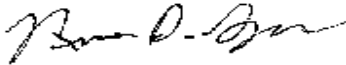


City of Calistoga
Staff Report

9

TO: Honorable Mayor and City Council
FROM: Lynn Goldberg, Planning and Building Director
DATE: July 15, 2014
SUBJECT: Municipal Code Amendment to Prohibit the Distribution of Single-Use Carryout Bags by Designated Businesses; CEQA Categorical Exemption (Sections 15307 and 15308) (MCA 2014-3)

APPROVAL FOR FORWARDING:



Richard D. Spitler, City Manager

1 **ISSUE:** Whether to amend the Calistoga Municipal Code to prohibit the distribution of
2 single-use carryout bags by certain businesses and require customers to be charged for
3 recyclable paper bags

4 **RECOMMENDATION:** Following a public hearing, introduce an ordinance adopting the
5 proposed amendment, which includes a determination that it is categorically exempt
6 from the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections
7 15307 and 15308, and waive its first reading.

8 **BACKGROUND:** On June 3, 2014, the Council directed staff to initiate a Municipal
9 Code amendment prohibiting the distribution of single-use carryout bags by certain
10 businesses and requiring customers to be charged for recyclable paper bags. This
11 action followed a recommendation of the Calistoga Green Committee, which has been
12 working on this issue for many months and was unsuccessful in significantly increasing
13 reusable bag use by customers after the city's food markets voluntarily discontinued the
14 distribution of single-use carryout bags.

15 **PROPOSED REGULATIONS:** The regulations included in proposed Chapter 19.12,
16 Single-Use Carryout Bag Reduction:

- 17 • Prohibit the distribution of single-use carryout bags by food markets, convenience
18 stores, farmers markets, stores that hold a Type 20 or Type 21 off-sale alcoholic
19 beverage sales license, and restaurants that receive 50 percent or more of their
20 revenue from the sale of prepared food to be eaten off-premises ("designated
21 businesses").

22 Rather than applying the prohibition to all retailers, this approach focuses on the
23 primary distributors of single-use bags and customers who would most likely develop
24 a habit of bringing reusable bags to a store. Many of the community's smaller
25 businesses are patronized by tourists who would not be expected to be carrying
26 reusable bags. Furthermore, many of the tourist-oriented businesses distribute
27 unique bags that would be more challenging to replace with a bag that meets the
28 recyclable bag requirements. Finally, the staff time devoted to explaining the
29 regulations to business owners and monitoring compliance would be greatly reduced
30 if the ban applied only to a handful of operations, rather than all businesses in town.

- 31 • Require that designated businesses charge customers for each recyclable paper
32 bag in order to deter the distribution of any type of single-use bag and promote the
33 use of reusable bags. A retailer may waive the charge for customers participating in
34 a supplemental food program, such as WIC. As suggested by the City Attorney, the
35 amount of the charge will be set by Council resolution in order for it to be easily
36 changed in the future. This resolution will be presented to the Council at a future
37 meeting if the subject ordinance is adopted.
- 38 • Become effective on January 1, 2015, to provide sufficient time for business owners
39 to secure a supply of acceptable bags.

40 **CONSISTENCY WITH CITY COUNCIL GOALS AND OBJECTIVES:** Prohibiting the
41 distribution of single-use carryout bags by the businesses that generate most of them,
42 and requiring a charge for recyclable paper bags is consistent with the following goal
43 and objective adopted by the City Council for FY 14-15:

44 *Goal 4: Create an environmentally-sustainable community.*

45 Objective

- 46 1. *Implement "green" environmental sustainability policies and initiatives.*

47 **ENVIRONMENTAL REVIEW**

48 The proposed amendment is exempt from the California Environmental Quality Act
49 (CEQA) per the following categorical exemptions contained in the CEQA Guidelines:

50 *Section 15307 Actions by Regulatory Agencies for Protection of Natural*
51 *Resources*

52 *Class 7 consists of actions taken by regulatory agencies, as authorized by state*
53 *law or local ordinance, to assure the maintenance, restoration or enhancement*
54 *of a natural resource where the regulatory process involves procedures for*
55 *protection of the environment.*

56 *Section 15308 Actions by Regulatory Agencies for Protection of the*
57 *Environment*

