



**CITY OF PACIFIC GROVE**  
300 Forest Avenue, Pacific Grove, California 93950

**AGENDA REPORT**

**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Steve Matarazzo, Interim Community Development Director  
**MEETING DATE:** July 16, 2014  
**SUBJECT:** Reusable Bag Ordinance for Pacific Grove  
**CEQA:** Categorically Exempt as a Regulation for the Protection of the Environment

**RECOMMENDATION**

Provide staff with direction on the draft ordinance, to be brought back to the Council on August 6, for adoption prior to September 1, 2014.

**DISCUSSION**

Like most cities in California, Pacific Grove has been waiting for a ruling from an appellate court on CEQA requirements before proceeding with a reusable bag ordinance. In January, 2014, in the case of *Save the Plastic Bag Coalition v. City and County of San Francisco*, the First Appellate District Court ruled that reusable bag ordinances were exempt from the California Environmental Quality Act (CEQA) as a Class 7 and Class 8 Exemption, Actions by Regulatory Agencies for the Protection of Natural Resources and the Environment.

On two occasions this year, the City Council has reviewed the topic of prohibiting single-use carry out bags and requiring reusable bags at retail establishments.

On May 7<sup>th</sup>, the Council was presented with a chart illustrating differences between regulations in Monterey and Carmel, with Carmel allowing retailers not to charge for paper bags. At least one council member preferred this option.

The State of California is also considering Senate Bill 270 (Padilla), a state-wide reusable bag approach, which would pre-empt local jurisdictions from its regulations if they address the issue by September 1, 2014. The bill has recently been amended; now, only a local resolution must be adopted by the deadline. Therefore, should Pacific Grove decide to regulate reusable bags, it shall have until late August to adopt a resolution with applicable criteria, and an ordinance can then be crafted, while still preserving all of our options. SB 270 has yet to be enacted, as it is still at the legislative committee phase of the overall process; it may pass, it may pass but only in a highly amended form, or it may be defeated or vetoed. At this time, SB 270 would phase in the requirements gradually, starting initially only with retailers over 10,000 ft. sq. In addition, SB 270 would charge only 10 cents for a paper bag, not the 25 cents that has been fairly standard in Monterey County.

A draft reusable bag ordinance is presented as attachment 1. The ordinance is modeled after the Monterey ordinance. It may, or may not, include the requirement that retail establishments charge a fee for paper bags. The basis for requiring a fee to be charged is not intended to increase a retailer's profit. It is to encourage (incentivize) customers to bring their own re-usable bags.

Vicki Pearse has provided the City with survey results, which showed that when 25 cents per paper bag was charged, the use of reusable bags increased substantially: in Capitola usage went from 53% to 89%; in Santa Cruz went from 46% to 80%, and in the County of Santa Cruz went from 10% to 85%.

### **OPTIONS**

1. Eliminate Section 11.98.030 (D) of the draft ordinance, which requires retailers to charge a 25-cent fee for each paper bag. This no-charge-for-paper-bags option was chosen by the City of Carmel. Carmel recently reviewed a survey that showed the no-fee aspect of the ordinance did not result in a significantly increased use of reusable bags, but did result in the virtual elimination of single-use plastic bags in favor of paper bags. Although the increase in the use of paper bags was not fully anticipated, Carmel has chosen to leave their ordinance as is.

2. Modify Section 11.98.030(D) of the draft ordinance, to require retailers to charge a 10-cent fee for paper bags. This would make the Pacific Grove ordinance more in line with the current provisions of SB 270, but different from both Monterey and Carmel.

3. Wait for State legislation on reusable bags to become law. If this were to occur, we would be allowing a slower process of requiring all retailers to adhere to the reusable bag law, since only large retailers are required to do so for the first year. In addition, the 10 cents-per-bag charge has been shown to reduce the switch to reusable bags.

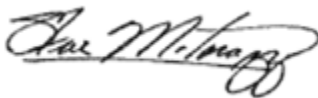
### **FISCAL IMPACT**

None.

