

ORDINANCE NO. 2015-08

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON, CALIFORNIA, ADDING A NEW CHAPTER 5.01, "SINGLE-USE PLASTIC CARRYOUT BAG REDUCTION ORDINANCE" TO TITLE 5 OF THE AMERICAN CANYON MUNICIPAL CODE

WHEREAS, improper use of single-use plastic bags create a significant impact on litter; and

WHEREAS, there are several alternatives to single-use plastic carry-out bags readily available in the City of American Canyon, including the use of reusable bags or the reuse of recycled paper 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, a public hearing was held by the City Council of the City of American Canyon on May 19, 2015 after due notice was given as required by law, at which time oral and documentary evidence was introduced along with the written recommendation of the Community Development Department staff of the City of American Canyon.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of American Canyon as follows:

SECTION 1: The City Council hereby makes the following findings in support of the determination that the "Single Use Plastic Carry-Out Bag Reduction" ordinance is exempt from CEQA under CEQA Guidelines Sections 15307 and 15308:

- The proposed project, adoption of an ordinance regulating single-use carryout shopping bags, will serve to protect the environment and natural resources by reducing use of single-use plastic and paper carryout bags.
- The proposed project will establish local regulations that will reduce impacts of single use plastic bags on the environment by establishing procedures that will reduce the use of single-use carryout bags and incentivize use of reusable carryout bags.
- The City Council therefore finds that there exists ample evidence, in both the written and administrative record and contained in testimony and information presented by City staff and received by the City Council as a part of the public hearing, that the proposed project will serve as a local regulation enacted for the purpose of protecting residents' quality of life. The City's environmental analysis, as set forth more specifically in these findings and within the written and administrative record, is supported by the holding in Save the Plastic Bag Coalition v. County of Marin, 218 Cal. App.4th 209 (2013), 159 Cal. Rptr. 3d 763.

SECTION 2: The City Council hereby determines that this Single Use Plastic Carry-Out Bag Reduction ordinance is exempt from CEQA pursuant to CEQA Guidelines Sections 15307 and 15308, which exempt actions taken by a regulatory agency as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource or protection of the environment where the regulatory process involves procedures for protection of the environment.

SECTION 3: Amendment. A new Chapter 5.01, "SINGLE-USE CARRYOUT BAG REDUCTION ORDINANCE" is hereby added to Title 5 of the American Canyon Municipal Code, to read as follows:

Chapter 5.01 SINGLE-USE PLASTIC CARRYOUT BAG REDUCTION ORDINANCE

5.01.010 TITLE

This chapter shall be known as the City's "Single-Use Plastic Carryout Bag Reduction" ordinance, and may be cited as such, and will be referred to herein as "this chapter."

5.01.020 PURPOSE AND INTENT

The purposes of this chapter are to:

- A. Enact a bag reuse program that reduces waste and pollution, and that decreases the use of Single-Use Plastic Carryout Bags in the City of American Canyon.
- B. Protect the environment from the negative impacts of Single-Use Carryout Bags by reducing the use of Single-Use Plastic Carryout Bags, with a provision that would require retail stores within the City of American Canyon to charge customers who request Recycled Paper Bags.
- C. Provide an incentive for customers to use reusable bags or bring their own bags by exempting application of the bag charge from those customers who use reusable bags or bring their own bags.

5.01.030 DEFINITIONS

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

- A. "Customer" means any Person obtaining Merchandise from a Retail Establishment.
- B. "Director" means the Community Development Director of the City of American Canyon, or a designee of the Community Development Director or City Manager.
- C. "Merchandise" means any consumer goods as that term is defined by California Civil Code section 1791(a), except that "Merchandise" shall also include clothing and consumables, as those terms are defined by California Civil Code Sections 1791(c) and (d), respectively. "Merchandise" does not include Prepared Food. "Merchandise" includes, but is not limited to, liquor and beer, clothing, electronics and groceries that are not Prepared Food.
- D. "Person" means any human person, as well as any other form of legal entity (including a corporation, partnership, joint venture, limited liability company, or sole proprietorship).
- E. "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.

