



San Rafael

Agenda Item No: _____

Meeting Date: February 18, 2014

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Manager's Office

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City Manager Approval: _____

SUBJECT: CONSIDERATION OF AN ORDINANCE ESTABLISHING SAN RAFAEL MUNICIPAL CODE CHAPTER 10.94 REGULATING SINGLE USE CARRYOUT BAGS

RECOMMENDATION:

1. Conduct a public hearing;
2. Adopt resolution certifying a Final Environmental Impact Report (Final EIR) and adopting an EIR Addendum
3. Adopt resolution adopting CEQA Findings of Fact supporting approval of ordinance; and
4. Pass to print an ordinance establishing San Rafael Municipal Code Chapter 10.94 regulating single use carryout bags.

BACKGROUND:

The negative effects on the environment with regard to single use plastic bags is well-documented, and includes hazards to marine life and other wildlife that get caught or entangled in, or ingest plastic bags when littered in the environment. Due to the lightweight nature of plastic bags, and the fact that they are not biodegradable, they easily become litter that resides in the environment for many years. Other effects include covering and clogging storm drains as well as aesthetic effects, and many landfill operators employ full time staff to catch blowing bags and paper before they escape into the environment. The negative effects of single use paper bags include increased greenhouse gas emissions and other pollution resulting from the production and transportation of the bags.

In 2006, the State of California passed AB 2449, which limited local government regulation of plastic bags. It required large grocery stores to have plastic bag recycling receptacles, but precluded cities from requiring a fee for distribution of plastic bags. Although CalRecycle has not been able to gather accurate data, they estimate that less than 5% of plastic bags are currently being recycled. For the past several years, various bills that would have banned grocery stores, convenience stores, and pharmacies from providing plastic bags have been introduced in the State legislature, but none have been adopted. However, there is a renewed interest and possibility of a compromise bill that is expected to be introduced in the legislature again this year.

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

In April 2009 the City Council adopted San Rafael's Climate Change Action Plan (CCAP), which includes Program LF17 directing the City to investigate options for banning non-recyclable single-use items such as plastic bags and polystyrene takeout food containers. In 2011 the City Council adopted the Sustainability Element of the City's General Plan, which includes Policy SU-9 for adoption of a Zero Waste goal and implementation of programs to reduce material consumption and waste generation, with a subsection SU-9h which specifically calls for banning single-use items such as single use carryout bags.

In 2010, the City applied for and received a grant from the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) to fund development of single-use plastics ordinances and facilitate a process involving six Marin jurisdictions. From February to May 2011 a Single-Use Plastics Advisory Committee (SUPAC) process was convened to investigate options for enacting an ordinance in San Rafael that could be utilized by other jurisdictions as well. SUPAC included the cities of Novato, Mill Valley, San Anselmo, Tiburon, and Sausalito, the County of Marin, local businesses, residents, the California Grocers and Restaurants associations, and community members. Based on its findings, SUPAC recommended that the City adopt an ordinance to reduce single-use carryout bags similar to one that was recently adopted by the County.

In July, 2011, the Save the Plastic Bag Coalition filed a lawsuit against the County of Marin, contending that the County could not enact its ordinance without preparing a full Environmental Impact Report. In August 2011, a City Council study session was held to review the SUPAC recommendations and get direction on how staff should move forward on this issue. The Council directed staff to analyze the requirements of the California Environmental Quality Act and the lawsuit against the County consistent with the SUPAC recommendations. The Council further directed staff to start the background work necessary to prepare an ordinance, to conduct research for enforcement, and to consider phasing in all retailers after one year of implementation.

In March 2012, a second City Council study session was held to review the results of the lawsuit against the County and get direction on how staff should proceed. Although the County had won its lawsuit, it was under appeal, and it was uncertain how the higher court would respond. At that time, Council reiterated its desire to adopt a similar ordinance. However, due to the uncertainty of the legal standing of such a ban, Council directed staff to continue to investigate options, to support state-wide legislation, and to proceed with an ordinance to ban expanded polystyrene foam takeout food containers in restaurants and other food service establishments, which was completed and adopted by Council in October of 2012.

