

DOCUMENT REVIEWED BY:

City Clerk _____

City Attorney _____

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

**AN ORDINANCE AMENDING CHAPTER
6.26 (DISPOSABLE BAG REDUCTION)
OF TITLE 6 (HEALTH AND SANITATION)
OF THE FORT BRAGG MUNICIPAL
CODE**

ORDINANCE NO. ____-2014

WHEREAS, the City of Fort Bragg adopted Ordinance 903-2012 (Disposable Bag Reduction) on May 14, 2012; and

WHEREAS, Public Eating Establishments were specifically exempted from Ordinance 903-2012 because of a claim that any local regulation of them was preempted by the State Restaurant Code; and

WHEREAS, the environmental problems of plastic single-use carryout bags that motivated the adoption of Ordinance 903-2012, as set forth in its Findings, are caused as much by Public Eating Establishment take-out bags as by bags from other retail stores; and

WHEREAS, the Court of Appeal of the State of California, First Appellate District, ruled in Case Number A137056 on December 10, 2013 that (1) state law does not preempt local regulation of restaurant carryout bags and (2) such regulation qualifies for a categorical exemption under the California Environmental Quality Act as action to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment;

NOW, THEREFORE, the City Council ordains as follows:

Section 1. Legislative Findings. The City Council hereby finds as follows:

1. While the City Council recognizes carryout bag regulation is a matter of statewide interest and concern that is best applied uniformly throughout the state, in the absence of statewide regulation, it is in the best interests of the City and its residents for the City to regulate carryout bags as described herein.
2. The regulation of single-use carryout bags as proposed herein promotes the general health and welfare of the public by reducing the amount of waste, litter and marine pollution that are attributable to single use bags.
3. Carryout bags at Public Eating Establishments should be regulated in the same manner as carryout bags at other retail stores, except that the requirement for a minimum charge for recycled paper bags should be waived because of the particular circumstances of takeout food orders at Public Eating Establishments.

4. Regulation of single-use carryout bags at Public Eating Establishments will have beneficial environmental impacts and no significant adverse environmental impacts.

Section 2. Chapter 6.26 entitled DISPOSABLE BAG

REDUCTION of Title 6 of the Fort Bragg Municipal Code is amended as follows:

1. The definition of PUBLIC EATING ESTABLISHMENT in Section 6.26.010 (DEFINITIONS) is amended to read:

PUBLIC EATING ESTABLISHMENT. A restaurant, take-out food establishment, a separate take-out food department of a Store, or any other business that receives 90% or more of its revenue from the sale of PREPARED FOOD to be eaten on or off its premises.

2. The definition of STORE in Section 6.26.010 is amended to read:

STORE. A retail establishment that sells perishable or nonperishable goods, licensed to do business in the City.

3. Section 6.26.020 (CARRYOUT BAG REGULATIONS) is amended to read:

A. A Store shall not provide a Single-Use Carryout Bag to a Customer at the point of purchase, except as provided in this section.

B. Plastic Single-Use Carryout Bags are prohibited.

C. A Store may provide Reusable Carryout Bags to Customers at no cost, until 18 months after the effective date of this Ordinance, only when combined with a time-limited Store promotional program to promote the use of Reusable Carryout Bags.

D. A Store may provide to a Customer a Recycled-Content Paper Bag or a Reusable Carryout Bag upon request but any Store except a Public Eating Establishment shall charge the Customer not less than 10 cents per bag, except as provided in subdivisions (C) and (E).

E. A Store will not be required to charge a customer for a Recycled-Content Paper Bag of less than 250 cubic inches capacity.

F. For any Recycled-Content Paper Bag or a Reusable Carryout Bag sold to a Customer, the amount of the sale of the bag shall be separately itemized on the sales receipt. No store shall rebate or otherwise reimburse a Customer any portion of the charge required for a Recycled-Content Paper Bag.

Section 3 Effective Date and Publication. This ordinance shall be and the same is hereby declared to be in full force and effect from and after one hundred eighty (180) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

The foregoing Ordinance was introduced by Councilmember _____ at a regular meeting of the City Council of the City of Fort Bragg held on _____, 2014, and adopted at a regular meeting of the City of Fort Bragg held on _____, 2014, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Dave Turner,
Mayor

ATTEST:

Cynthia M. VanWormer, CMC
City Clerk

PUBLISH: _____, 2014
EFFECTIVE DATE: _____, 2014