- F. "Public Eating Establishment" means a restaurant, take-out food establishment, or any other business that receives ninety percent (90%) or more of its revenue from the sale of Prepared Food to be eaten on or off its premises. "Prepared Food" means food 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 or uncooked meat product, or fruits and vegetables that are intended to be prepared for consumption off site.
- G. "Recycled Paper Bag" means a paper bag provided by a Retail Establishment to a Customer in accordance with this Chapter, at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting merchandise out of the establishment that contains no old growth fiber and a minimum of forty percent (40%) Post-consumer Recycled Material; is one hundred percent (100%) recyclable; and has printed in a manner on the outside of the bag the word "Recyclable," the name and location of the manufacturer, and the percentage of Post-consumer Recycled content.
- H. "Retail Establishment" means any commercial establishment that sells Merchandise at retail directly to the Customer; and is located within or doing business within the geographical limits of the City of American Canyon. Retail Establishment does not include Public Eating Establishments.
- I. "Reusable Bag" means a bag made of cloth or other machine washable fabric that has handles, and is specifically designed and manufactured for multiple reuse.
- J. "Reusable Plastic Bag" means a bag made of durable plastic with handles that is at least 2.25 millimeters thick and is specifically designed and manufactured for multiple reuse.
- K. "Single-Use Plastic Carryout Bag" means a bag, provided by a Retail Establishment to a Customer at the check 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 Plastic Carryout Bag" specifically excludes any Reusable Bag or Recycled Paper Bag and excludes any bag provided to the Customer (1) to transport produce, bulk food or meat from a produce, bulk food or meat department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; (3) to segregate merchandise that could damage or contaminate other merchandise when placed together in a Reusable Bag or Recycled Paper Bag; or (4) to contain or wrap meat, fish, or frozen foods, whether prepackaged or not.

5.01.040 Single-Use Plastic Carryout Bags

- A. On and after January 1, 2016, no Retail Establishment shall provide a Single-Use Plastic Carryout Bag to a Customer.
- B. On and after January 1, 2016, no Retail Establishment shall provide a Recycled Paper Bag or a Reusable Plastic Bag to a Customer for the purpose of transporting Merchandise out of the establishment unless: (1) the Retail Establishment charges the Customer an amount of not less than ten cents (\$0.10) per bag, and (2) the amount of the charge for each Recycled Paper Bag or Reusable Plastic Bag is separately itemized on the sales receipt provided by the

Retail Establishment to the Customer. Retail Establishments that provide a durable bag made of cloth or other machine washable fabric may do so at no charge to their customers at the Retail Establishment's discretion.

- C. Retailers shall retain the proceeds from the collection of the charge required by 5.01.040(B) for the point of sale purchase of a Recycled Paper Bag or Reusable Plastic Bag. This chapter does not restrict how retailers use these monies.
- D. Nothing in this chapter shall prohibit Customers from using bags of any type that they bring to a Retail Establishment themselves or from carrying away goods that are not placed in a bag.

5.01.050 Exemptions

A Retail Establishment may provide a Reusable Bag or a Recycled Paper Bag at no cost at the point of sale for the following purposes:

- a. 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.
- b. To transport produce, bulk food or meat from a produce, bulk food or meat department within a store to the point of sale.
- c. To hold prescription medication dispensed from a pharmacy.
- d. To segregate merchandise that could damage or contaminate other merchandise when placed together in a Reusable Bag or Recycled Paper Bag.
- e. To contain or wrap meat, fish, or frozen foods, whether prepackaged or not.
- f. To contain food from a Public Eating Establishment.

5.01.060 Enforcement

The Director shall have primary responsibility for enforcement of this chapter. The Director is authorized to make all necessary and reasonable rules and regulations with respect to the enforcement of this chapter. All such rules and regulations shall be consistent with the provisions of this chapter.

It is a violation of this Code, subject to enforcement pursuant to Chapter 1.16 of this Code and punishment and prosecution pursuant to Chapter 1.20 of this Code, for any Retail Establishment to violate or fail to comply with any provision of this chapter.

SECTION 4: Severability. If any section, sub-section, subdivision, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

SECTION 5: Effective Date. This Ordinance shall become effective on January 1, 2016..

The foregoing Ordinance was introduced and read at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 19th day of May, 2015, and was passed and adopted at a regular meeting of the City Council of the City of American Canyon, State of California held on August 18, 2015, by the following vote:

Ayes: Councilmembers Bennett, Ramos, Vice Mayor Leary and Mayor Garcia
Noes: Councilmember Joseph
Absent: None

Leon Garcia, Mayor

ATTEST:

APPROVED AS TO FORM:

Taresa Murphy, Interim Deputy City Clerk

William D. Ross, City Attorney