58 *Class 8 consists of actions taken by regulatory agencies, as authorized by state*
59 *law or local ordinance, to assure the maintenance, restoration, enhancement or*
60 *protection of the environment where the regulatory process involves*
61 *procedures for protection of the environment.*

62 The proposed regulatory measures are generally intended to maintain and protect
63 natural resources and the environment based upon substantial evidence that they will
64 reduce the City's contribution of oil-based plastic waste as well as paper waste to the
65 landfills, reduce oil consumption and greenhouse gas emissions, reduce the amount of
66 plastic and paper litter in the environment, and reduce degradation of the marine
67 environment and harm to marine wildlife. Prohibiting the distribution of single-use plastic
68 carry-out bags at many retailers will undoubtedly have a positive environmental impact
69 so long as customers do not merely shift from single-use plastic to single-use paper
70 carry-out bags, which also have adverse environmental impacts. The available evidence
71 shows that by charging for paper bags, enough customers will convert to reusable bags
72 that the net effect of the regulations will be to reduce the use of both plastic and paper
73 single-use carry-out bags from their current levels in Calistoga.

74 **FISCAL IMPACT:** Adoption of the proposed regulations will require staff time for
75 informing business owners and monitoring compliance.

76 **ALTERNATIVES:** As an alternative to the proposed amendment, the Council may
77 choose not to ban the distribution of single-use carryout bags. If the Council selects this
78 alternative, local food markets may voluntarily continue to avoid their distribution;
79 however, this alternative would not likely significantly increase the use of reusable bags.

80 The Council may also choose to apply the bag distribution prohibition to all businesses
81 within the city; however, this alternative is not recommended for the reasons discussed
82 above.

83 **ATTACHMENT**

1. Draft Chapter 19.12, Single-Use Carryout Bag Reduction

ORDINANCE NO. XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING MUNICIPAL CODE TITLE 19, ENVIRONMENTAL PROTECTION, TO ADD CHAPTER 19.12, SINGLE-USE CARRYOUT BAG REDUCTION (MCA 2014-4)

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 acidification, water consumption and solid waste generation; and

WHEREAS, according to the California Integrated Waste Management Board's 2009 study single-use plastic bag recycling rates, approximately 19 billion single-use plastic bags were used in California in 2009, but less than 5 percent were recycled; 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," have documented the prevalence of single-use plastic carry-out bags littering the environment, blocking storm drains and fouling beaches; 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 carry-out 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, and of all single-use bags, single-use plastic bags have the greatest impacts on litter and marine life; and

WHEREAS, the City of Calistoga's General Fund must bear the brunt of the clean-up costs of plastic bag litter; and

WHEREAS, evidence suggests that the use of single-use paper bags result in greater GHG emissions, atmospheric acidification, water consumption, and ground-level ozone production than single-use plastic bags; and

WHEREAS, from an overall environmental and economic perspective, a sustainable, practical and appropriate alternative to single-use plastic and paper carry-out bags is a shift to reusable bags; and

WHEREAS, there are several alternatives to single-use carry-out bags readily available in Calistoga, including the use of reusable bags or the reuse of recycled paper bags; and

WHEREAS, studies such as the "Implementation of the County of Los Angeles Plastic and Paper Carryout Bag Ordinance" 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 City 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 Calistoga Green Committee reviewed the proposed amendments included in this ordinance at a public meeting on May 2, 2014, and after written materials and testimony presented by staff at the meeting, forwarded a recommendation that the City Council approve the amendments included in this ordinance; and

WHEREAS, the City Council of the City of Calistoga reviewed and considered this ordinance at its meeting on July 15, 2014, noticed in accordance with state and local law, and which included the written and oral staff report, the Green Committee’s recommendation and comments received from the general public and interested agencies and parties.

NOW, THEREFORE, THE CALISTOGA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE

Findings. The above recitals are incorporated herein as if set forth herein in full and each is relied upon independently by the City Council for its adoption of this ordinance.

SECTION TWO

Title 19, Environmental Protection, is hereby amended to add Chapter 19.12, Single-Use Carryout Bag Reduction, as follows:

Chapter 19.12, Single-Use Carryout Bag Reduction

19.12.010 Purposes

The purposes of this Chapter are to reduce waste and pollution, and protect the environment by minimizing the distribution of single-use carryout bags.

