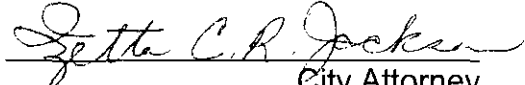


As Introduced on Floor 7/3/07

APPROVED AS TO FORM AND LEGALITY


City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS NANCY J. NADEL AND JEAN QUAN

ORDINANCE BANNING THE USE OF NON-COMPOSTABLE PLASTIC CARRY-OUT BAGS AT POINT OF SALE BY RETAIL ESTABLISHMENTS IN THE CITY OF OAKLAND THAT GROSS ONE MILLION DOLLARS OR MORE ANNUALLY AND PROVIDING EDUCATION AND INCENTIVES FOR SHOPPERS TO USE RE-USEABLE BAGS AT AFFECTED RETAIL ESTABLISHMENTS IN THE CITY

WHEREAS, each year, 500 billion to 1 trillion plastic bags are used worldwide – one million per minute – the production and use of which have significant environmental impacts, including litter, the consumption of 12 million barrels of oil, and the deaths of thousands of marine animals; and

WHEREAS, according to AB 2449, the 2006 California Assembly Bill creating the At-Store Recycling Program, Californians use 19 billion disposable plastic bags every year and throw away 600 bags per second, and less than 50 tons of the 52,000 tons of disposable plastic bags used in California annually are recycled, resulting in over 147,000 tons of waste going to landfills, at an annual cost of \$51 million; and

WHEREAS, according to the Algalita Marine Research Foundation, plastic bags do not biodegrade, but break down through abrasion and tearing into small toxic bits that contaminate soil, waterways, and the marine environment, where they are mistaken for food by animals, killing over 1 million seabirds, 100,000 marine mammals, and countless fish annually from ingestion of, or entanglement in, marine debris; and

WHEREAS, marine debris is ubiquitous and can be found from highly populated urban beaches to the most remote arctic beaches, such as the North Pacific Gyre, which is home to a floating island of trash twice the size of Texas; and

WHEREAS, in 2006, the California Coastal Commission determined that up to 80% of all marine debris is plastic and 80% comes from land-based sources; and

WHEREAS, the Department of Conservation, in its annual Coastal Cleanup and the 1999 Litter Study, concludes that disposable retail bags represent some of the most commonly littered items, and plastic bags littered in Oakland streets are carried by wind and storm water into City storm drains that lead to Oakland's creeks, Lake Merritt, the Oakland estuary, and eventually into the San Francisco Bay; and

WHEREAS, on February 8, 2007, the Ocean Protection Council unanimously adopted a *marine debris resolution that calls for reduced use of single-use plastic food containers*; and

WHEREAS, plastic bags contaminate recycling operations and are otherwise difficult to recycle due to the logistics of sorting, contamination of inks, and the low quality of the plastic used, resulting in an extremely low estimated recycling rate of 1-3% for plastic bags; and

WHEREAS, one of the strategies proposed in Oakland's Zero Waste Strategic Plan (Resolution 80286 C.M.S., adopted in December 2006 by the Oakland City Council) is to "ban the use or sale of problematic products;" and

WHEREAS, 10 percent of U.S. oil consumption – approximately 2 million barrels each day - is used to make plastic, and therefore discouraging the use of single-use plastic bags promotes and aids the goal of "Oil Independent Oakland By 2020," the task force established by the Oakland City Council to develop a plan to reduce Oakland's reliance on oil (Resolution No. 80214 C.M.S., adopted October 17, 2006); and

WHEREAS, retail outlet stores could educate and encourage their customers to use environmentally preferable and readily available alternatives to non-compostable plastic bags, including reusable cloth bags, compostable plastic bags and/or paper bags which are collected by Oakland's curbside recycling program, and can be composted with Oakland's Food Scraps/Yard Trimming program; and

WHEREAS, governments in several countries, including Australia, Singapore, Taiwan, South Africa, Bangladesh, and the Republic of Ireland have taken action to discourage the use of non-biodegradable plastic bags; and

WHEREAS, the California Legislature, by enacting Chapter 5.1, the At-Store Recycling Program (commencing with Section 42250), Part 3 of Division 30, of the Public Resources Code, encourages the use of reusable bags by consumers and retailers and discourages the consumption of single-use bags; now therefore

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

SECTION 1. Sections 2 through 7 of this Ordinance shall be codified as a new chapter of the Oakland Municipal Code under TITLE 8, HEALTH AND SAFETY. Additions to the Code are indicated by underscoring.

SECTION 2. Definitions.

- A. "Affected retail establishment" means any retail establishment, excluding restaurants, located within the geographical limits of the City of Oakland that has gross annual sales of one million dollars (\$1,000,000) or more.

