



**CITY OF ENCINITAS
CITY COUNCIL
AGENDA REPORT
Meeting Date: November 20, 2013**

TO: Mayor and City Council

VIA: Gus Vina, City Manager *[Signature]*
Glenn Pruim, Director Engineering/Public Works

FROM: *[Signature]* Richard Phillips, Deputy City Manager

SUBJECT: Informational Update on Environmental Commission's Report on Single Use Plastic Bag Ordinance Elements.

BACKGROUND:

The City Council requested the Environmental Commission (Commission) review and present recommendations on single-use plastic bag ordinance elements as part of the Commission's approved 2013/14 Work Plan. The Council also included in the Commission's Work Plan development of recommendations regarding elimination of polystyrene take-out food packaging. The Commission finalized their report and recommendations regarding single-use plastic bags at their August 8, 2013 meeting (Attachment 1).

The City Manager suggested the single-use plastic bag and polystyrene take-out containers issues be topics at the City Council's Strategic Plan Environment Focus Area. The Environment Focus Area planning session is scheduled for January 29, 2014. Prior Council discussions indicated that the single-use plastic bag and the polystyrene take-out containers topics be considered at the same time.

At the October 23, 2013 City Council meeting, Deputy Mayor Shaffer and Councilmember Kranz requested a plastic bag reduction ordinance item be brought back to Council as soon as possible.

The purpose of this cover staff report to the Commission's report is to provide background information on recent updates on proposed state and regional legislation on single-use plastic bag reduction measures and to introduce the Commission's report. Presentation of the Environmental Commission's report and recommendations will be provided by a representative of the Environmental Commission.

ANALYSIS:

The Environmental Commission obtained information on single-use carry-out bag reduction measures implemented in other jurisdictions, kept apprised on the status of legal challenges to the environmental review process in other jurisdictions, reviewed various elements of single-use carry-

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out bag reduction measures and developed recommendations. The Commission finalized their report and recommendations to the City Council at their August 10, 2013 meeting.

The Commission's recommendation includes development of a single-use carry-out bag reduction ordinance with the following major elements:

- Phased-in prohibition of distribution of single-use plastic bags for all retailers over a one year period beginning with grocery stores, pharmacies and large retailers followed by smaller retailers.
- Paper bag pass-through cost of no less than 10 cents.
- Required postconsumer, recycled content for paper bags.
- Exemptions for non-profits, restaurants, produce and bulk product bags.

State and Regional Updates:

State Senator Padilla plans on re-introducing SB 405 prohibiting the distribution of single-use carry-out plastic bags in the 2014 legislative session. The proposed legislation, as currently written, would phase-in a prohibition on the distribution of single-use plastic bags beginning with grocery stores, drug stores and large retailers followed by a prohibition at convenience stores, mini-markets and stores that sell beer, wine and spirits for off-site consumptions. Proposed legislation SB 405 does not prohibit single-use plastic bag distribution by all retailers, but retail stores with gross annual sales of \$2.0 million or more, stores with retail spaces greater than 10,000 square feet, and convenience, food stores and other store that have a limited line of perishable and non-perishable food goods and hold a Type 20 or Type 21 alcohol license. Several California jurisdictions have modeled their single-use plastic bag restriction ordinances to SB 405 to apply to large grocery stores, drug stores and phase-in of convenience stores. The Encinitas City Council considered adopting Resolution 2013-45 supporting SB 405 at their November 13, 2013 meeting.

Regionally, the City of San Diego's Rules and Economic Development Committee approved moving forward with development of a proposed City of San Diego ordinance for the reduction of single-use plastic bags at their October 23, 2013 committee meeting. A draft ordinance was prepared, with similar language to SB 405. A draft ordinance will be considered by the San Diego City Council in the future upon the completion of the environmental review process.

FISCAL AND STAFF IMPACTS:

No fiscal impact to review and receive the report.

RECOMMENDATION:

It is recommended that City Council receive the Encinitas Environmental Commission's report and recommendations and provide staff direction.

ATTACHMENTS:

Attachment 1 Report and Attachments on Recommended Reusable Bag Ordinance
Elements from the Encinitas Environmental Commission

Attachment 2 Power Point presentation slides



**CITY OF ENCINITAS
CITY COUNCIL
AGENDA REPORT
Meeting Date: November 20, 2013**

TO: Mayor and City Council
FROM: Encinitas Environmental Commission
SUBJECT: Report on Recommended Reusable Bag Ordinance Elements from the Environmental Commission

BACKGROUND:

During the 2013-14 Commission Work Plan presentation to City Council on April 10, 2013, the Environmental Commission presented a detailed Informational Item report regarding Reusable Bag Ordinances (**Attachment A**). At that meeting, the City Council directed the Environmental Commission to bring back a report and presentation on elements of a Reusable Bag Ordinance for Council discussion and direction. Since 2008, single-use plastic carryout bags and the promotion of reusable shopping bags have been items of interest and concern in Encinitas. The submission of a petition from the community in 2008 with over 1,000 signatures led the City Council to direct the Environmental Commission to address this subject at that time. Prior direction and actions toward the development of an ordinance in Encinitas were delayed due to threat of CEQA related litigation from the plastic bag industry and the related costs for conducting an Environmental Impact Report (EIR).

At their August 8, 2013 meeting, the Environmental Commission reviewed and approved a recommended report to City Council on reusable bag ordinance elements.

ANALYSIS:

Statewide over 80 communities have adopted ordinances promoting the use of reusable shopping bags over both plastic and paper carryout bags. These jurisdictions cover over one-third of the state's population. Several attempts for statewide legislation have been proposed since 2007; however, no state-wide legislation has passed to date. With the increasing number of local communities passing a variety of ordinances many of the major grocery store chains, the California Grocers Association and the California Retailers Association supported the most recently proposed statewide legislation (SB405) citing a desire for consistency throughout the state. On May 30, 2013, SB405 failed a Senate vote by three votes.

A list of the jurisdictions throughout the state that have passed single use bag ordinances as of October 2013 is contained in **Attachment B**. To date, the City of Solana Beach is the only jurisdiction in San Diego County that has adopted an ordinance entitled, "Single-Use Carryout Bag

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Use Reduction". Other local communities that are looking into a reusable bag ordinance are the cities of Chula Vista, San Diego and Oceanside.

KEY ELEMENTS

Most California single-use bag ordinances have the following components:

- Applies to grocery stores, drug stores and convenience stores
- Most retailers with some exemptions for non-profit organizations
- Fee on paper bags: 10 cents (Solana Beach and most others jurisdictions)
10 cents/25 cents (Central and Northern California jurisdictions)
- Many communities exclude restaurants due to potential litigation challenges from the plastics industry.
- Requirements that paper bags contain varying degrees of post-consumer recycled content materials.
- Some require merchant reporting on bag sales.
- Most jurisdictions include some type of enforcement on businesses for non-compliance.

It should be noted that an increasing number of communities in Central and Northern California are considering a progressive, two-step fee approach starting at 10 cents and increasing to 25 cents within twelve to twenty-four month periods. This is based on reasoning that after a period of time shoppers became immune to the initial fee and an increase in paper bag use was observed. Following are some of the communities that have adopted the progressive bag fee structure: Campbell, Capitola, Menlo Park, Monterey, Mountain View, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, San Mateo County, San Jose, South San Francisco, Sunnyvale, and Watsonville.

The City of Los Angeles is the most recent large Southern California jurisdiction to pass an ordinance which includes a \$.10 fee on paper bags. Other Southern California communities with ordinances include: Calabasas, Culver City, Dana Point, Glendale, Huntington Beach, Laguna Beach, Long Beach, Los Angeles County, Malibu, Manhattan Beach, Pasadena, Santa Monica, Solana Beach, and West Hollywood.

A comparison of ordinance components utilized by a variety of Southern California communities, as well as the most recently proposed statewide legislation (SB405-Padilla) session is provided in **Attachment C**. Two sample ordinances are contained in **Attachment E**.

CEQA

Previously, the City of Encinitas was threatened with litigation by a plastic bag industry coalition demanding the City conduct a full and costly Environmental Impact Report (EIR) for implementation of a reusable bag ordinance. With a recent appellate court decision in favor of Marin County's (population 68,150) ordinance restricting single use plastic bags and fee on paper bags, there is a precedent that a CEQA review may no longer require a full Environmental Impact Report for jurisdictions of a similar size adopting an ordinance of a similar scope. Adoption of an ordinance - phasing out plastic carryout bags and implementing a fee on paper carryout bags – may allow Encinitas to consider utilizing either a Negative Declaration or Categorical Exemption and the cost of environmental review could possibly be minimized.

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As noted in prior Environmental Commission agenda reports, in addition to in-person meetings with grocers and retailers of all sizes, a community workshop on plastic bags was conducted in February 2010. Feedback obtained at the workshop from businesses noted that if the City ordinance required a city-wide fee on bags the retailer indicated they comply however, none were willing to consider self-imposing a fee on either plastic or paper bags.

Health Concerns

With the expansion of ordinances supporting the use of reusable bags, the plastic bag industry raised health concerns. One study cited, titled Grocery Bag Bans and Food Borne Illness, has been refuted by the San Francisco Department of Public Health (**Attachment D**). Studies have shown that regular washing of reusable shopping bags decreases potential contamination. Therefore, it is recommended that all outreach materials include reminders for regular washing or cleaning/disinfecting of all reusable bags.

