



CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 3 - 0 1 6 7

JUN 1 3 2013

REPORT RE:

**REVISED DRAFT ORDINANCE ADDING ARTICLE 2 TO CHAPTER XIX OF THE
LOS ANGELES MUNICIPAL CODE TO REGULATE THE USE OF PLASTIC
AND PAPER SINGLE-USE CARRYOUT BAGS AND TO PROMOTE
THE USE OF REUSABLE BAGS**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 11-1531

Honorable Members:

Pursuant to your request, on May 24, 2013, this Office prepared and transmitted for your consideration a draft ordinance that would ban the distribution of plastic single-use carryout bags by a set category of retail establishments, regulate the distribution of paper single-use carryout bags by those same retailers, and promote the use of reusable bags to replace the banned and regulated single-use bags (City Attorney Report No. R13-0143). On June 5, 2013, your Honorable Energy and Environment Committee requested that this Office revise the draft ordinance to: (1) add "contains no old growth fiber" to the definition of "Recyclable Single-Use Carryout Bags" in Subsection I of Section 195.01; (2) add "and bag care and washing instructions" to the definition of "Reusable Bag" in Subsection J(5) of Section 195.01; (3) delete Subsection B of Section 195.03; and (4) amend Section 3 to set the operative date of the ordinance as January 1, 2014, for all Stores defined in Subsections K(1) and (2) of Section 195.01, and July 1, 2014, for all Stores defined in Subsection K(3) of Section 195.01 of the Los Angeles Municipal Code. This Office now transmits for your consideration the enclosed revised draft ordinance, approved as to form and legality.

CEQA Findings

Under separate cover, the Bureau of Sanitation submitted to you the Final Environmental Impact Report (FEIR) pertaining to the draft ordinances. Upon consideration of the FEIR, and if you concur with the conclusions reached therein, you may comply with the California Environmental Quality Act by taking the following actions prior to or concurrent with your action to adopt the proposed ordinance or revised proposed ordinance:

CERTIFY that the final Environmental Impact Report, for the Single-Use Carry Out Bag Ordinance (Ordinance), SCH No. 201209053 (EIR): (1) complies with the California Environmental Quality Act (CEQA) and constitutes a valid environmental clearance for the adoption of the Ordinance; (2) reflects the City's independent judgment and analysis as to the environmental impacts associated with adoption of the Ordinance; and (3) that the City Council has reviewed and considered the information in the EIR before adopting the Ordinance.

FIND that, as set forth in the EIR, adoption of the Ordinance will not cause any significant environmental impacts.

Council Rule 38 Referral

A copy of the revised draft ordinance was sent, pursuant to Council Rule 38, to the Bureau of Sanitation asking that they make any comments that they may have directly to the City Council when you consider this matter.

If you have any questions regarding this matter, please contact Deputy City Attorney John A. Carvalho at (213) 978-8184. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:JAC:fa
Transmittal

ORDINANCE NO. _____

An ordinance adding Article 2 to Chapter XIX of the Los Angeles Municipal Code to regulate the use of plastic and paper single-use carryout bags and to promote the use of reusable bags.

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:

Section 1. Billions of plastic single-use carryout bags are consumed in the City of Los Angeles each year, most of which end up in the litter stream or in landfills. These bags negatively impact the environment and create a blight of litter that is pervasive in the public landscape, including parks, streams, beaches and streets. The City of Los Angeles spends millions of dollars annually on prevention, cleanup, and other activities to abate litter, and it has a significant interest in protecting its residents from the negative impacts caused by plastic single-use carryout bags. Through this Ordinance, the City of Los Angeles seeks to increase waste diversion from landfills, promote recycling, and reduce litter.

Sec. 2. Article 2 is added to Chapter XIX of the Los Angeles Municipal Code to read as follows:

ARTICLE 2
CARRYOUT BAGS

SEC. 195.01. DEFINITIONS.

