CITY OF CARMEL-BY-THE-SEA

CITY COUNCIL

ORDINANCE 2012-4

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA AMENDING THE CARMEL MUNICIPAL CODE TO BAN THE DISTRIBUTION OF SINGLE-USE PLASTIC BAGS FROM RETAIL ESTABLISHMENTS WITHIN THE CITY OF CARMEL-BY-THE-SEA

WHEREAS, The City of Carmel-by-the-Sea is a unique coastal community that prides itself in its community character and environmental resources; and

WHEREAS, the General Plan encourages the City to protect, conserve and enhance the unique natural beauty and irreplaceable natural resources of Carmel and its Sphere of Influence, including its biological resources, water resources, and scenic routes and corridors; and

WHEREAS, the General Plan encourages the City to maintain the community, and the beach in particular, free from refuse; and

WHEREAS, the General Plan encourages the City to maintain and restore, where feasible, the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health; and

WHEREAS, single-use plastic carryout bags contribute to a persistent litter problem that is of growing concern for the health of waterways locally and worldwide; and

WHEREAS, most plastic carryout bags do not biodegrade and instead persist in the environment for hundreds of years, slowly breaking down through abrasion, tearing and photo degradation into toxic plastic bits that contaminate soil and water while entering the food web when animals inadvertently ingest these materials; and

WHEREAS, the proposed ordinance will eliminate the use of single-use plastic carryout bags by all retail establishments and encourage the use of reusable bags; and

WHEREAS, the ordinance will not become mandatory until 3 February 2013 (six months after the effective date identified below); and

WHEREAS, the proposed ordinance is consistent with the General Plan and its goal of maintaining the City's environmental resources; and

WHEREAS, an Initial Study/Negative Declaration has been prepared for the proposed ordinance; and

WHEREAS, on 5 June 2012 the City Council adopted the first reading of the ordinance.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA does hereby resolve to:

Adopt an ordinance amending Section 8.74 of the Carmel Municipal Code to ban single-use plastic carryout bags from all retail establishments within the City of Carmel-by-the-Sea (see Exhibit "A").

Severability. If any part of this ordinance, even as small as a word or phrase, is found to be unenforceable such finding shall not affect the enforceability of any other part.

Effective Date. This ordinance shall become effective 30 days after final adoption by the City Council.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this third day of July 2012 by the following roll call vote:

AYES:	COUNCIL MEMBERS:	BEACH; HAZDOVAC; TALMAGE & BURNETT
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	HILLYARD

SIGNED,

Ken Talmage For

JASON BURNETT, MAYOR

ATTEST:

Molly Langhi for

Heidi Burch, City Clerk

EXHIBIT "A"

CMC Section 8.74 Single-Use Plastic Carryout Bags

8.74.010 - Purpose

The production and disposal of single-use plastic bags causes significant environmental impacts including contamination of the environment, the deaths of marine animals through ingestion and entanglement, and widespread litter. The purpose of this to ordinance is to protect, conserve and enhance the City's unique natural beauty and irreplaceable natural resources through the elimination of single-use plastic carryout bags and by encouraging the use of reusable bags. This ordinance shall become effective six months after the effective date of adoption.

8.74.020 – Definitions

A. A "single-use plastic carryout bag" is defined as a plastic 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 plastic carryout bags do not include bags, a maximum of 11" x 17", without handles provided to the customer (1) to transport produce, bulk food, candy 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.

B. A"reusable bag" is defined as a bag with handles that is specifically designed and manufactured for multiple reuse and is either: (1) made of cloth or other machine washable fabric; (2) made of durable plastic that is at least 2.25 mils thick or (3) other durable material suitable for reuse.

8.74.030 - Applicability

No retail establishment, that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to the customer, shall provide a single-use plastic carryout bag to a customer 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 except as provided in this Section. A reusable bag or a recycled bag may be provided to the customer, pursuant to this Section.

A. Public eating establishments, defined as restaurants, take-out food establishments, or any other business that receives 90% or more of its revenue from the sale of food which is prepared on the premises, to be eaten on or off its premises, are not considered retail establishments for the purpose of this Ordinance.

B. Nonprofit charitable re-users, which is a charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization, that re-uses and recycles donated goods or materials and receives more than 50% of its revenues from the handling and sale of those donated goods or materials, are not considered retail establishments for the purpose of this Ordinance.

8.74.040 – Exemption

The City Administrator, or his/her designee, may exempt an affected entity from the requirements of this chapter for a period of up to one additional year after the operative date of this Ordinance, upon sufficient showing by the applicant that the provisions of this chapter would cause undue hardship. The phrase undue hardship includes:

1. Situations where the are no acceptable alternatives to single use plastic carryout bags for reasons which are unique to the entity;
2. Situations where compliance with the requirements of this chapter would deprive a person of a legally protected right.

8.74.040 – Enforcement

Violations of this chapter may be enforced with this section.

A. The City Administrator, or his/her designee shall be responsible for enforcing this chapter and shall have authority to issue citations for violations.

B. Anyone violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction.

C. The City Attorney may seek legal, injunctive, or other relief to enforce the provisions of this chapter.

D. The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.

E. Violations of this chapter shall be enforced as follows:

1. For the first violation, City Administrator or designee shall issue a written warning specifying that a violation of this chapter has occurred and which further notifies the retail establishment of appropriate penalties to be assessed in the event of future violations. The establishment will have 30 days to comply.

2. The following penalties will apply for subsequent violations of this chapter:

a. A fine not exceeding $100.00 for the first violation 30 days after the first warning.

b. A fine not exceeding $200.00 for the second violation 60 days after the first warning.

c. If not in compliance 90 days after the first warning, the establishment may be scheduled for a business license revocation hearing with the Planning Commission in accordance with CMC Section 5.12.040.