FISCAL AND STAFF IMPACTS:

Fiscal and staff impacts with regard to a reusable bag ordinance pertain to the following areas:

- CEQA review
- Outreach and education
- Enforcement

CEQA staff in the Planning and Building Department has noted that based on available proven CEQA review conducted in other communities that the time and cost for review may be conducted in-house for minimal cost.

Based on the number of communities that have adopted ordinances, outreach and education materials can be modeled on jurisdictions that have implemented single-use carryout bag restrictions. The imposition of a fee, with advance notice flyers and posters, generally leads to a rapid change in behavior.

Enforcement would be conducted similar to other ordinances in the City, through complaint-based reporting through Code Enforcement. Given the progression of ordinances throughout the state it is anticipated that enforcement complaints would be minimal. Solana Beach has reported few actionable enforcement complaints.

ENVIRONMENTAL COMMISSION RECOMMENDATION:

The Encinitas Environmental Commission respectfully presents the following options for City Council consideration:

Option 1.) Consider preparation of a Reusable Bag Ordinance that includes the following primary components:

- Phase-in a Reusable Bag Ordinance:
 - 6 months: Large Grocers, Pharmacies & Retailers
 - 12 months: All other businesses and Farmers Markets
- Paper bag cost pass-through fee for postconsumer recycled-content paper bags of not

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less than 10 cents

- Bag Exemptions: produce and bulk product plastic bags, small paper product bags;
Revisit and reconsider exemption on plastic produce bags in 24 months.
- Business Exemptions: Non-profit organizations reusing plastic bags that have been donated to them
- Restaurant Exemption: Review after outcome of litigation

Option 2.) Continue to follow and actively support state-wide plastic carryout bag reduction Legislation.

Respectfully, the Environmental Commission strongly recommends Option 1 as it is consistent with the Environmental Commission's FY13/14 Annual Work Plan and is beneficially supportive of the City Council approved Environmental Action Plan.

ATTACHMENTS:

Attachment A – 4/10/13 Information Report to City Council on Reusable Bag Ordinances

Attachment B – Listing of Jurisdictions and Agencies statewide that have adopted ordinances

Attachment C – Comparison of Ordinance Components

Attachment D – San Francisco Department of Public Health Letter, dated February 10, 2013

Attachment E – Sample Single-Use Carry Out Bag Ordinances



**CITY OF ENCINITAS
CITY COUNCIL
INFORMATION REPORT
Meeting Date: April 10, 2013**

TO: City Council

VIA: Gus Vina, City Manager
Glenn Pruim, Public Works and Engineering Director

FROM: Jacy Bolden, Environmental Commission staff liaison
Environmental Commission Members

SUBJECT: Information item regarding Reusable Bag Ordinances

BACKGROUND:

After receiving a petition in June 2008 from over 1,000 residents, the City Council asked the Environmental Commission to present options for reducing the use of single-use plastic bags in Encinitas. On September 10, 2008, City Council voted (3-2) to move forward with the development of an ordinance to phase out single-use carryout bags at all types of businesses – including restaurants. The option selected included: Ban Plastic Bags + Fee on Paper Bags (no less than \$.05) + Option to Self-charge (on plastic bags). Council opted for an ordinance that uses a phased-in approach with input from businesses. Following are select highlights of action history:

- October 13, 2008, an internal CEQA Plan of Action meeting was held for ordinance development with staff from the following departments: City Attorney, Risk Management, Planning, Public Works and Environmental Commission. Risk exposure for lawsuit was determined to be very high; decision was to proactively watch progress with City of Manhattan Beach and the CEQA choice from the City of Santa Monica.
- December 18, 2008, 1st 'Day Without A Bag' (DWAB) event held in Encinitas to raise awareness and give away reusable shopping bags. 2nd DWAB held December 17, 2009.
- March 11, 2009, grocer's meeting scheduled and postponed.
- September 17, 2009, threat of lawsuit letter received from Save The Plastic Bag Coalition stating EIR must be conducted.
- February 3, 2010, Community Input Forum held to review bag reduction efforts in Encinitas, pending/failed legislation, initiatives in other communities, status of lawsuits and receive input. Attendance included: Seaside Market, Target, California Grocers

Association, American Chemistry Council, Solana Center for Environmental Innovation, Surfrider, Coastkeeper, DEMA, Encinitas Business Network, and Councilmember Barth.

- Regionwide 'Day Without A Bag' held County-wide:
December 16, 2010, December 15, 2011, December 20, 2012

Plastic Bag Ordinances Locally Implemented or Approved:

- San Diego County:
 - City of Solana Beach, population ~13,000; CEQA – Negative Declaration
 - All retailers covered + \$.10 fee on paper bags (stays with retailer)
 - Restaurants removed under threat of lawsuit
 - On March 27, 2013, City Council considered removing the \$.10 fee – conclusion was ordinance stays intact.
- Over 71 jurisdictions in California have adopted and/or implemented ordinances to date.

Active Lawsuits:

The primary active lawsuits pertain to CEQA and the California Retail Food Code. Three jurisdictions are testing the use of a Categorical Exemption over an EIR or Negative Declaration. One jurisdiction is still moving forward with their desire to include restaurants, which Save the Plastic Bag Coalition believes is pre-empted by the California Retail Food Code pertaining to food safety and handling.

Industry Positions:

- California Grocers Association (CGA) supports local ordinances, and statewide legislation, that include a fee on paper bags. CGA submitted a letter in support of an ordinance with a fee on paper bags to the Environmental Commission on March 11, 2013.
- California Restaurant Association does not support plastic bag bans for restaurant carryout bags.

Proposed Statewide Legislation:

- Two attempts for statewide legislation have recently been introduced: AB 158 & SB 405
 - Grocery stores with more than \$2 million in annual sales and retailers with more than 10,000 square feet.
 - Effective date January 1, 2015, for distribution of free (no fee) recycled-content paper bags or reusable plastic bags.
 - Effective July 31, 2016, grocery retailers could only provide reusable plastic bags or recycled paper bags at a charge (fee on paper bag).

Failed Legislation:

AB 298 (2012-Brownley) Single Use Bag Bill; AB1998 (2010) – prohibit plastic or compostable carry-out bags + fee on paper bags not less than \$.05; AB68 (2009) – required consumers pay a \$.25 fee for single-use bags; AB87 (2009) – required consumers pay a \$.25

Last printed 4/2/2013 5:32:00 PM

04/10/2013

Item #05

Page 16

11/20/2013

Item #10C

Page 9

fee for single-use bags; AB 2769/2058 (2008): Required a fee be placed on single-use carryout bags distributed at large grocery stores and pharmacies.

ANALYSIS:

CEQA costs related to Reusable Bag Ordinance:

- Categorical Exemption (Cat Ex): in-house
- Negative Declaration (Neg Dec): in-house
- Mitigated Neg Dec: in-house
- Full Environmental Impact Report (EIR): \$25,000; Region-wide EIR \$55,000

Suggested next step approaches for consideration:

- 1.) Environmental Commission to make full Reusable Bag presentation.

- 2.) Wait and follow progress of statewide legislation.

FISCAL AND STAFF IMPACTS:

CEQA costs to be evaluated for both internal and external environmental review. Fiscal impacts of outreach, education and enforcement have not yet been conducted as a part of this report.

RECOMMENDATION:

City Council to receive the informational report regarding Reusable Bag Ordinance.

Single-Use Bag Ordinances in CA (updated October 8, 2013)