### **ATTACHMENTS**

1. Draft Reusable Bag Ordinance
2. Comparison Table of Local Regulations to Proposed SB 270

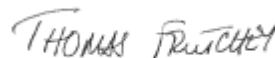
RESPECTFULLY SUBMITTED:



---

Steve Matarazzo, Interim  
Community Development Director

REVIEWED BY:



---

Thomas Frutchey  
City Manager

**ORDINANCE NO.** \_\_\_\_\_

**ADDING CHAPTER 11.98 TO THE CITY OF PACIFIC GROVE MUNICIPAL CODE  
TO REDUCE SINGLE-USE PLASTIC AND PAPER CARRY-OUT BAGS**

**BE IT ORDAINED** by the City Council of the City of Pacific Grove as follows:

SECTION 1: Chapter 11.98 of the City of Pacific Grove Municipal Code is hereby added to read as follows:

Chapter 11.98--BAG REDUCTION

Sections:

11.98.010 Purpose and Findings

11.98.020 Definitions

11.98.030 Ban on plastic carry out bags and charge for other single-use carry out bags

11.98.040 Implementation

11.98.050 Enforcement

**11.98.010 Purpose and Findings**

A. It is the intent of the City of Pacific Grove in enacting this Chapter to eliminate the common use of plastic single use carry out bags, to encourage the use of reusable bags by consumers and retailers, and to reduce the consumption of single use bags in general. It is the further purpose of this Chapter that by promoting reusable bags, it will further the City's overall waste reductions goals as may be amended from time to time by the State of California.

B. The City of Pacific Grove finds that the addition of this Chapter to the municipal code qualifies as a regulation for the protection of natural resources and the environment as defined by the California Environmental Quality Act (CEQA).

**11.98.020 Definitions**

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

“Single use carryout bag” is defined as a bag, other than a reusable bag or recycled bag, provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment. Single use carryout bags do not include bags, a maximum of 11” x 17”, without handles to the customer (1) to transport produce, bulk food or meat from a product, bulk food or meat department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; or (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a bag.

“Plastic bag” or “plastic carry out bag” means a single-use carry out bag of any size that is provided at point of sale to customers by a retail establishment. Plastic bags include both compostable and non-compostable carry out bags.

“Reusable bag” means any bag with handles that is specifically designed and manufactured for multiple reuse, and is either: (1) made of cloth or other washable woven fabric, or (2) made of durable material that is at least 2.25 mils thick. A “reusable bag” may be made of recyclable plastic such as high density polyethylene (HDPE), low density polyethylene (LDPE), or polypropylene.

“Recycled paper bag” is defined as a bag that contains no old growth fiber and a minimum of 40% post-consumer recycled content, is 100% recyclable, and has printed in a highly visible manner on the outside of the bag the words “Reusable” and “Recyclable”, the name and location of the manufacturer, and the percentage of post-consumer recycled content.

“Retail establishment” or “retail store” means all sales outlets, stores, shops, vehicles, or other places of business located within the City of Pacific Grove that operate primarily to sell or convey goods directly to the ultimate consumer. Restaurants as defined herein are exempt from the requirements of this Chapter. Also exempt from the requirements of this Chapter is prepared food sold at grocery and convenience stores’ food counters.

“Restaurant” is defined as an establishment doing business in the City of Pacific Grove whose principal business is the sale of prepared food for consumption either on or off premises, which includes a restaurant, café, bakery, delicatessen, or catering truck.

“Exempted uses” means those point-of-purchase or delivery sales that have received a special exemption, through the Community Development Director or the Director’s designee, allowing single-use bags.

### **11.98.030 Ban on plastic bags and charge for single-use carry out bags**

A. No retail establishment shall provide plastic carry out bags to customers at the point of sale, except as permitted in this Chapter.

B. No City of Pacific Grove contractors, special events promoters, or their vendors, while performing under contract or permit shall provide plastic carry out bags to customers at the point of sale.

C. Single-use paper carry out bags provided to customers shall contain a minimum of 40 percent post-consumer recycled paper fiber, and must be recyclable in the City of Pacific Grove's curbside recycling program.