- B. “City sponsored event” means any event organized or sponsored by a City of Oakland Department or Agency.
- C. “Compostable bag” means a carry out bag that is certified and labeled as meeting the current ASTM-Standard Specification for compostability by a recognized verification entity such as the Biodegradable Product Institute and which can be easily differentiated, through color coding and other markings, from non-compostable plastic carry-out bags.
- D. “Customer” means any person purchasing food or other materials from an affected retail establishment.
- E. “Operator” means a person in control of, having daily responsibility for, the daily operation of an affected retail establishment, which may include, but is not limited to, the owner of the affected retail establishment
- F. “Plastic carryout bag” means a non-compostable plastic bag provided by a store to a customer at the point of sale. These bags are often referred to as “t-shirt” bags.
- G. “Recyclable Paper Bag” means a paper carryout bag provided by an affected retail establishment to a customer at the point of sale for purposes of transporting groceries or other goods and meets *all* of the following requirements: (1) contains no old growth fiber, (2) is 100% recyclable, and (3) contains a minimum of 40% post-consumer recycled content.
- H. “Reusable Bag” means a bag that is specifically designed and manufactured for multiple reuse and is (1) made of cloth or other machine washable fabric, or (2) made of other durable material suitable for re-use.

SECTION 3. Prohibitions and Requirements.

- A. Affected retail establishments are prohibited from providing plastic carry-out bags to their customers at the point of sale. reusable bags, recyclable paper bags, and compostable plastic bags are allowed alternatives.
- B. Affected retail establishments are strongly encouraged to provide incentives for the use of reusable bags through the use of education and credits, rebates, or tokens for individuals who bring reusable bags.
- C. Nothing in this section shall be read to preclude affected retail establishments from making reusable, compostable, or recyclable paper bags available for sale or free to customers.

SECTION 4. Liability and Enforcement.

- A. The City Administrator or his/her designee will have primary responsibility for enforcement of this Chapter. The City Administrator or his/her 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, entering the premises of any affected retail establishment to verify compliance.

- B. An affected retail establishment that is operated in violation of any of the requirements of this Chapter is deemed a public nuisance and any person who causes or permits such violations shall be subject to the civil penalties authorized in Chapter 1.08 of this code.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

SECTION 5. Violations – Penalties.

- A. If the City Administrator or his/her designee determines that a violation of this Chapter occurred, he/she will issue a written warning notice to the operator of an affected retail establishment that a violation has occurred.
- B. If the affected retail establishment has subsequent violations of this Chapter, the following penalties will apply.
 - a. A fine, payable by the owner of the affected retail establishment or the corporation itself, not exceeding one hundred dollars (\$100.00) for the first violation after the warning notice is given.
 - b. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the warning notice is given.
 - c. A fine not exceeding five hundred dollars (\$500.00) for the third and any future violations after the warning notice is given.
- C. Affected retail establishments may request an administrative hearing to adjudicate any penalties issued under this Chapter by filing a written request with the City Administrator, or his or her designee. The City Administrator, or his or her designee, will promulgate standards and procedures for requesting and conducting an administrative hearing under this Chapter. Any determination from the administrative hearing on penalties issued under this Chapter will be final and conclusive.

SECTION 6. Exemptions.

- A. Retail establishments in the City of Oakland with gross annual sales of less than one million dollars are exempted from the provisions of this Ordinance. All retail establishments in the City of Oakland are encouraged to comply with the provisions of this Ordinance.
- B. This ordinance applies only to non-compostable carry out plastic bags provided at the point of sale, otherwise known as “t-shirt” bags. The provisions of this ordinance do not apply to single-use plastic bags exclusively used to transport produce such as apples, oranges, grapes, carrots and other similar fruits or vegetables to the point-of-sale counter of the affected retail establishment.

SECTION 7. No Conflict With Federal or State Law.

Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal or state law.

SECTION 8. Severability.

If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

SECTION 9. Effective Date.

This Ordinance will become effective upon adoption by the City Council. All affected retail establishments must comply with its requirements within six months of its effective date. City-sponsored events at which plastic carry-out bags may be used must comply with the provisions of this Chapter within ninety (90) days from the effective date of this Chapter.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

NOTICE AND DIGEST

ORDINANCE BANNING THE USE OF NON-COMPOSTABLE PLASTIC CARRY-OUT BAGS AT POINT OF SALE BY RETAIL ESTABLISHMENTS IN THE CITY OF OAKLAND THAT GROSS ONE MILLION DOLLARS OR MORE ANNUALLY AND PROVIDING EDUCATION AND INCENTIVES FOR SHOPPERS TO USE RE-USEABLE BAGS AT AFFECTED RETAIL ESTABLISHMENTS IN THE CITY

This ordinance codifies a new chapter of the Oakland Municipal Code under Title 8, Health And Safety, entitled "Plastic Bags" to protect and enhance the health of the residents of the city by promoting use of reusable bags and prohibiting the use of non-compostable plastic bags to transport customers' purchases from retail establishments that gross one million dollars or more annually.