On June 24, 2013, the First District Court of Appeals ruled in favor of the County specific to their ordinance in the unincorporated areas of Marin. It was subsequently appealed to the Supreme Court. Meanwhile, City staff worked with the Sustainability Subcommittee of the Council to pursue the City's options. This action resulted in City Manager Nancy Mackle requesting the JPA to develop a "model ordinance" and administer the environmental review (CEQA) process of assessing the model ordinance, which San Rafael and all other participating Marin jurisdictions could utilize in order to accelerate the adoption of a bag ordinance.

The decision to petition the JPA was based on many factors. First, Council had been directing staff to pursue other options, and in consultation with the City Attorney's Office agreed that pursuing an ordinance alone with or without an environmental review had significant staff time and financial cost implications. Second, the JPA's main goal is to promote Zero Waste and provide technical expertise and financial support to cities and towns to do so. Third, other waste collectives in California were starting to do similar work that had been successful and cost-

effective. Fourth, doing a unified environmental review such as this allowed the City and other jurisdictions to address the “cumulative effect” argument brought about by the Save the Plastic Bag Coalition, when multiple jurisdictions in a small geographic area implement a similar ordinance. Fifth, a full environmental review provided the study necessary to apply the ordinance to all retailers within a year, including restaurants, which Council has stated a desire to do consistently since 2011 (see discussion below under section entitled, Environmental Review).

The JPA Board approved of and began an environmental impact report (EIR) process in spring 2013, and released a draft EIR in November. Council held a public hearing on the draft EIR in December 2013 and provided comments to the JPA. The JPA has committed resources to the consultant, Rincon Consultants, to assist San Rafael in being the first city to utilize the EIR to adopt an ordinance locally so that other cities and towns may utilize the materials to more efficiently pass ordinances in their jurisdictions. The JPA Board certified the EIR at their last meeting on January 16, 2014, paving the way for staff to bring forward this ordinance.

ANALYSIS:

A proposed ordinance is presented in Attachment 3 of this staff report. Per the direction of the City Council at the December 2, 2013 City Council hearing on the Draft Environmental Impact Report, the proposed ordinance has been drafted to be essentially the same as Draft EIR Alternative #4 with some minor additions and alterations. It applies to three types of retailers, which amounts to approximately 45 businesses in San Rafael, and to public events such as the Downtown Farmer’s Market Festival, which includes approximately 50-60 covered vendors on an average market day.

The inclusion of public events in the draft ordinance is one of the aforementioned additions, and was decided on in discussions with the City Council Subcommittee on Sustainability and the City’s Special Event Coordinator. Most jurisdictions in California now include events such as farmer’s markets, and they can represent a large number of single use plastic bags. The Downtown Farmer’s Market Festival organizer was consulted as well and is in agreement.

In addition, to accommodate Council’s direction on December 2, 2013 Council Meeting, EIR Alternative 4 was altered to become effective approximately six months from the time of passage, rather than in 30 days, to accommodate businesses’ ability to exhaust their inventory and implement the receipting requirement. A further alteration to the EIR Alternative 4 is the self-reporting mechanism, which is a one-time verification of compliance that staff felt would be a simple way for the City to recognize early-adopters and identify businesses that need further outreach. The final alteration is a reduction in the amount of time a retail store can provide free reusable bags, down from sixty to thirty days in any twelve month period, in order to minimize any potential for reusable bags to be used like single-use bags.