D. Retail establishments shall charge a minimum 25-cent fee for each single-use paper carryout bag provided to customers at the point of sale. Retail establishments shall keep annual records of paper bag distribution to be made available to the Community Development Director or designee upon request. From time-to-time, the City may review the annual records of paper bag distribution to ensure the effectiveness of these regulations. If it is determined that single-use paper bag or plastic reusable bag use has increased beyond anticipated levels, the City Council may consider increasing the store charge to improve the effectiveness of these regulations.

E. The charge imposed pursuant to this Chapter shall not be charged to customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, the State Department of Social Services Food Stamp program, or other government-subsidized purchase programs for low-income residents.

F. The ban on single-use plastic bags and the charge for single-use paper bags do not apply to plastic or paper bags used to protect produce, meat, or otherwise used to protect items as they are put into a carryout bag at checkout. Other examples or exemptions include: paper bags to protect bottles, plastic bags around ice cream or other wet items, paper bags used to weigh candy, paper pharmacy bags, or paper bags used to protect greeting cards.

G. Retail establishments are strongly encouraged to make reusable bags available for sale to customers at a reasonable price.

H. Retail establishments shall indicate on the customer transaction receipt the number of paper carry out bags provided, and the total amount charged.

#### **11.98.040 Implementation**

A. Thirty days before this ordinance may be enforced, the City shall mail or deliver a copy of this Chapter to every retail establishment within its jurisdiction.

B. The City will make available to each retail establishment within its jurisdiction the text of an initial placard designed to inform shoppers of its policies for carry out bags.

C. The City shall provide a copy of this Chapter, or a link to this Chapter on the City's website, to every new retail establishment that applies for a business license.

**11.98.050 Enforcement**

- A. Violations of this Chapter may be enforced in accordance with Chapters 1.16 and 1.19 of the municipal code.
- B. The Community and Economic Development Director, or the Director's designee, shall be responsible for enforcing this Chapter and shall have authority to issue citations for violations.
- C. Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction.
- D. The City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this Chapter.
- E. The remedies and penalties provided in this Chapter are cumulative and not exclusive of one another.
- F. The City may inspect any vendor's premises to verify compliance.
- G. Violation of this Chapter will be considered a public nuisance. In addition to any other remedies or penalties that may be available, any violation described in the preceding paragraph shall be subject to abatement by the City, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by an injunction issued by the Superior Court in a civil action, based upon a showing by the City that said violation exists.

**SECTION 2: Effectiveness**

This Ordinance shall be in force and take effect thirty (30) days after second reading and final adoption.

**PASSED AND ADOPTED** BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this \_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
BILL KAMPE, Mayor

ATTEST:

---

ANN CAMEL, Interim City Clerk

APPROVED AS TO FORM:

---

DAVID C. LAREDO, City Attorney

## Reusable Bag Approaches by Different Jurisdictions

	<b>Prohibited</b>	<b>Fee for bags</b>	<b>Effective Date(s)</b>	<b>Applicability</b>
<b>SB 270</b>	Single-Use Plastic (less than 2.25 mils)	10 cents for paper or plastic reusable bag	July 1, 2015 & July 1, 2016	July 1, 2015 -10,000 sq. ft. or min sales of \$2M.  July 1, 2016 – Convenience food store, foodmart, or good to be consumed off premises.
<b>City of Monterey</b>	Single-Use Plastic (less than 2.25 mils)	25 cents for paper bags; no charge for plastic bags in excess of 2.25 mils; effective January 1, 2013	July 1, 2012	Prevents retail stores from providing customers with single-use plastic carryout (shopping) bags, including those advertised as compostable, biodegradable, photo-degradable or similar.  Allows retail stores to provide customers with any size recyclable paper or reusable carryout bags; or provide carryout bags made of plastic 2.25 mils or thicker, with or without charge, at their discretion.
<b>City of Carmel</b>	Single-Use Plastic (less than 2.25 mils)	No fee for paper bags.	February 3, 2013	No retail establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items