Local Jurisdiction	Brief Description	Effective Year	CEQA/Strategy	Key Elements and Notes
Fairfax	plastic ban	2008	Voter Initiative	Covers all retail
Malibu	plastic ban	2008/2009	Exemption	Covers all retail and restaurants
Manhattan Beach	plastic ban	2012	Neg Dec	Covers all retail
LA County	plastic ban, 10 c for paper	2011/2012	EIR	Covers large supermarkets, drug stores & convenience stores
San Jose	plastic ban, 10 c for paper	2012	EIR	Covers all retail except nonprofit
Marin County	plastic ban, 5 c for paper	2012	Exemption	Covers large supermarkets, drug stores & convenience stores
Santa Monica	plastic ban, 10 c for paper	2011/2011	EIR	Covers all retail and farmer's markets
Calabasas	plastic ban, 10 c for paper	2011/2012	used LAC EIR	Covers large supermarkets, drug stores & convenience stores
Santa Clara County	plastic ban, 15 c for paper	2012	Neg Dec	Covers all retail except nonprofit
Long Beach	plastic ban, 10 c for paper	2011/2012	used LAC EIR	Covers large supermarkets, drug stores, convenience stores & farmer's markets
Santa Cruz Co (amend)	plastic ban, 10/25 c for paper	2012/2013	Mit Neg Dec	Covers all retail and restaurants
Pasadena	plastic ban, 10 c for paper	2012/2012	used LAC EIR	Covers large supermarkets, drug stores, & convenience stores, free paper bags for farmer's markets and city events
Monterey	plastic ban, 10/25 c for paper	2012	Neg Dec	Covers all retail except nonprofit
Sunnyvale	plastic ban, 10 c for paper	2012/2013	EIR	Covers all retail except nonprofit
SLO County & 7 Cities	plastic ban, 10 c for paper	2012	Exemption	Covers large supermarkets, drug stores, & convenience stores in unincorporated County and incorporated Cities
Alameda Co & 14 Cities	plastic ban, 10/25 c for paper/reusable	2013	EIR	Covers large supermarkets, drug stores, & convenience stores in unincorporated County and incorporated Cities
San Francisco	plastic ban, 10 c for paper /reusable	2012 (expand '07 ban)	Exemption	Covers all retail and restaurants, no price requirement on bags for restaurant leftovers, allows compostable bags
Millbrae	plastic ban, 10 c for paper	2012	Neg Dec	Covers all retail except nonprofit/drycleaner
Laguna Beach	plastic ban, 10 c for paper	2013	Neg Dec	Covers all retail and farmer's markets
Dana Point	plastic ban, voluntary charge for paper	2013/2013	Neg Dec	Covers all retail
Carpinteria	plastic ban, paper ban for large stores	2012/2013	Exemption	Covers all retail
Ojai	plastic ban, 10 c for paper	2012	Neg Dec	Covers all retail
Ukiah	plastic ban, 10 c for paper	2012/2013	EIR	Covers all retail
Watsonville	plastic ban, 10/25 c for paper	2012	Santa Cruz Co Neg Dec	Covers all retail
Solana Beach	plastic ban, 10 c for paper	2012/2013	Neg Dec	Covers all retail
Fort Bragg	plastic ban, 10 c for paper	2012/2013	EIR	Covers all retail
Mendocino County	plastic ban, 10 c for paper	2013/2013	EIR	Covers all retail
Carmel	plastic ban	2012	Neg Dec	Covers all retail except nonprofit
Santa Cruz City	plastic ban, 10 c for paper	2013	Neg Dec	Covers all retail
West Hollywood	plastic ban, 10 c for paper	2013/2013	used LAC EIR	Covers all retail
San Mateo County	plastic ban, 10/25 c for paper/reusable	2013	EIR	Covers all retail
Pacifica	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Mountain View	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
South San Francisco	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Foster City	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Belmont	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Colma	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Capitola	plastic ban, 25 c for paper	2013	Neg Dec	Covers all retail
Daly City	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Menlo Park	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Glendale	plastic ban, 10 c for paper	2013/2014	used LAC EIR	Covers large supermarkets, drug stores, convenience stores, & farmer's markets
San Bruno	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Portola Valley	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Cupertino	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Half Moon Bay	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
San Carlos	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Los Altos	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Burlingame	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Brisbane	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Redwood City	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Huntington Beach	plastic ban, 10 c for paper	2013	EIR	Covers large supermarkets, drug stores, convenience stores, & farmer's markets
East Palo Alto	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
San Mateo City	plastic ban, 10/25 c for paper/reusable	2013	used San Mateo EIR	Covers all retail except nonprofit
Palo Alto	plastic ban, 10 c for paper/reusable	2013 (expand '09 ban)	EIR	Covers all retail and restaurants
Culver City	plastic ban, 10 c for paper	2013	used LAC EIR	Covers large supermarkets, drug stores & convenience stores
LA City	plastic ban, 10 c for paper	2014	EIR	Covers large supermarkets, drug stores & convenience stores
Richmond	plastic ban, 5/10 c for paper/reusable	2014	Used RecycleMore EIR	Covers all retail
Campbell	plastic ban, 10/25 c for paper/reusable	2014	used San Mateo EIR	Covers all retail except nonprofit
Los Gatos	plastic ban, 10/25 c for paper/reusable	2014	used San Mateo EIR	Covers all retail except nonprofit
El Cerrito	plastic ban, 5/10 c for paper/reusable	2014	Used RecycleMore EIR	Covers all retail
Morgan Hill	plastic ban, 10 c for paper/reusable	2014	Exemption	Covers all retail
San Pablo	plastic ban, 5/10 c for paper/reusable	2014	Used RecycleMore EIR	Covers all retail

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Elements of a Successful Single-Use Bag Ordinance

- Prohibition on distribution of single-use plastic carryout bags & single-use paper bags with less than 50% recycled content (at least 40% pcc)
- End wasteful, costly practice of hiding carryout bag price, require retailers to charge not less than actual average cost of providing paper bags
- Stores retain revenue, but required to report the amount charged and number of bags sold.
- Store definition:
 - gross annual sales of \$2 million or more selling food and nonfood goods
 - at least 10,000 square feet of retail space with a licensed pharmacy
 - pharmacy, convenience store, or other retail store selling a limited line of food goods
 - Can be customized to phase in restaurants and other retailers with different implementation dates based on store size/category
- Exemptions for protective/produce type bags, WIC/lower income
- Defines reusable bags as: Handled bag specifically designed and manufactured for multiple reuse and
 - made of cloth or other machine washable fabric, and/or made of durable plastic at least 2.25 mils thick
 - meets lead and other heavy metal safety requirements as specified for packaging under state Toxics in Packaging law (Health & Safety Code Sections 25214.11-25214.26)

Several California companies are leading the globe in the manufacture of durable, reusable bags made from recycled materials. As this market becomes more fully developed, jurisdictions may want to consider policies and incentives to promote the use of California manufactured reusable bags with the highest level of post-consumer recycled material.



Sample Plastic Bag Reduction Ordinance Elements

ISSUE	SB405 (Failed 2013)	City of Solana Beach	City of Santa Monica	City of Long Beach	City of Manhattan Beach
Time period for the ordinance to become effective	Tiered based on store type: -Grocery stores, large retailer with pharmacy. -Convenience stores, foodmarts, and all Type 20 & 21 alcohol licences apx 18 months later.	Tiered based on store type: -Grocery Stores, Food Vendors, Pharmacies and City Facilities: 3 months -Retail Establishments, Vendors, Farmer's Markets, Non-profit Vendors	8 months	Tiered based on store type: -Large: 3 months -All others: (including Farmers' Markets) 8 months	Tiered based on store type: -Large: 6 months -All others: 1 year
Size of store/type of store applicable	-Grocery and large retailers with sales of \$2.0 million or more; -10,000 sf of retail space. Convenience food stores, foodmarts, liquor > Other retail and restaurants NOT included	-All grocery stores, pharmacies and retail. -Also includes City Facilities and Farmer's Market. > Restaurants NOT included	-Grocery stores, pharmacies and retail. Also includes City facilities and Farmer's Markets -Also includes City facilities and events on public property > Restaurants NOT included at this time	-Grocery stores, pharmacies and retail. Bans plastic and paper at Farmer's Markets -Has sales and square footage thresholds > Restaurants NOT included	-Grocery stores, pharmacies, retail, restaurants and vendors. Also includes City facilities and events on public property
In order to incentivize the use of reusable bags regulation on paper bag pass through fee to customers	-Authorizes a store to make available for purchase at the point of sale a recycled paper bag and reusable grocery bag.	-Minimum of \$0.10 per bag; the fee stays with the business. Allows businesses to charge less for paper if they can show a lower actual cost	-Minimum of \$0.10 per bag; fee stays with the business. -Allows businesses to charge less for paper if they can show a lower actual cost	-Minimum of \$0.10 per paper bag; fee stays with the business.	-Does not charge for paper bags, but encourages businesses to provide incentives for the use of reusable bags through education and credits or rebates

ISSUE	SB405 (Failed 2013)	City of Solana Beach	City of Santa Monica	City of Long Beach	City of Manhattan Beach
Requirements for minimum post-consumer recycled material content in paper bags	<ul style="list-style-type: none"> -Contains minimum of 40% postconsumer recycled materials -20% postconsumer for an 8 pound or smaller bag -Is accepted for recycling in curbside programs in a majority of households -Printed on bag manufacturer name, country in which manufactured, and the minimum percentage of postconsumer content. 	<ul style="list-style-type: none"> -Contains no old growth fiber -100% recyclable and contains a minimum of 40% post-consumer recycled content -Displays the words 'Recyclable' in a highly visible area -Is capable of composting -Is accepted in curbside recycling 	<ul style="list-style-type: none"> -40% minimum for bags larger than 8 pounds -20% minimum for bags less than 8 pounds -Is capable of composting -Is accepted in curbside recycling Printed on the bag is the minimum percentage of post-consumer content 	<ul style="list-style-type: none"> -Contains no old growth fiber -100% recyclable and contains a minimum of 40% post-consumer recycled content -Displays the words 'reusable' in a highly visible area -Is capable of composting -Is accepted in curbside recycling 	<ul style="list-style-type: none"> -Contains no old grown fiber -100% recyclable and contains a minimum of 40% post-consumer recycled content -Displays the words "reusable" and "recyclable" in a highly visible area
Exemptions for health or safety, financial hardships, or others	<ul style="list-style-type: none"> -WIC/Cal Special Supplemental Food Programs -Product/Produce bags 	<ul style="list-style-type: none"> -Restaurant take-out can use plastic bags (liquids) -Financial hardship: WIC/Cal Special Supplemental Food Program -Product/Produce bags 	<ul style="list-style-type: none"> -Restaurant take-out can use plastic bags (liquids) -Financial hardship: WIC/Cal Special Supplemental Food Program -Product/Produce bags 	<ul style="list-style-type: none"> -Restaurants -WIC (Cal Special Supplemental Food Program) -Product/Produce bags 	<ul style="list-style-type: none"> -Undue hardships
Type of incentive to encourage the use of reusable bags	<ul style="list-style-type: none"> -Prohibits single use carryout bags at point of sale, authorizes store to sell recycleable paper bags and/or reusable bag. 	<ul style="list-style-type: none"> -\$.10 fee/sale of paper bags -City provided reusable bags during lead up and post implementation 	<ul style="list-style-type: none"> -\$.10 fee/sale of paper bags -City provided 25,000 reusable bags during the education period 	<ul style="list-style-type: none"> -\$.10 fee/sale of paper bags 	<ul style="list-style-type: none"> N/A