The proposed ordinance would apply to retail stores and event vendors in the following ways:

- Ban plastic bags with handles at point of sale
- Mandate a minimum \$0.10 charge for each recyclable paper bag provided to a customer at point of sale (to be retained by the store or vendor)
- Mandate conditions for what constitutes a recyclable paper bag as well as a reusable bag
- Mandate a minimum \$0.10 charge for each reusable bag provided to a customer at point of sale (to be retained by the store or vendor)
- Mandate clear signage for the charges for paper and reusable bags at stores
- Encourage stores and event vendors to promote reusable bags through signage and verbal communications

- Mandate self-reporting of compliance

The following additional provisions would apply only to retail stores:

- Mandate sales of reusable bags
- Mandate placing the charge for each recyclable paper or reusable bag on the customer receipt

The rationale for making these two provisions only applicable to retail stores has to do with the fact that retail stores by nature have a much larger line of products for sale, have retail space with which to store and display reusable bags, and have mandated receipting systems in place, whereas event vendors typically do not.

In addition, the proposed ordinance contains certain conditions for stores regarding promotional giveaways of reusable bags, and provides the ability of the City Council to increase the minimum charge for recyclable paper bags and reusable bags at any time by resolution. Finally, it contains exemptions for people on Supplemental Food programs, and for product bags to separate vegetables, meats, and bulk foods.

This proposed ordinance would not apply to retailers that do not sell food products such as milk, bread, sodas and snack foods. Although San Rafael has many more retailers of this nature, including department stores, clothing stores, gift stores, and the like, the vast majority of plastic bags are distributed through the retailers covered under the current proposed ordinance. However, the City Council has made it clear its intention to revisit the ordinance in one year in order to make it applicable to all retailers, including restaurants, and to increase the charge for other types of checkout bags to a minimum of \$0.25 per bag, which was studied in the Draft EIR as Alternative 7.

Implementation, Outreach and Enforcement

Single use bag reduction ordinances are prevalent throughout the Bay Area, and there are currently three in Marin County. This ordinance is similar in scope and effect as the ordinance in unincorporated Marin and Mill Valley, and shares many features of the Fairfax ordinance as well, namely the ban on plastic bags. Customers have heard the message to use reusable bags and cut down on single use bags, but have lacked the systemic incentives to do so in San Rafael. The \$0.10 bag charge for recyclable paper bags, the mandate to show the charge on the receipt and to post signage with the charge are all designed to incentivize the reduction of single use bags, and are similar to other ordinances throughout the state.

In 2011 there was a Bring Your Own Bag (BYOBag) promotion in the County and staff has procured the logo for use in our outreach campaign. Staff, interns, local organizations, and volunteers will commence store outreach soon after adoption of the ordinance. Public outreach will commence sometime this summer. Noticing has already gone out to potentially affected stores and to the Farmer's Market Festival so that they may be aware of, and comment on, the proposed ordinance. Staff will work with the JPA, and Marin Climate and Energy Partnership, as well as other local jurisdictions to promote the ordinance and offer online and print resources to assist with business comprehension and compliance, and customer education.

Store and vendor outreach will consist of the following and will commence this spring through fall:

- Intern visits to potentially affected business
- A business toolkit with ordinance information, cash register placards, reusable bag resources, and best practices
- Outreach through the Chamber of Commerce and Business Improvement District

- Translation of materials into Spanish

Customer outreach will consist of the following and will commence this summer through fall:

- Press development
- Online resources
- A Bring Your Own Bag Week, with outreach events and bag giveaways at stores and the Downtown Farmer' Market Festival, culminating in a beach and creek cleanup for Coastal Cleanup Day

Enforcement is not anticipated to be a significant issue in light of the considerable awareness of the issue in our community and the greater Bay Area. It will be initially conducted through the self-reporting provision of the ordinance, utilizing an online reporting tool much like Santa Barbara and a few other jurisdictions have done. Volunteers may be engaged to verify compliance as well. Final enforcement will be on a complaint basis and will be the responsibility of City staff. The County of Marin did extensive outreach to the 32 businesses covered under their ordinance, and reported that all are in compliance with minimal enforcement.