The following definitions apply to this Article:

- A. **Customer** means any person purchasing goods from a Store.
- B. **Operator** means the person in control of, or having the responsibility for, the operation of a Store, including, but not limited to, the owner of the Store.
- C. **Paper Single-Use Carryout Bag** means any bag made predominantly of paper materials, including, but not limited to, virgin, recycled or recyclable paper materials, which is provided to a Customer at the point of sale. Paper Single-Use Carryout Bag does not include Reusable Bags, Produce Bags, or Product Bags.
- D. **Person** means any natural person, firm, corporation, partnership, or other organization or group however organized.
- E. **Plastic Single-Use Carryout Bag** means any bag made predominantly of plastic derived from petroleum, natural gas, or a biologically-based source, such as corn or other plant sources, which is provided to a customer at the point of sale. Plastic

Single-Use Carryout Bag includes compostable and biodegradable bags, but does not include Reusable Bags, Produce Bags, or Product Bags.

F. **Postconsumer Recycled Material** means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer Recycled Material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

G. **Produce Bag and Product Bag** mean any bag without handles used exclusively to carry produce, meats, or other food items to the point of sale inside a store or to prevent such food items from coming into direct contact with other purchased items.

H. **Recyclable** means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of using the altered form in the manufacture of a new product.

I. **Recyclable Paper Single-Use Carryout Bag** means a Paper Single-Use Carryout Bag that meets all of the following requirements:

- (1) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) Postconsumer Recycled Material;
- (2) has printed on the bag the name of the manufacturer, the country where the bag was manufactured, and the percentage of Postconsumer Recycled Material used in making the bag;
- (3) displays the word "Recyclable" in a minimum 14-point type size; and
- (4) contains no old growth fiber.

J. **Reusable Bag** means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements:

- (1) has a minimum lifetime of 125 uses, which for purposes of this Article means the capability of carrying a minimum of 22 pounds, 125 times over a distance of at least 175 feet;
- (2) has a minimum volume of 15 liters;
- (3) is machine washable or is made of a material that can be cleaned or disinfected;
- (4) does not contain lead in an amount greater than 89 ppm, nor contain total heavy metals (lead, hexavalent chromium, cadmium, and mercury) in an

amount greater than 99 ppm, unless lower heavy metal limits are imposed by applicable state or federal law, in which case such standards shall apply;

(5) has printed on the bag, or on a tag that is permanently affixed to the bag, (i) the name of the manufacturer, (ii) the country where the bag was manufactured, (iii) a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, (iv) the percentage of Postconsumer Recycled Material used, if any, and (v) bag care and washing instructions; and

(6) if made of plastic, is a minimum of at least 2.25 mils thick.

K. **Store** means any of the following retail establishments located within the City of Los Angeles:

(1) a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000.00), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;

(2) a store of at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or

(3) a drug store, pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.

SEC. 195.02. PROHIBITED CARRYOUT BAGS.

A. No Store shall provide to any Customer a Plastic Single-Use Carryout Bag for the purpose of carrying away goods or other materials from the point of sale.

B. No Store shall provide to any Customer a Paper Single-Use Carryout Bag for the purpose of carrying away goods or other materials from the point of sale, except as otherwise provided in this Article.

SEC. 195.03. PERMITTED CARRYOUT BAGS.

A. All Stores shall provide or make available to a Customer only Recyclable Paper Single-Use Carryout Bags or Reusable Bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this Article. Nothing in this Article prohibits Customers from using bags of any type that they bring to

the Store themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the Store.

B. Beginning January 1, 2014, for all Stores defined in Subsections K(1) and (2) of Section 195.01, and beginning July 1, 2014, for all Stores defined in Subsection K(3) of Section 195.01, Stores may provide to their Customers Recyclable Paper Single-Use Carryout Bags for the purpose of carrying away goods or other materials from the point of sale, subject to the following requirements:

(1) Customers shall be charged ten cents (\$0.10) for each Recyclable Paper Single-Use Carryout Bag provided; and

(2) Every Customer receipt must specify the number of Recyclable Paper Single-Use Carryout Bags provided to that Customer and the total amount charged to the Customer for those bags.

C. All monies collected by a Store pursuant to Subsection C of this Section will be retained by the Store and may only be used for any of the following purposes:

(1) costs associated with complying with the requirements of this Article;

(2) actual costs of providing Recyclable Paper Single-Use Carryout Bags; and

(3) costs associated with a Store's educational materials or education campaign encouraging the use of Reusable Bags.