ISSUE	SB405 (Failed 2013)	City of Solana Beach	City of Santa Monica	City of Long Beach	City of Manhattan Beach
Ban applies to all plastic bags or those of a certain type/thickness	-Exemption for restaurant and take-out bags -Product/Produce bags exempted -Prescription medication bags exempted.	-Restaurant and take-out bags exempted -Product/Produce bags exempted -Any plastic bag less than 2.25 mil thick	-Restaurant and take-out bags exempted -Product/Produce bags exempted -Any plastic bag less than 2.25 mil thick	-Restaurant take-out bags exempted -Product/Produce bags exempted	-Produce bags exempted
Enforcement provisions	-Yes (fines)	-Yes (fines)	-Yes (fines)	-Yes (fines)	-No
Requirement for businesses to keep statistics to determine the effectiveness	Inspections delegated to Department of Resources, Recycling & Recovery	-No	-Yes	-Yes	-No
Environmental Clearance	Necessary Env Clearances	Neg Declaration	EIR	Regional EIR	Neg Declaration



Edwin M. Lee
Mayor

Department of Public Health

Barbara A. Garcia, MPA
Director of Health

Tomás J. Aragón, MD, DrPH
Health Officer

February 8, 2013; Updated: February 10, 2013

Attachment D

To: Eileen Shields, Public Health Information Officer
From: Tomás J. Aragón, MD, DrPH, Health Officer
Re: Klick J, Wright JD. Grocery Bag Bans and Foodborne Illness. U of Penn, Inst for Law & Econ Research Paper No. 13-2. November 2, 2012. Available from <http://ssrn.com/abstract=2196481>. Accessed on February 7, 2013.

This memo is to respond to a recent unpublished¹ research paper concluding that the San Francisco ban on plastic bags has led to an increase in bacterial foodborne illnesses and deaths. This paper is from Jonathan Klick and Joshua D. Wright from the University of Pennsylvania Institute for Law & Economics. Based on our review of this paper, and our disease surveillance and death registry data, the Klick & Wright's conclusion that San Francisco's policy of banning of plastic bags has caused a significant increase in gastrointestinal bacterial infections and a "46 percent increase in the deaths from foodborne illnesses" is not warranted.

Here are some of the limitations of their study:

- The Klick & Wright study is classified as an ecological study; that is, if factor A (reusable bags) increased in a location, and then factor B (gastrointestinal bacterial infections) increase in the same location, therefore, factor A caused factor B. Drawing causal conclusions from this type of study is called an "ecological fallacy."² The basic study flaw is that persons that use reusable bags frequently may not be the same persons that were diagnosed with gastrointestinal bacterial infections in their study. This is the reason epidemiologists will not use ecological studies to test causal hypotheses. At best, ecologic studies raise epidemiologic causal hypotheses but cannot test them.
- In testing causal hypotheses, it is necessary to measure the outcome (gastrointestinal infections) *and* exposure to the putative cause (reusable bags) *in the same persons*. Because of their study design, this was not possible.
- In testing causal hypotheses, it is necessary to "control for" alternative causal explanations (called "confounders"). Because of their study design, this was not possible. For example, gastrointestinal bacterial infections are not only caused from contaminated food, but also from contaminated water, improper food handling or preparation, or from person-to-person spread (such as sexual activity, especially in men who have sex with men). In any causal study, investigators always adjust for the "usual suspects."
- The authors use emergency department (ED) data to represent infection incidence in San Francisco. People with these infections seek many sources of care, including urgent care, their own doctors, and no care, as well as going to the ED. So ED data are very incomplete. By California law, selected laboratory-confirmed diagnoses are reported to the health department. Our disease registry is the proper basis for surveillance of microbiological data on these infections in our population. The counts and rates of these infections fluctuate over time.

Table 1: San Francisco Resident Deaths from ICD-10 Codes A00–A09

ICD-10	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total
A021	0	0	0	1	0	0	0	0	0	0	1
A047 ^a	3	3	8	3	10	8	18	18	15	25	111
A048	0	0	0	0	0	0	2	3	0	0	5
A049	0	0	0	0	0	0	1	1	0	0	2
A081	0	0	0	0	1	0	0	0	0	0	1
A084	0	1	0	0	0	2	0	1	0	0	4
A09	0	0	0	0	0	2	0	0	0	0	2
A090 ^b	0	0	0	0	0	0	0	1	4	3	8
A099 ^c	0	0	0	0	0	0	0	0	6	0	6
Total	3	4	8	4	11	12	21	24	25	28	140
A047 ^a	3	3	8	3	10	8	18	18	15	25	111
Not A047	0	1	0	1	1	4	3	6	10	3	29

^a A047 Enterocolitis due to *Clostridium difficile*

^b A090 Other and unspecified gastroenteritis and colitis of infectious origin

^c A099 Gastroenteritis and colitis of unspecified origin

From our surveillance data, there has been an increase in campylobacteriosis, no increase in salmonellosis, and no increase in enterotoxigenic *Escherichia coli* (Appendix: Figures 1 and 2). Interpreting these changes is not straightforward. The epidemiology of enteric pathogens in San Francisco differs compared to surrounding counties because we are an urban center with a larger population of ethnic immigrants and men who have sex with men (MSM).³ Research studies need to adjust for these population differences.

- The authors analyze deaths due to ICD-10 cause of death codes A00-A09 (intestinal infectious diseases). From 2001 through 2010 San Francisco had a total of 140 deaths from these causes. However, 111 of them (79%) were for code A047 (Enterocolitis due to *Clostridium difficile*). These infections have indeed increased in San Francisco since 2005 (before the ban) (Table 1). Toxin-producing *C. difficile* causes enterocolitis through overgrowth when exposed to antibiotics, most commonly in hospitalized patients. However, in recent years we have seen an unexplained increase of *C. difficile* enterocolitis in the United States, Europe, and Canada. The increase in San Francisco probably reflects this international increase. Foodborne exposures is not yet an established cause of *C. difficile* enterocolitis, but is an active area of research.^{4 5}

For these reasons, the authors should not have included *C. difficile* deaths in their analysis. Without *C. difficile*, there were a total of 29 deaths in these codes over 10 years through 2010. So their analysis of deaths, and costs due to deaths, is completely invalid as evidence for their argument about reusable bags.

¹This paper has not been submitted for rigorous scientific peer review and publication.

²Piantadosi S, Byar DP, Green SB. The ecological fallacy. *Am J Epidemiol.* 1988 May;127(5):893-904. Review. PubMed PMID: 3282433.

³Aragón TJ, Vugia DJ, Shallow S, Samuel MC, Reingold A, Angulo FJ, Bradford WZ. Case-control study of shigellosis in San Francisco: The role of sexual transmission and HIV infection. *Clin Infect Dis.* 2007 Feb 1;44(3):327-34. Epub 2006 Dec 29. PubMed PMID: 17205436.

⁴Rupnik M, Wilcox MH, Gerding DN. *Clostridium difficile* infection: New developments in epidemiology and pathogenesis. *Nat Rev Microbiol.* 2009 Jul;7(7):526-36. doi: 10.1038/nrmicro2164. Review. PubMed PMID: 19528959.

⁵Gould LH, Limbago B. *Clostridium difficile* in food and domestic animals: A new foodborne pathogen? *Clin Infect Dis.* 2010 Sep 1;51(5):577-82. doi: 10.1086/655692. Review. PubMed PMID: 20642351.

Klick & Wright's approach of asking about the (potential) health effects of a policy change is a valid and important public health research approach we call "Health Impact Assessments" (HIAs).⁶ ⁷ The San Francisco Department of Public Health is a strong proponent and user of the HIA approach.⁸ ⁹ ¹⁰ We recommend that the authors consider using the Institute of Medicine HIA framework and, for this topic, build strong research collaborations with experts in public health and infectious disease epidemiology. In San Francisco, we are vigilant in monitoring and studying infectious diseases. San Francisco is one of selected counties participating in the Centers for Disease Control and Prevention (CDC) California Emerging Infections Program (CEIP), which conducts infectious disease epidemiologic research through well-designed, rigorous scientific studies. CEIP has conducted research studies of foodborne illness for many years in the San Francisco Bay Area and has contributed significantly to our scientific understanding of foodborne illness epidemiology (see <http://www.ceip.us/foodnet.htm>).

