

August 12, 2024

**CITY OF CARLSBAD
INFORMATIONAL MEMORANDUM**

Rick Lopez, Mayor

Wendy Austin, City Administrator

To: Mayor Lopez, Wendy Austin & City Councilors
From: Denise Madrid Boyea, City Attorney
Date: August 12, 2024
Subject: Single-Use Plastic Carryout Bag Ordinance

For some years, the City of Carlsbad has considered implementing an Ordinance to address the effect of single-use plastic carryout bags on the community. An Ordinance has been drafted for your official consideration at a later time. Numerous City employees, community members and administrative staff have collaborated on the drafting of the Ordinance. The Board of Solid Waste Commissioners have been meeting regularly and have approved the draft Ordinance. The Chairwoman of the Solid Waste Board, Susan Crockett, has issued a letter dated August 8, 2024, addressing the Ordinance. Basically, the Ordinance bans the use of single-use plastic carryout bags with some exceptions, promotes the use of reusable bags or recycled bags or boxes, provides for enforcement and penalties for violations and implements an effective date of February 1, 2025. A delayed implementation will allow the City to roll out this Ordinance in an orderly manner, educate and allow for planning by the retail and other establishments it will effect. Before implementation, the City will make all reasonable efforts to inform the general public, provide an opportunity for the public to comment and give advance notice of the Ordinance.

A copy of the Ordinance and a letter from Chairwoman Crockett is attached for your review.

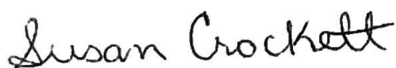
August 8, 2024

Dear City of Carlsbad Mayor Lopez and City Council;

On Monday, August 5, 2024, the City of Carlsbad's Board of Solid Waste Commissioners held a special meeting in which each Commissioner voted in favor of the Single-Use Plastic Carryout Bag Ordinance to be recommended to your office and considered before the City Council for a vote for implementation in our community. On behalf of BSWC members, Alvin Doporto, Jim Grantner, Michelle Perry, Michele Robertson, and myself, we collectively believe that the City of Carlsbad implementing and supporting this ordinance will result in a cleaner area and help tremendously cut down on the number of complaints the City of Carlsbad regularly receives regarding litter and blight. Single-use plastic carryout bags have for years proven to be a nuisance to our southeast New Mexico landscape and we seek only to help remedy the negative effects of their use.

Please accept my sincere appreciation for considering bringing this before your governing body and let me know if I can be of any assistance moving forward.

Most Respectfully,



Susan Crockett, Chair
Board of Solid Waste Commission
Ph: 575.361.4695
Email: susancrocketto3@gmail.com

ORDINANCE NO. 2024-__

AN ORDINANCE CREATING SECTION 22-7 BANNING THE DISTRIBUTION OF SINGLE-USE PLASTIC CARRYOUT BAGS; ESTABLISHING IMPLEMENTATION BEGINNING FEBRUARY 1, 2025; AND MAKING OTHER SUCH CHANGES AS NECESSARY TO IMPLEMENT THE PURPOSE OF THIS ORDINANCE AND TO PROMOTE THE USE OF REUSABLE BAGS.

WHEREAS, the litter problem resulting from single-use plastic carryout bags is becoming increasingly difficult to manage and has costly negative implications for tourism, wildlife and aesthetics; and

WHEREAS, the majority of single-use plastic carryout bags used for shopping do not easily biodegrade and persist in the environment for decades, slowly breaking down through abrasion, tearing, and photo degradation into plastic bits that negatively impact the ecosystem; and

WHEREAS, single-use plastic carryout bags not only add to the amount of waste at the landfill or become unsightly when not properly disposed of, but they also create a risk for the health and safety of animal, including livestock, pets, and wildlife, while entering the food web when these animals inadvertently ingest these materials; and

WHEREAS, the City of Carlsbad desires to protect the environment, while reducing waste, litter, and pollution in order to protect the public health and welfare and promote community aesthetics; and

WHEREAS, to encourage the public to use reusable bags, this Single-Use Plastic Carryout Bag Ordinance will eliminate the use of single-use plastic carryout bags.

NOW THEREFORE, be it ordained by the governing body of the City of Carlsbad that:

Chapter 22, Article I of the Code of Ordinances, City of Carlsbad, New Mexico is hereby amended to include the following provisions:

A new Section 22-7 is created to read:

Section 22-7. Banning single-use plastic carryout bags and promoting reusable bags.

(a) *Purpose.* The production, use, and disposal of single-use plastic carryout bags causes significant negative environmental impacts including widespread litter and the death of animals including livestock, pets, and wildlife, through ingestion and entanglement. The purpose of this section is to protect, conserve, and enhance the city's unique natural beauty and irreplaceable natural resources through the reduction of single-use plastic carryout bags and to encourage the use of reusable bags.