D. All Stores must report to the Department of Public Works, on a quarterly basis, the total number of Recyclable Paper Single-Use Carryout Bags provided, the total amount of monies collected for providing Recyclable Paper Single-Use Carryout Bags, if applicable, and a summary of any efforts the Store has undertaken to promote the use of Reusable Bags by Customers in the prior quarter. Such reporting must be done on a form prescribed by the Department of Public Works, and must be signed by a responsible agent or officer of the Store confirming that the information provided on the form is accurate and complete. Quarterly reports must be submitted no later than thirty (30) days following the end of the quarter for which the report is made.

SEC. 195.04. USE OF REUSABLE BAGS.

A. All stores shall provide Reusable Bags to Customers, either for sale or at no charge.

B. All Stores are urged to educate Store staff to promote Reusable Bags and to post signs encouraging Customers to use and maintain Reusable Bags.

SEC. 195.05. EXEMPTIONS.

Stores that provide Recyclable Paper Single-Use Carryout Bags pursuant to Section 195.03 of this Article shall provide such bags or Reusable Carryout Bags or both, at the Store's option, free of charge to any Customer participating either in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code or in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 195.06. ENFORCEMENT.

A. The Department of Public Works has primary responsibility for enforcement of this Article. The Department of Public Works is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Article, including but not limited to, investigating violations, issuing fines and entering the premises of any store during business hours.

B. If the Department of Public Works determines that a violation of this Article has occurred, it will issue a written notice to the Operator of the Store that a violation has occurred and the potential penalties that will apply for future violations.

C. If a Store violates any of the requirements of this Article after a written notice has been issued pursuant to Subsection B of this Section for that violation, the following penalties will be imposed and shall be payable by the Operator of the Store:

(1) A fine not exceeding one hundred dollars (\$100.00) for the first violation that occurs following written notice pursuant to Subsection B of this Section;

(2) A fine not exceeding two hundred dollars (\$200.00) for the second violation that occurs following written notice pursuant to Subsection B of this Section;

(3) A fine not exceeding five hundred dollars (\$500.00) for the third and any subsequent violation(s) that occurs following written notice pursuant to Subsection B of this Section.

D. A fine shall be imposed for each day a violation occurs or is allowed to continue.

E. All fines collected pursuant to this Article shall be deposited into the Citywide Recycling Trust Fund (CRTF) of the Department of Public Works to assist the department with its costs of implementing and enforcing the requirements of this Article.

F. Any Operator who receives a written notice or fine pursuant to this section may request an administrative review of the accuracy of the determination or the propriety of any fine issued by filing a written notice of appeal with the Board of Public Works no later than thirty (30) days after receipt of a written notice or fine, as applicable. The notice of appeal must include all facts supporting the appeal and any supporting documentation, including copies of all photos, statements and other documents that the appellant wishes to be considered in connection with the appeal. The appeal will be heard by the Board of Public Works. The Board of Public Works will conduct a publicly noticed hearing concerning the appeal within forty-five (45) days from the date that the notice of appeal is filed, or on a later date if agreed upon by the appellant and the Board of Public Works, and will give the appellant at least ten (10) days prior written notice of the date of the hearing. The Board of Public Works may sustain, rescind, or modify the written notice or fine, as applicable. The Board of Public Works will have the power to waive any portion of the fine in a manner consistent with its decision. The decision of the Board of Public Works is final and effective on the date of the Board hearing where its decision is made.

SEC. 195.07. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Article is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the Article. The Los Angeles City Council hereby declares that it would have adopted this Article and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Article would be subsequently declared invalid.

SEC. 195.08. NO CONFLICT WITH FEDERAL OR STATE LAW.

Nothing in this Article is intended to create any requirement, power or duty that is in conflict with any federal or state law.

Sec. 3. This Article shall become operative on January 1, 2014, for all Stores defined in Subsections K(1) and (2) of Section 195.01 of the Los Angeles Municipal Code. This Article shall become operative on July 1, 2014, for all Stores defined in Subsection K(3) of Section 195.01 of the Los Angeles Municipal Code.

Sec. 4. The City Clerk shall certify to the passage of this Ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this Ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH City Attorney

By  _____
JOHN A. CARVALHO
Deputy City Attorney

Date 6/12/13

File No. CF 11-1531