Finally, the idea that widespread use of reusable bags may cause gastrointestinal infections if they are not regularly cleaned is plausible. However, the hypothesis that there is a significant increase in gastrointestinal foodborne illnesses and deaths due to reusable bags has not been tested, much less demonstrated in this study. It would be a disservice to San Francisco residents and visitors to alarm them by claiming that it has been. It could be useful, however, to remind people to use safe food-handling practices, including maintaining the cleanliness of everything they use to transport, handle, and prepare food.

⁶Health impact assessment is a systematic process that uses an array of data sources and analytic methods and considers input from stakeholders to determine the potential effects of a proposed policy, plan, program, or project on the health of a population and the distribution of those effects within the population. Health impact assessment provides recommendations on monitoring and managing those effects

⁷Institute of Medicine, Committee on Health Impact Assessment; National Research Council. Improving Health in the United States: The Role of Health Impact Assessment. The National Academies Press, 2011. Available from: http://www.nap.edu/catalog.php?record_id=13229

⁸Bhatia R, Corburn J. Lessons from San Francisco: Health impact assessments have advanced political conditions for improving population health. *Health Aff (Millwood)*. 2011 Dec;30(12):2410-8. doi: 10.1377/hlthaff.2010.1303. PubMed PMID: 22147870.

⁹Bhatia R, Wernham A. Integrating human health into environmental impact assessment: An unrealized opportunity for environmental health and justice. *Environ Health Perspect*. 2008 Aug;116(8):991-1000. doi: 10.1289/ehp.11132. Review. PubMed PMID: 18709140; PubMed Central PMCID: PMC2516559.

¹⁰Bhatia R. Protecting health using an environmental impact assessment: A case study of San Francisco land use decisionmaking. *Am J Public Health*. 2007 Mar;97(3):406-13. Epub 2007 Jan 31. PubMed PMID: 17267726; PubMed Central PMCID: PMC1805033.

Figure 1. Cases of Campylobacteriosis, Enterotoxigenic E. coli, and Salmonellosis, San Francisco, 1986-2011

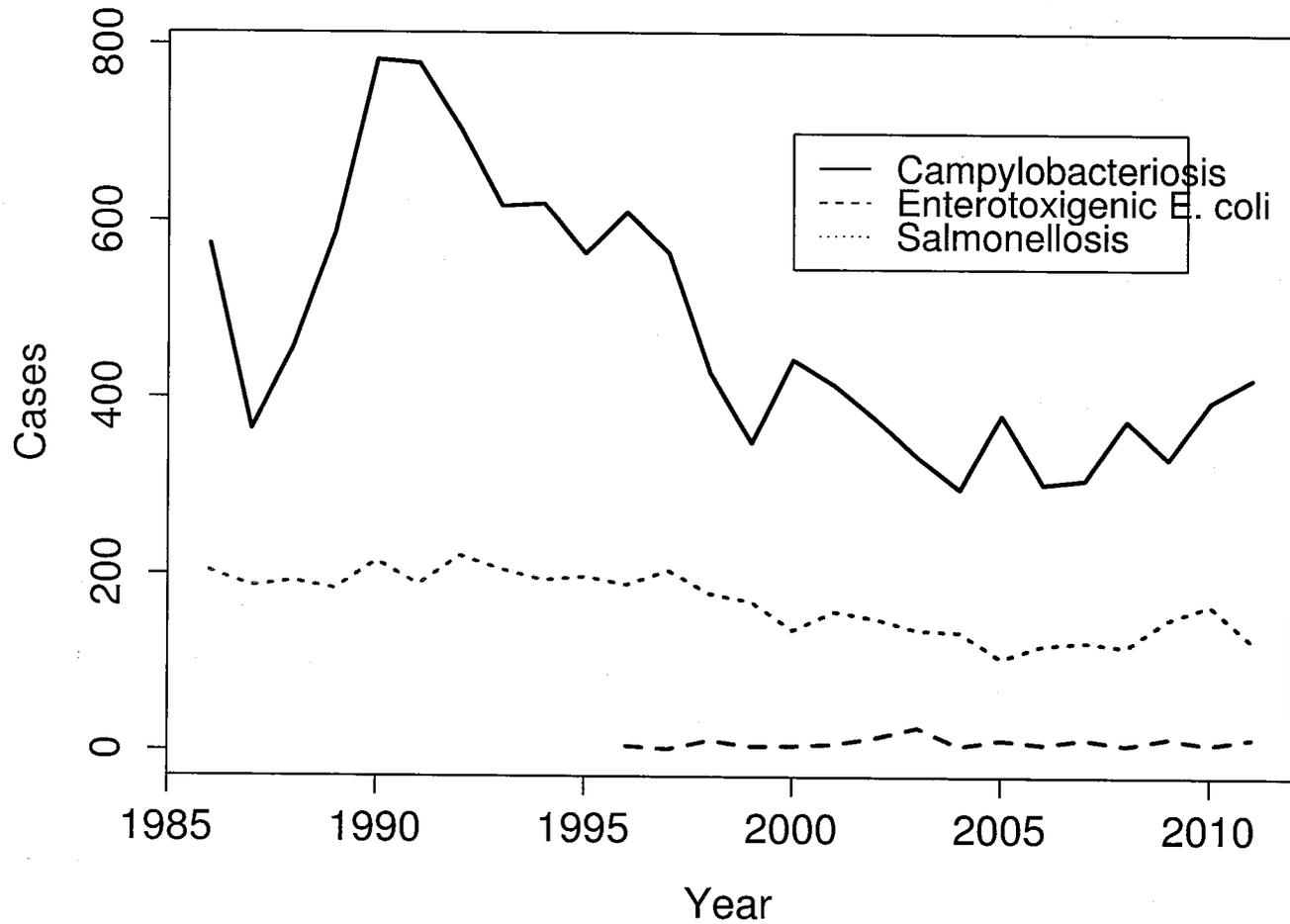
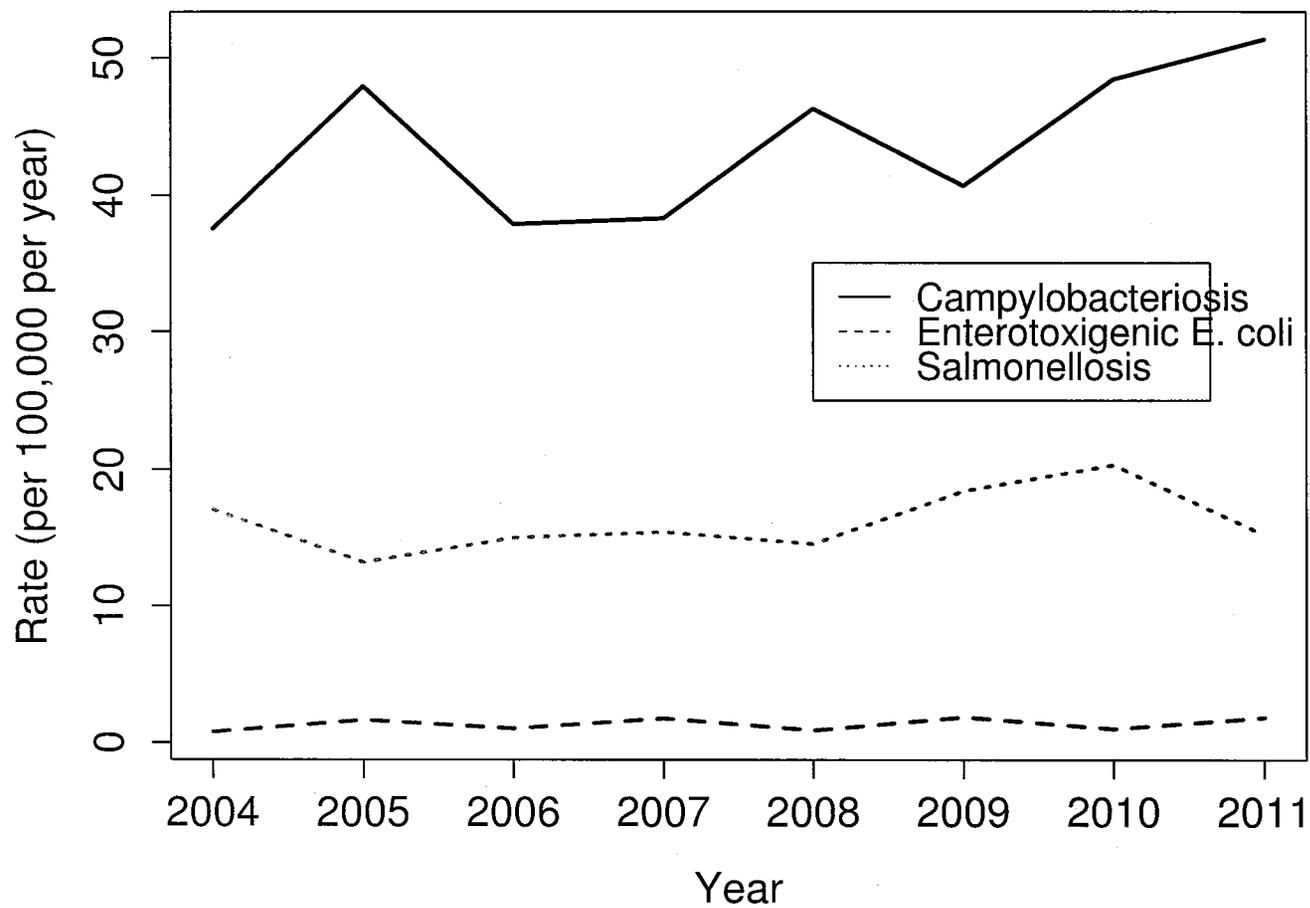


Figure 2. Rates of Campylobacteriosis, Enterotoxigenic E. coli, and Salmonellosis, San Francisco, 2004-2011



Attachment E

**ORDINANCE NO. 3553
ORDINANCE OF THE MARIN COUNTY BOARD OF SUPERVISORS
REGULATING RETAIL ESTABLISHMENTS PROVISION OF SINGLE-USE CARRY-OUT
BAGS**

THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS.

