AGENDA SECTION: CONSENT CALENDAR
AGENDA ITEM #6
REPORT #12-95

STAFF REPORT
COUNCIL MEETING DATE:
July 23, 2012

ITEMS FOR COUNCIL CONSIDERATION:

Second Reading of Ordinance No. 657, amending Carpinteria Municipal Code, Title 8, Health and Safety, Chapter 8.51, Single-use Bag Regulations.

Department: Administration

City Manager _____ Dave Durflinger **City Attorney** _____ for Peter Brown

ACTION _X_ **NON-ACTION** ___ **STAFF RECOMMENDATION:**

Adopt Ordinance No. 657, as read by title only and waive further reading.

Sample Motion: I move to adopt Ordinance No. 657, amending Carpinteria Municipal Code, Title 8, Health and Safety, Chapter 8.51, Single-Use Bag Regulations, as read by title only and waive further reading.

I. BACKGROUND/DISCUSSION:

At its regular meeting of July 9, 2012, the City Council approved on first reading Ordinance No 657, closed the public hearing and scheduled the Second Reading of the Ordinance to July 23, 2012. Ordinance No. 657 will amend the existing single-use bag regulations of the City of Carpinteria as found in Chapter 8.51 of the Carpinteria Municipal Code. The amendments will serve to exempt restaurants from these provisions and to re-categorize certain stores as Small Commercial Establishments.

If the second reading of Ordinance No. 657 is approved, the Ordinance will become effective 30 days thereafter on August 22, 2012. By the terms of the amended regulations, Large Commercial Establishments (as defined), would be required to comply with the regulations by October 22, 2012; and Small Commercial Establishments by April 11, 2013.

II. LEGAL:

Ordinance No. 657 consummates changes to the City's Single-Use Bag regulations that were a part of a legal Settlement Agreement between the Save the Plastic Bag Coalition and the City of Carpinteria. The City Attorney's office assisted with the development of the amendments included in Ordinance No. 657 in order to ensure consistency with the terms of the Settlement Agreement.

III. ATTACHMENTS:

Ordinance No. 657

ORDINANCE NO. 657

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA, CALIFORNIA, AMENDING CHAPTER 8.51 OF THE CARPINTERIA MUNICIPAL CODE PERTAINING TO THE REGULATION OF SINGLE-USE BAGS

WHEREAS, the City of Carpinteria ("City") pursuant to its police powers has the authority to enact laws which promote the public health, safety and general welfare of its residents; and

WHEREAS, the City is required under state and federal law to implement policies and programs to protect unique coastal resources and environmentally sensitive habitat areas (California Coastal Act), reduce the amount of waste produced by the community (i.e., AB 939, AB 341, AB 32), and prevent storm water runoff, trash, and debris from polluting creek and ocean waters (National Pollutant Discharge Elimination System Permit Program and the State Municipal Storm Water Permitting Program); and

WHEREAS, the State Legislature passed the Environmental Protection – Recycling – Plastic Carryout Bags Act (AB 2449) in 2007, with the stated intent of encouraging the use of reusable bags by consumers and retailers, and reducing the consumption of single-use bags state-wide; and

WHEREAS, the Carpinteria community is attractive to residents, businesses, and visitors due to a local economy and quality of life that is centered on a clean and healthy environment, including but not limited to, parks, public open spaces, creeks, estuary, tidelands and the ocean; and

WHEREAS, commercial establishments in Carpinteria distributed an estimated millions of single-use plastic bags and hundreds of thousands single-use paper bags in 2010; and

WHEREAS, most single-use paper and plastic bags are not recycled and so they end up in the waste stream or as litter in the environment. For example, the State of California estimates that 5 percent of single-use plastic bags distributed by commercial establishments subject to the At-Store Recycling Program (Pub. Res. Code § 42250-42257) are recycled through the Program and the EPA estimated that (nationally) approximately 50 percent of single-use paper shopping bags were recycled in 2009; and

WHEREAS, in response to these conditions, the City Council of the City of Carpinteria held publicly noticed meetings on June 25, 2007, July 9, 2007, February 25, 2008, September 22, 2008, May 11, 2009, June 28, 2010, March 28, 2011, August 8, 2011, October 10, 2011, December 12, 2011, and February 27, 2012 and hosted community workshops on November 8, 2011 and February 1, 2012 in order to discuss issues and alternative responses to the use of single-use bags in the City; and

WHEREAS, after receiving testimony and other information documenting the negative local and global impacts of single-use plastic bags on the environment and the waste stream, the City Council adopted Ordinance No. 655 on March 12, 2012, which establishes chapter 8.51 of

the Carpinteria Municipal Code titled, "Single-Use Bag Regulations", and that regulates the distribution in the City of Carpinteria of single-use carryout bags to customers by commercial establishments; and

WHEREAS, shortly after its adoption, the Save the Plastic Bag Coalition filed a lawsuit in Santa Barbara Superior Court (*Save the Plastic Bag Coalition v. City of Carpinteria*, Case No. 1385674), claiming that the use of single-use bags by restaurants in California is regulated by State law under the Health & Safety Code and therefore California cities, including the City of Carpinteria, are preempted from regulating the use of such bags by restaurants; and

WHEREAS, the City disagrees with the claims made by the Save the Plastic Bag Coalition concerning preemption by State law; however, in light of the uncertainties and costs associated with litigation, the City and the Save the Plastic Bag Coalition have entered into a Settlement Agreement. In the Settlement Agreement, the City has agreed to make certain changes to its single-use bag regulations in order to exempt restaurants, and the Save the Plastic Bag Coalition has agreed to dismiss the litigation; and

WHEREAS, the purpose of these proposed amendments is to implement the terms of the Settlement Agreement and make other related changes to the City's single-use bag regulations.