(b) *Definitions.* Unless a contrary intention clearly applies, for the purposes of this section, the following definitions apply:

Produce bag or Product bag means a bag without handles used exclusively to:

- (i) Carry produce, meat, or bulk food from the produce, meat, or bulk food department of a retail establishment to the point of sale; or
- (ii) Contain or wrap flowers or potted plants; or
- (iii) Segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a bag.

Reusable bag is a bag that is designed and manufactured for multiple uses, is made of cloth or other machine-washable fabric and has stitched handles, or a polypropylene or recycled-content polyethylene terephthalate bag that has stitched handles;

Paper bag is a paper bag that is recyclable;

Single-use plastic carryout bag is a carryout bag made from plastic that is provided to a customer at the point of sale for the purpose of transporting groceries, food, or other goods and is not specifically designed and manufactured for multiple reuse.

The term single-use plastic carryout bag does not include:

- (i) Produce bags or product bags; or
- (ii) Bags used exclusively to carry prescription drugs when dispensed from a pharmacy; or
- (iii) Bags used exclusively to hold cleaned laundry at a dry cleaning establishment or deliver a newspaper in bad weather; or
- (iv) Bags utilized at ice machines

Recyclable cardboard box is a box made of non-waxed cardboard or paper.

Retail establishment means any retail business including, without limitation, those that sell goods of any kind directly to a consumer, including the sale of household items, personal items, or food. Examples include but are not limited to: grocery stores, supermarkets, discount stores, specialty stores, convenience stores, liquor stores, department stores, clothing stores, jewelry stores, pharmacies, home improvement and décor stores, temporary retail businesses, and gas stations.

Restaurant is any coffee shop, cafeteria, private and public school cafeteria or eating establishment, and any other eating establishment that gives or offers for sale food to the public, patrons, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere.

Mobile food establishment is a vehicle-mounted, commercial food service establishment designed to be readily moveable and which may serve multiple locations daily. Mobile food establishments shall conform to all state and local requirements for the operation of a mobile food business. Such establishments are also called *food trucks*.

(c) *Eliminate the use of single-use plastic carryout bags and promote reusable bags.*

(i) Retail establishments, restaurants, and mobile food establishments shall not provide a single-use plastic carryout bag to any customer.

(ii) To further promote the use of reusable bags and reduce the quantity of single-use plastic carryout bags entering the city's waste stream, retail establishments, restaurants, and mobile food establishments are encouraged to offer recyclable paper bags or reusable bags either at no charge or for sale at their points of sale and/or provide cardboard boxes for use at their points of sale at no charge. Any fees imposed for alternatives to single-use plastic carryout bags may be set by the retail establishment, restaurant, or mobile food establishment; however, should a retail establishment, restaurant or mobile food establishment choose to implement a fee for recycled paper bag usage, that fee may not exceed ten (.10) cents each.

(d) *Enforcement, Violations, and Penalties.*

(i) The City Administrator shall assign primary responsibility for enforcement of this section to an appropriate department or division. The department or division so assigned shall be authorized to take any and all actions reasonable and necessary to enforce this section, including, but not limited to, educating the public and businesses, investigating compliance, entering the premises of any store during business hours, and issuing notices of violations and filing complaints in Municipal Court as may be appropriate.

(ii) If the assigned department or division determines that a violation of this section has occurred, and if there have been no prior convictions for that retail establishment, restaurant or mobile food establishment, a written warning notice shall be issued to the owner, operator or manager of that retail establishment, restaurant or mobile food establishment. The warning notice shall include a description of the violation and a statement of the potential penalties that will apply for future violations.

(iii) Any retail establishment, restaurant or mobile food establishment that violates or fails to comply with any of the requirements of this section, after a written warning notice is issued or complaint filed in Municipal Court for that violation, shall be guilty of a violation punishable according to the provisions of Section 1-6 of this code.

(iv) Subsequent violations shall be subject to increasing punishments not to exceed the limits set forth in Section 1-6 of this code. If a retail establishment, restaurant or mobile food establishment is found to have committed a subsequent violation of this section similar in kind to the violation addressed in a prior written warning notice, then upon a conviction, the owner, operator, or manager of the retail establishment, restaurant, or mobile food establishment shall be punished for the subsequent violation by a fine of not less than fifty dollars (\$50.00) and not exceeding one hundred dollars (\$100.00). Additional violations shall be subject to a fine of not less than one hundred dollars (\$100.00) and not exceeding five hundred dollars (\$500.00).

(v) Each day a violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such, if a conviction results.

(e) *No Conflict with Federal or State Law.* Nothing in this Ordinance is intended to create any requirement, power, or duty that conflicts with any federal or state law.

(f) *Effective Date.* The Single-Use Plastic Carryout Bag Ordinance shall become effective February 1, 2025.

INTRODUCED, PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2024.

RICK LOPEZ, MAYOR

ATTEST:

NADINE MIRELES, CITY CLERK

DRAFT