WHEREAS, the use of all single-use shopping bags (plastic, paper, biodegradable) have severe environmental impacts, including greenhouse gas (GHG) emissions, litter, harm to wildlife, ground level ozone formation, atmospheric acidification, water consumption and solid waste generation; and

WHEREAS, there are approximately forty (40) retail establishments or stores as defined herein in the unincorporated portion of Marin County, most of which provide single-use, disposable carry-out bags to their customers; and

WHEREAS, many of these single-use carry-out bags are made from plastic or other material that does not readily decompose; and

WHEREAS, approximately Nineteen Billion (19,000,000,000) single-use plastic bags are used annually in California but less than 5% are recycled; and

WHEREAS, numerous studies have documented the prevalence of single-use plastic carry-out bags littering the environment, blocking storm drains and fouling beaches; and

WHEREAS, the County of Marin's taxpayers must bear the brunt of the clean-up costs of this litter; and

WHEREAS, plastic bags are a significant source of marine debris and are hazardous to marine animals and birds which often confuse single-use plastic carry-out bags for a source of food resulting in injury and death to birds and marine animals; and

WHEREAS, of all single-use bags, single-use plastic bags have the greatest impacts on litter and marine life; and

WHEREAS, the use of single-use paper bags result in greater (GHG) emissions, atmospheric acidification, water consumption, and ozone production than single-use plastic bags; and

WHEREAS, from an overall environmental and economic perspective, the best alternative to single-use plastic and paper carry-out bags is a shift to reusable bags; and

WHEREAS, there are several alternatives to single-use carry-out bags readily available in the County of Marin; and

WHEREAS, an important goal of the County is to procure and use sustainable products and services; and

Ordinance No.3553
Page 1 of 5

WHEREAS, it is the County's desire to conserve resources, reduce the amount of GHG emissions, waste, litter and marine pollution and to protect the public health and welfare including wildlife, all of which increase the quality of life for the County's residents and visitors; and

WHEREAS, studies document that banning plastic bags and placing a mandatory charge on paper bags will dramatically reduce the use of both types of bags.

SECTION 2. Chapter 5.46 is hereby added to Title 5 of the Marin County Code to read as follows:

CHAPTER 5.46 DISPOSABLE BAG REDUCTION ORDINANCE

SECTION 5.46.010. DEFINITIONS

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

- (a) "Director" means the Marin County Agricultural Commissioner, or his/her designee.
- (b) "Postconsumer recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
- (c) "Recycled paper bag" means a paper carry-out bag provided by a store to a customer at the point of sale that meets all of the following requirements:
 - (1) (A) Except as provided in subparagraph (B), the paper carry-out bag contains a minimum of 40 percent postconsumer recycled materials.
 - (B) An eight pound or smaller recycled paper bag shall contain a minimum of 20 percent postconsumer recycled material.
 - (2) Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the state.
 - (3) Is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400.
 - (4) Has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the minimum percentage of post-consumer content.
- (d) "Reusable grocery bag" on and after January 1, 2012, means a bag that meets the requirements of Section 5.46.030.
- (e) (1) "Single-use carry-out bag" means a bag made of plastic, paper, or other material, that is provided by a store to a customer at the point of sale and that is not a reusable grocery bag that meets the requirements of 5.46.030.
- (2) A single-use carry-out bag does not include either of the following:
 - (A) A bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the California Business and Professions Code to a customer purchasing a prescription medication.

Ordinance No.3553
Page 2 of 5

- (B) A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag or reusable bag.
- (f) "Store" means any of the following retail establishments located within the unincorporated area of the County:
- (1) A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;
 - (2) A store of at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or
 - (3) A drug store, pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.

SECTION 5.46.020. CARRY-OUT BAG REGULATION

- (a) On and after January 1, 2012, a store shall not provide a single-use carry-out bag to a customer at the point of sale, except as provided in this section.
- (b) (1) A store shall make reusable bags available for purchase by a customer.
- (2) (A) A store may provide reusable bags to customers at no cost, until December 31, 2012.
- (B) On and after January 1, 2013, a store may provide reusable bags to customers at no cost only when combined with a time-limited store promotional program.
- (C) Notwithstanding any other law, on and after January 1, 2012, a store shall provide a customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and a customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code, with a reusable bag or a recycled paper bag at no cost at the point of sale.
- (D) On and after January 1, 2012, a store may provide to a customer a recycled paper bag upon request but shall charge the consumer, except as provided in subdivision (C), a reasonable cost, but not less than five cents.

SECTION 5.46.030. REUSABLE GROCERY BAGS

- (a) On and after January 1, 2012, a reusable grocery bag provided by a store shall meet all of the following requirements:
- (1) Be designed and manufactured to withstand repeated uses over a period of time.
 - (2) Be made from a material that can be cleaned and disinfected.

Ordinance No.3553
Page 3 of 5

- (3) Shall not contain lead, cadmium, or any other heavy metal in toxic amounts.

SECTION 5.46.040. RECOGNITION OF STATEWIDE IMPORTANCE

The County of Marin recognizes carry-out bag regulation as a matter of statewide interest and concern and is best applied uniformly throughout the state. In the absence of statewide regulation the County of Marin believes it is in the best interest of the County of Marin to regulate carry-out bags.

SECTION 5.46.050. ENFORCEMENT AND NOTICE OF VIOLATIONS

- (a) The Agricultural Commissioner, or his or her designee, shall have primary responsibility for enforcement of this Chapter. The Agricultural Commissioner is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this Chapter, including, but not limited to, inspecting any store's premises to verify compliance.
- (b) Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction.
- (c) The County may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- (d) The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in this Chapter shall preclude any person from pursuing any other remedies provided by law.

SECTION 5.46.060. PENALTIES FOR VIOLATIONS

- (a) Violations of this ordinance shall be punishable as follows:

Plastic Bag Compliance Fee Matrix

Violations	Scanner Number		
	1-3	4-9	10 or more
First	Written Warning Notice		
Second	\$135.00	\$200.00	\$220.00
Thrd	\$185.00	\$250.00	\$270.00
Fourth	\$270.00	\$400.00	\$440.00
Fifth	Administrative Civil Penalty or Referral to DA		

- (1) Each violation of this Chapter shall be considered a separate offense.

SECTION 3. Any provision of the Marin County Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE. This ordinance shall be and is hereby declared to be in full force and effect as of January 1, 2012 from and after the date of its passage and shall be published once before the expiration of fifteen (15) days after its passage, with the names of the supervisors voting for and against the same in the *Marin Independent Journal*, a newspaper of general circulation published in the County of Marin.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin held on this 25th day of January, 2011, by the following vote:

AYES: SUPERVISORS Judy Arnold, Charles McGlashan, Steve Kinsey,
Susan L. Adams

NOES: NONE

ABSENT: SUPERVISOR Harold C. Brown, Jr.



PRESIDENT, BOARD OF SUPERVISORS

ATTEST:



CLERK

Ordinance No.3553
Page 5 of 5

ORDINANCE 435

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SOLANA BEACH, CALIFORNIA, ADDING CHAPTER
5.01 OF THE SOLANA BEACH MUNICIPAL CODE, ALL
RELATED TO PLASTIC BAG USE REDUCTION**

WHEREAS, about nineteen billion (19,000,000,000) single use bags are used annually in California but less than 5% are recycled; and

WHEREAS, there are approximately 461 licensed retail businesses in the City of Solana Beach ("the City"); and,

WHEREAS, approximately 160 of these licensed retail businesses provide single use, disposable carry-out bags to their customers; and

WHEREAS, about 6.5 million single use carry-out bags are distributed by licensed retail establishments in the City each year; and

WHEREAS, most of these single use carry out bags are made from plastic or other material that does not readily decompose; and

WHEREAS, numerous studies have documented the prevalence of single use plastic carry out bags littering the environment, blocking storm drains, fouling beaches and the ocean environment; and

WHEREAS, the City's taxpayers must bear the brunt of the clean-up costs; and

WHEREAS, plastic bags are a significant source of marine debris and are hazardous to marine animals and birds which often confuse single use plastic carry out bags for a source of food. The ingestion of these bags can result in reduced nutrient absorption and death to birds and marine animals; and

WHEREAS, single use paper bags are made from renewable resources and are much less environmentally problematic than single use plastic bags, yet they do require environmental resources to manufacture, transport, and recycle and/or dispose of; and