NOW, THEREFORE, the City Council of the City of Carpinteria does hereby ordain as follows:

SECTION 1. INCORPORATION OF RECITALS

The City Council finds and determines that the above recitals are incorporated herein and are each relied upon independently by the City Council for its adoption of this Ordinance.

SECTION 2. AMENDMENT OF CHAPTER 8.51

Sections 8.51.030, 8.51.040, and 8.51.050 of chapter 8.51 of the Carpinteria Municipal Code are repealed and replaced in their entirety by the following:

8.51.030 Definitions.

The following definitions shall govern the construction of this chapter:

A. "Commercial Establishment" means any person, including any corporation, partnership, business, facility, vendor, organization or individual located in or doing business within the City of Carpinteria that sells or provides perishable or non-perishable goods.

B. "Large Commercial Establishment" is a commercial establishment with over $5,000,000 in annual gross retail sales volume, as reported to the State Board of Equalization or is a grocery store as defined in this section.

C. "Small Commercial Establishment" is a commercial establishment that does not qualify as a large commercial establishment.

D. "Gift Bag" means a decorated bag capable of containing a volume no greater than 6 liters made largely of paper, with handles that is designed to be used as gift packaging .

E. "Grocery Store" means a commercial establishment greater than 3,000 square feet in area that sells a line of dry goods, canned goods, or non-food items and some perishable items.

F. "Point of Sale" means the location in the commercial establishment where purchase is made.

G. "Product Bag" means any bag provided to a customer within a commercial establishment for the purposes of transporting items to the point of sale. An illustrative list of product bags includes bags used to contain produce, vegetables, meat, prescription drugs, any bulk goods, as well as dry cleaning bags, newspaper bags, and prepackaged goods.

H. "Paper Bag" means any paper bag that has a post-consumer recycled content of at least 40 percent and is 100 percent recyclable.

I. "Restaurant" means any person or establishment doing business within the City of Carpinteria that provides prepared food or beverage for public consumption on or off its premises such as a restaurant, café, bakery, grocery or convenience store food counter or delicatessen, or catering truck vehicle.

J. "Reusable Bag" means any bag with handles that is specifically designed and manufactured for multiple reuse, has a minimum lifetime capability of 125 or more uses carrying 22 or more pounds over a distance of at least 175 feet, and is either (1) made of cloth or other machine washable fabric or (2) made of other durable material, including plastic that is at least 2.25 mils thick.

K. "Single-Use Bag" means any bag that is provided to customers for carryout purchases by a commercial establishment, excluding gift bags, product bags, and reusable bags, as defined in this section.

8.51.040 Prohibition and Reporting Requirement.

A. Commencing on October 22, 2012 large commercial establishments are prohibited from dispensing to any customer at the point of sale a single-use bag.

B. Commencing on April 11, 2013 small commercial establishments are prohibited from dispensing to any customer at the point of sale a single-use bag, except gift bags or paper bags, as defined in this chapter.

8.51.050 Exemptions.

A. During a locally declared emergency, the City, emergency response agencies operating within the City, users of City facilities, and commercial establishments shall be exempt from the provisions of this chapter.

B. The City Manager, or his/her designee, may exempt an affected commercial establishment, from the requirements herein for a period of up to six months, upon showing by the commercial establishment that the application of the provisions herein would cause undue hardship. In determining whether undue hardship exists, the city manager or his/her designee shall consider:

1. Situations unique to the commercial establishment where there are no reasonable alternatives to using any bags that are not in compliance with this chapter and compliance with this chapter would cause significant economic hardship to that commercial establishment;

2. The existence of franchise or other contractual obligations which require a commercial establishment to use bags that are not in compliance with this chapter.

C. The decision of the City Manager or his/her designee to grant or deny an exemption shall be final. Exemptions granted under the provisions of this section are valid for up to six months, as determined by the City Manager. A commercial establishment granted an exemption by the City must re-apply prior to the end of the exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed six months.

D. An exemption application shall include all information necessary for the City to make its decision, including but not limited to documentation showing the factual support for the claimed exemption.

E. Commercial Establishments must exercise best efforts during exemption period to meet ordinance requirements.

F. All Restaurants shall be exempt from the requirements of this Chapter.

SECTION 3. CEQA FINDINGS.

The adoption of this Ordinance is not subject to the California Environmental Quality Act, as this ordinance does not constitute a project, as defined by Public Resources Code Section 21065 and even if it is determined that the proposed action constitutes a project, the project would be exempt pursuant to CEQA Guidelines §§ 15307 [exemptions for actions to protect natural resources] , 15308 [exemptions for actions to protect the environment], or 15061(b)(3) [common sense exemption].

SECTION 4. EFFECTIVE DATE.

This Ordinance shall be in full force and effect thirty (30) days following a second reading of the ordinance; and before the expiration of fifteen (15) days of its passage shall be published once with the names of the City Council voting for and against the same in the Coastal View, a newspaper of general circulation, published in the City of Carpinteria.

SECTION 5. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or application thereof to any person or circumstances, 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 chapter or any part thereof. The City Council hereby declares that it would have passed such section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases may be declared unconstitutional or invalid or ineffective.

PASSED, APPROVED, AND ADOPTED this 23rd day of July 2012, by the following called vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

_____

Mayor of the City of Carpinteria

ATTEST:

_____

City Clerk, City of Carpinteria

I hereby certify that the foregoing Ordinance was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held this 23 day of July 2012.

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City Attorney, City of Carpinteria

APPROVED AS TO FORM:

SB 620385 v1:035444.0942