19.12.020 Definitions

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

A. “Designated Business” means:

1. Food markets, convenience stores, farmers markets, and stores that hold a Type 20 or Type 21 off-sale alcoholic beverage sales license, and,
2. Restaurants and any other businesses that receive fifty percent (50%) or more of their revenue from the sale of Prepared Food to be eaten off-premises. “Prepared Food” means food or beverages that are prepared on the premises by cooking, chopping, slicing, mixing, freezing or squeezing, and that require no further preparation to be consumed.

3. "Recyclable Paper Bag" means a paper bag that contains no old growth fiber and a minimum of forty percent (40%) Post-consumer Recycled Material, is accepted for curbside recycling in Calistoga, 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. "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.
4. "Reusable Bag" means a bag that meets all of the following criteria or any requirements established by the State of California:
 1. If plastic, is at least 2.25 mils (thousandths of an inch) thick.
 2. Has one or more handles.
 3. Has a minimum lifetime capability of 125 or more uses carrying 22 or more pounds over a distance of at least 175 feet.
 4. Is at least 15 liters in volume.
 5. Is machine washable or made from a material that can be cleaned and disinfected.
 6. Meets the standards of the California Toxics in Packaging Prevention Act, as amended, or any successor legislation.
5. "Single-Use Carryout Bag" means a bag provided to a customer at a checkout 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 Carryout Bag" specifically excludes:
 1. Reusable Bags
 2. Recyclable Paper Bags
 3. Bags used to:
 - a. Transport bulk food from a department within a store to the point of sale;
 - b. Segregate merchandise that could damage, be damaged, contaminate or be contaminated by other merchandise when placed together in a Reusable Bag or Recycled Paper Bag; or
 - c. Contain or wrap frozen goods.

19.12.030 Single-Use Carryout Bags Prohibited

- A. On and after January 1, 2015, no Designated Business shall provide a Single-Use Carryout Bag to a customer. Owners of Designated

Businesses may voluntarily begin compliance with this Chapter prior to this date.

- B. Nothing in this Chapter shall prohibit customers from using their own bags or containers of any type for the transport of merchandise from a Designated Business. A Designated Business shall not require a customer to purchase or accept a Recyclable Paper Bag or Reusable Bag as a condition of sale.

19.12.040 Recyclable Paper Bag Charge

- A. Except as provided in Subsection (C.) below, on and after January 1, 2015, no Designated Business shall provide a Recyclable Paper Bag to a customer for the purpose of transporting merchandise out of the establishment unless:
 - 1. The establishment charges the customer a minimum amount per bag set by resolution of the City Council; and
 - 2. The amount of the charge for each Recycled Paper Bag is separately itemized on the sales receipt provided by the establishment to the customer.
- B. A Designated Business may not rebate or otherwise reimburse a customer any portion of the charge required for a Recyclable Paper Bag.
- C. A Designated Business may provide Reusable Bags or Recyclable Paper Bags at no cost 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.

19.12.050 Enforcement

- A. It is a violation of this Code, subject to enforcement, punishment and prosecution pursuant to Chapter 1.08 of this Code, for any Designated Business to violate or fail to comply with any provision of this Chapter.
- B. The Planning and Building Director shall have primary responsibility for enforcement of this Chapter.

SECTION FOUR

Environmental Review. The proposed ordinance is exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections 15307 and 15308 because the regulatory measures are generally intended to maintain and protect natural resources and the environment based upon substantial evidence that they will reduce the City's contribution of oil-based plastic waste as well as paper waste to the landfills, reduce oil consumption and greenhouse gas emissions, reduce the amount of plastic

and paper litter in the environment, and reduce degradation of the marine environment and harm to marine wildlife.

SECTION FIVE

Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

SECTION SIX

Effective Date. This Ordinance shall take effect thirty (30) days after its passage and before the expiration of fifteen (15) days after its passage, shall be published in accordance with law, in a newspaper of general circulation published and circulated in the City of Calistoga.

THIS ORDINANCE was introduced with the first reading waived at the City of Calistoga City of Council meeting of the 15th day of July, 2014, and was passed and adopted at a regular meeting of the Calistoga City Council on the ___ day of ___, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chris Canning, Mayor

ATTEST:

Kathy Flamson, Deputy City Clerk