WHEREAS, from an overall environmental and economic perspective, the best alternative to single use plastic carryout bags is a major shift to reusable bags; and

WHEREAS, this ordinance permits stores to implement incentives to generate a shift in consumer behavior toward the use of reusable bags and significantly reducing single-use bag consumption; and

WHEREAS, there are several alternatives to single-use carry out bags readily available in the City, including reusable bags produced from sustainable materials; and

WHEREAS, it is the City's desire to whenever possible conserve resources, reduce the amount of green house gas emissions, waste, beach litter and marine pollution and to protect the public health and welfare including local wildlife, all of which increase the quality of life for Solana Beach's residents and visitors; and

WHEREAS, the City Council of the City of Solana Beach conducted a noticed public hearing regarding the proposed ordinance at their regular scheduled meeting of April 25, 2012. The public hearing was advertised pursuant to applicable law and testimony was invited and received; and

WHEREAS, the proposed ordinance is exempt from review under the California Environmental Quality Act (CEQA) based upon the commonsense exemption under 14 CCR 15061(b)(3) and the reasoning in the California Supreme Court case *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal. 4th 155 (2011); and

WHEREAS, even though the proposed ordinance is exempt from CEQA, an Initial Environmental Study was prepared in an abundance of caution under the applicable provisions of CEQA. Based upon this study it was determined that the proposed ordinance is not an action involving any significant impacts upon the environment, and a Negative Declaration was prepared and is hereby adopted; and

WHEREAS, the proposed ordinance does not preempt compliance with the California Retail Food Code or any other state or federal law.

WHEREAS, the City Council desires to add Chapter 5.01 to the Solana Beach Municipal Code, entitled "Single-Use Carryout Bag Use Reduction" to provide for restrictions on the use of plastic bags within the City.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SOLANA BEACH DOES ORDAIN AS FOLLOWS:

Section 1. Section 5.01.010 of the Solana Beach Municipal Code is hereby added as follows:

Section 5.01.010 Definitions

(a) "Food Vendor" means any person or establishment in the City of Solana Beach, that provides prepared food for public consumption on or off its premises and includes, without limitation, any store, shop, sales outlet, restaurant, Grocery Store, delicatessen, or catering truck or vehicle.

(b) "Grocery Store" means any Retail Establishment that sells groceries, fresh, packaged, canned, dry, prepared or frozen food or beverage products and similar items, and includes, without limitation, supermarkets, convenience stores, liquor stores and gasoline stations.

- (c) "Non-Profit Vendor" means a recognized tax exempt organization which provides goods as a part of its services.
- (d) "Paper Bag Cost Pass-Through" means the cost which may be collected by retailers from their customers when providing a Recycled Paper Bag.
- (e) "Pharmacy" means any retail store, where prescriptions, medications, controlled or over the counter drugs, personal care products or health supplement goods or vitamins are sold, but excluding any licensed pharmacy located within a hospital.
- (f) "Product Bag" means any bag, provided to a customer for use within a Retail Establishment to assist in the collection or transport of products such as produce, bulk items, meat, poultry, dry cleaning or laundry, to the point-of-sale within the Retail Establishment.
- (g) "Recyclable Paper Bag" means a paper bag that meets all of the following requirements: (1) contains no old growth fiber; (2) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) postconsumer recycled material; (3) is capable of composting, consistent with the timeline and specifications of the American society of Testing and Materials (ASTM) Standard D6400; (4) is accepted for recycling in curbside programs in the City; (5) has printed on the bag the name of the manufacturer, the location where the bag was manufactured, and the percentage of postconsumer recycled material used; and (6) displays the word "Recyclable" in a highly visible manner on the outside of the bag.
- (h) "Retail Establishment" means any person, including any corporation, partnership, business, facility, vendor, organization or individual that sells or provides merchandise, goods or materials, including, without limitation, clothing, food, or personal items of any kind, directly to a customer; Retail Establishment includes, without limitation, any Grocery Store, department store, hardware store, Pharmacy, liquor store, restaurant, catering truck, convenience store, and any other retail store or vendor.
- (i) "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; (2) has a minimum volume of 15 liters; (3) is machine washable or is made from a material that can be cleaned or disinfected; (4) does not contain lead, cadmium, or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags; (5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and (6) if made of plastic, is a minimum of at least 2.25 mils thick.

(j) "Single-Use Plastic Carry-Out Bag" means any bag that is less than 2.25 mils thick and is made predominately of plastic derived from petroleum or from bio-based sources, such as corn or other plant sources provided by a Retail Establishment at the point of sale to a customer for use to transport or carry away purchases, such as merchandise, goods or food, from the retail establishment. Single-Use Plastic Carry-Out Bags do not include Product Bags as defined in this Chapter.

(k) "Vendor" means any store, shop, restaurant, sales outlet or other commercial establishment located within or doing business within the City of Solana Beach, which provides perishable or nonperishable goods.

Section 2. Section 5.01.020 of the Solana Beach Municipal Code is hereby added as follows:

5.01.020 Prohibitions

(a) No Retail Establishment in the City shall provide a Single-Use Plastic Carry-Out Bag to a customer at the point of sale unless otherwise permitted pursuant to Section 5.01.040.

(b) No Retail Establishment in the City shall provide any type of bag to a customer at the point of sale except a Reusable Bag or a Recycled Paper Bag unless otherwise permitted pursuant to Section 5.01.040.

(c) No person shall distribute a Single-Use Plastic Carry-Out Bag at any City Facility, City-managed concession, City sponsored event, or City permitted event unless otherwise permitted pursuant to Section 5.01.040.

(d) No person shall distribute a Single-Use Plastic Carry-Out Bag at any Farmers Market within the City of Solana Beach.

(e) Nothing in this Chapter shall prohibit the provision of bags, including including Single-Use Plastic Carry-Out Bags, as may be necessary to comply with the California Retail Food Code or any other state or federal law.

Section 3. Section 5.01.030 of the Solana Beach Municipal Code is hereby added as follows:

5.01.030 Incentives for Use of Reusable Bags

(a) Affected Retail Establishments are strongly encouraged to provide incentives for the use of Reusable Bags through passing through the cost of recycled bags, through credits or rebates for customers that use Reusable Bags, or through education. Such incentives may include one or more of the following:

(1) Paper Bag Cost Pass-Through

- A. Subject to subsection (B) of this Section, an affected Retail Establishment may provide a Recycled Paper Bag to a customer if it collects a Paper Bag Cost Pass-through from the customer for each Recycled Paper Bag provided.
- B. The Paper Bag Cost Pass-through shall not be less than 10 cents unless a store has previously submitted a full accounting to the City, signed by a responsible manager under penalty of perjury that identifies all costs including bag purchase, shipping, handling and storage, showing a lesser actual cost to the store for each bag. Any such accounting shall expire one year from the date of original submission and a new accounting would need to be resubmitted.
- (2) Rebate. An affected Retail Establishment may rebate or otherwise reimburse a customer for use of a Reusable Bag up to 5 cents per Reusable Bag per transaction.
- (3) Each Retail Establishment is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging customers to use reusable bags.

Section 4. Section 5.01.040 of the Solana Beach Municipal Code is hereby added as follows:

5.01.040 Exemptions

Notwithstanding the requirements contained in Section 5.01.020:

(a) A Retail Establishment shall provide a customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and a customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code, with a reusable bag or a recycled paper bag at no cost at the point of sale.

(b) The City Manager, or his or her designee, may exempt an Affected Retail Establishment, Vendor or Non-Profit Vendor 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 there are no acceptable alternatives to Plastic Carry-Out Bags for reasons which are unique to the Retail Establishment, Vendor or Non-Profit Vendor;
2. Situations where compliance with the requirements of this Code would deprive a person of a legally protected right."

(c) The provision of Product Bags as defined in this Chapter is not prohibited.

Section 5. Section 5.01.050 of the Solana Beach Municipal Code is hereby added as follows:

5.01.050 Remedies.

(a) The City Manager, or his or her designee, is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this Chapter, including, but not limited to, inspecting any retail establishment's premises to verify compliance.

(b) Any person violating this Section shall be guilty of an infraction, which shall be punishable by a fine not exceeding two hundred fifty dollars, or a misdemeanor, which shall be punishable by a fine not exceeding one thousand dollars, or by imprisonment in the County Jail for a period not exceeding six months or by both such fine and imprisonment.

(c) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

(d) Administrative enforcement of this ordinance shall proceed pursuant to Solana Beach Municipal Code Chapter 1.18.

(e) Each violation of this Chapter shall be considered a separate offense.

(f) The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in this Chapter shall preclude any person from pursuing any other remedies provided by law.

(g) Notwithstanding any other provision of this Ordinance, this Ordinance may be enforced through any remedy as provided for in this Section upon its Effective Date.

Section 6. Chapter 5.01 of the Solana Beach Municipal Code shall become effective and operative as to: 1) Grocery Stores, Food Vendors, Restaurants, Pharmacies and City facilities three (3) months after its adoption by the City Council, and 2) all remaining Affected Retail Establishments, Vendors and Non-Profit Vendors six (6) months after its adoption by the City Council.

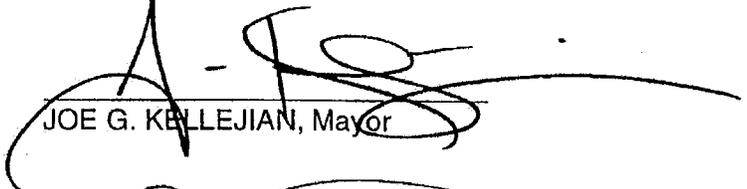
Section 7. Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

Section 8. The City Council of the City of Solana Beach hereby declares that should any section, paragraph, sentence, phrase, term or word of this Ordinance, hereby adopted, be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared invalid.

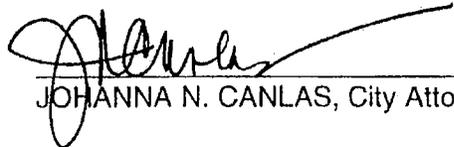
INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Solana Beach, California, on the 25th day of April, 2012; and

THEREAFTER ADOPTED at a regular meeting of the City Council of the City of Solana Beach, California, on the 9th day of May, 2012, by the following vote:

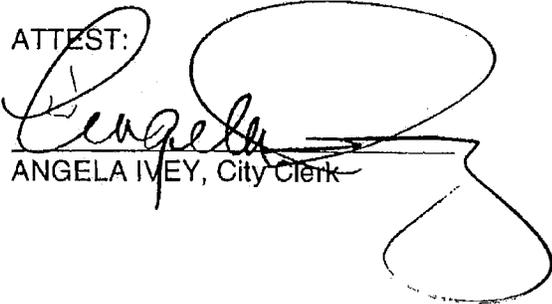
AYES: Councilmembers – Kellejian, Roberts, Nichols, Heebner
NOES: Councilmembers – None
ABSTAIN: Councilmembers – None
ABSENT: Councilmembers – Campbell


JOE G. KELLEJIAN, Mayor

APPROVED AS TO FORM:


JOHANNA N. CANLAS, City Attorney

ATTEST:

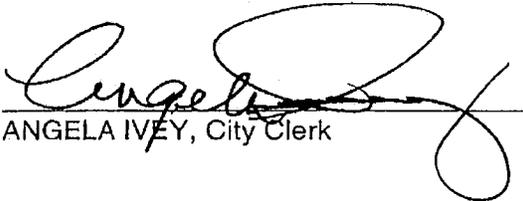

ANGELA IVEY, City Clerk



CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) SS.
CITY OF SOLANA BEACH)

I, ANGELA IVEY, City Clerk of the City of Solana Beach, California, DO HEREBY CERTIFY that the foregoing is a full, true and correct copy of **ORDINANCE 435** adding chapter 5.01 of the Solana Beach Municipal Code, all related to Plastic Bag Use Reduction as duly introduced on April 25, 2012 and adopted on May 9, 2012, a regular meeting, by the City Council of Solana Beach. This Ordinance has been published as required pursuant to law and the original is filed in the City Clerk's Office. (GC 40806).


ANGELA IVEY, City Clerk

Date of this Certification 5-16-12

ORDINANCE 437

AN ORDINANCE OF THE CITY OF SOLANA BEACH, CALIFORNIA, CLARIFYING THE CITY'S PROHIBITION OF PLASTIC CARRY-OUT BAGS AS IT RELATES TO RESTAURANTS AND ADDING SUBSECTION 5.01.040(d) TO THE SOLANA BEACH MUNICIPAL CODE

WHEREAS, on April 25, 2012, the City Council introduced Ordinance 435, which was adopted at the second reading on May 9, 2012.

WHEREAS, certain industry representatives threatened litigation against the City if restaurants are not explicitly exempted from the ordinance citing alleged preemption by the California Retail Food Code; and

WHEREAS, although the merits of this argument have yet to be fully litigated, the City Council has directed Staff to amend the ordinance in order to avoid potential litigation.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SOLANA BEACH DOES ORDAIN AS FOLLOWS:

Section 1. Beginning with subsection (h), Section 5.01.010 of the Solana Beach Municipal Code is hereby amended to read as follows:

Section 5.01.010 Definitions

(h) "Restaurant" means any person or establishment doing business within the City of Solana Beach that provides prepared food or beverages for consumption on or off its premises such as a restaurant, café, bakery, grocery or convenience store food counter or delicatessen, or catering truck vehicle.

(i) "Retail Establishment" means any person, including any corporation, partnership, business, facility, vendor, organization or individual that sells or provides merchandise, goods or materials, including, without limitation, clothing, food, or personal items of any kind, directly to a customer; Retail Establishment includes, without limitation, any Grocery Store, department store, hardware store, Pharmacy, liquor store, restaurant, catering truck, convenience store, and any other retail store or vendor.

(j) "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; (2) has a minimum volume of 15 liters; (3) is machine washable or is made from a material that can be cleaned or disinfected; (4) does not contain lead, cadmium, or any

other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags; (5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and (6) if made of plastic, is a minimum of at least 2.25 mils thick.

(k) "Single-Use Plastic Carry-Out Bag" means any bag that is less than 2.25 mils thick and is made predominately of plastic derived from petroleum or from bio-based sources, such as corn or other plant sources. Single-Use Carry-Out Bags do not include Product Bags as defined in this Chapter.

(l) "Vendor" means any store, shop, restaurant, sales outlet or other commercial establishment located within or doing business within the City of Solana Beach, which provides perishable or nonperishable goods.

Section 2. Section 5.01.040(d) of the Solana Beach Municipal Code is hereby added to read as follows:

(d) The provision of Single-Use Plastic Carry-Out Bags at Restaurants as defined in this Chapter is not prohibited.

Section 3. CEQA Finding. The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment. The Ordinance merely clarifies existing Ordinance No. 435, expressly exempting restaurants from the single use plastic carry-out bag ban. It is therefore exempt from California Environmental Quality Act review pursuant to 14 California Code of Regulations Section 15061(b)(3) and the reasoning in the California Supreme Court case *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal. 4th 155 (2011).

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 5. Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Solana Beach, California, on the 11th day of July 2012; and

THEREAFTER ADOPTED at a regular meeting of the City Council of the City of Solana Beach, California, on the ___ day of ____, 2012, by the following vote:

AYES: Councilmembers –
NOES: Councilmembers –
ABSTAIN: Councilmembers –
ABSENT: Councilmembers –

JOE G. KELLEJIAN, Mayor

APPROVED AS TO FORM:

ATTEST:

JOHANNA N. CANLAS, City Attorney

ANGELA IVEY, City Clerk

Attachment 2

Encinitas City Council Meeting
November 20, 2013

Single-Use Carry-Out Bags

Report and Recommendation
Encinitas Environmental Commission

Single-Use Carry-Out Bags

Presentation Overview:

- ❖ Environmental Commission's Process & Findings
 - Background
 - Single Use Bag Issues
 - Key Elements of Single-Use Bag Ordinances
 - Identified options
 - Commission's recommendation
- ❖ Staff Update
- ❖ Council Discussion and Direction

Single-Use Carry-Out Bags

Background:

- ❖ Single-use carry-out bag reduction measures of interest for some time
- ❖ Development of Single-Use Bag Ordinance Elements part of Commission's FY 13/14 Work plan.
- ❖ Environmental Com Ad-hoc Committee established
- ❖ Reviewed other California cities' ordinances
- ❖ Environmental Commission approved report & recommendation at their August 8, 2013 meeting

Single-Use Carry-Out Bags

Single-Use Plastic Bags Issues:

- Plastic bags in waste stream
- Short useful lifespan for consumers
- Low recycling rate
- Source of litter
- Improperly discarded, ends up in storm drains, waterways and ocean



Single-Use Carry-Out Bags

Key Elements of Single Use Bag Reduction Ordinances:

- Applies to grocery stores, drugs stores and convenience stores
- Phased-in implementation
- Some exemptions non-profits or special circumstances
- Require paper bags to contain recycled content
- Fee for paper bags of 10¢ to 25¢
- Excludes restaurants
- Enforcement provisions

Single-Use Carry-Out Bags

Commissions' Identified Options:

1. Consideration of Single-Use Carry-Out Bag Reduction Ordinance with primary components:
 - Phase-in implementation
 - Grocery store, pharmacies & large retailer - 6 months
 - All other retail establishments & farmers markets - 12 months
 - Recycled-content paper bag pass-through fee of not less than 10¢ retained by retailer
 - Exemption for produce & bulk product plastic bags, small product bags (review in 24 months)
 - Exemption for restaurants, non-profit organizations utilizing donated bags.

Single-Use Carry-Out Bags

Commissions' Identified Options - continued:

2. Actively support state-wide plastic single-use carry-out bag reduction legislation

Single-Use Carry-Out Bags

Commission's Recommendation:

- Environmental Commission strongly recommends development of single-use carry-out bag reduction ordinance

Single-Use Carry-Out Bags

State and regional update:

- ❖ SB 405 (Padilla) legislation planned reintroduction
- ❖ City of San Diego's Rule/Economic Development Committee

Single-Use Carry-Out Bags

Staff Recommendation:

- Receive Encinitas Environmental Commission report and provide direction.

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