Environmental Review

Draft Environmental Impact Report. The adoption of the proposed ordinance is a discretionary action, which is subject to the environmental review requirements of the California Environmental Quality Act (CEQA; Public Resources Code, Section 2100, et seq.). As discussed above, the JPA, representing a number of the participating Marin jurisdictions (including San Rafael) was assigned the role of administering the environmental review (CEQA) process for assessing a "model ordinance." In June 2013, the JPA determined that an Environmental Impact Report (EIR) should be prepared and preceded with the publication of a Notice of Preparation (NOP). Rincon Consultants, Inc. environmental consultants were hired to prepare the EIR.

On November 1, 2013, the Single Use Carryout Bag Reduction Ordinance Draft Environmental Impact Report (Draft EIR) was completed and published. Consistent with the CEQA Guidelines, the JPA observed a 45-day review period for public comment. The Draft EIR concluded that: a) for each environmental issue area studied, impacts would either be less-than-significant or beneficial; and b) the "model ordinance" would not result in any significant, unavoidable impacts that require mitigation. Further, consistent with the CEQA Guidelines, the Draft EIR included an assessment of seven alternatives to the project (EIR Alternatives), which are variations to the model ordinance. EIR Alternative 4 (mandatory charge of \$0.10 for recyclable paper carryout bags) was determined to be environmentally superior to the model ordinance.

As a "Co-Lead Agency," during the 45-day public review period, on December 2, 2013, the City Council conducted a public hearing on the Draft EIR. Comments received during the public hearing were submitted to the JPA for response and incorporation into the Final Environmental Impact Report (Final EIR). As part of this public hearing process, the City Council expressed support for considering adoption of an ordinance that would be similar to EIR Alternative 4 (with some additions).

Final EIR. A Final EIR was prepared and published in January 2014. The Final EIR consists of the Draft EIR text and appendices with edits and changes made in response to the comments received on the Draft EIR. All Draft EIR comments and responses have been incorporated into Section 8.0 of the Final EIR. An excerpt from Final EIR Section 8.0, which presents the responses to City of San Rafael comments on the Draft EIR, is provided in Attachment 4 of this staff report. A brief summary of the responses to the City's comments is provided as follows:

1. The City requested that the Final EIR address and clarify the true costs for paper bags to determine whether the suggested charge per bag (at \$0.10 or \$0.25/bag) would be an imposed cost or a revenue stream for the retail stores.

Final EIR Response 2.1: The Final EIR notes that the mandated minimum charge (\$0.05 per paper bag per model ordinance) is intended as an incentive for shoppers to bring reusable bags. As this is a minimum charge, the store operators may choose to charge more for a carryout paper bag or may choose not to provide single-use carryout bags at all. As disclosed in Draft EIR Section 2.0 (Project Description), recyclable paper carryout bags can be purchased in bulk for \$0.15-0.25 per bag. So, depending upon the preference of the retailer, the ordinance could either impose an additional cost or, but less likely, could generate revenue for the retailer.

2. The City requested that the Final EIR: a) identify the secondary impacts to the customer if a free plastic bag is no longer available to be re-used for trash, dog waste or other purposes; b) determine if the banning of free plastic bags would cause the customer to purchase more bags for trash, dog waste or other purposes (financial impact).

Final EIR Response 2.2: The Final EIR notes that the secondary economic effects of eliminating the re-use of free plastic bags is beyond the scope of the environmental analysis under CEQA. However, the Final EIR notes that the secondary environmental effects banning plastic bags would be generally similar to the continued use of free plastic bags. The Final EIR acknowledges that, although store-bought bags are sometimes slightly thicker than the free plastic carryout bags, this would be off-set by the overall reduction in use of plastic bags that would result from the ordinance.

With regard to the second comment and response, City staff has done some research but has found no studies specific to this issue. However, some cities and publications have acknowledged the potential increase in cost for some consumers for having to purchase trash can liners to replace the free plastic bags they get at point of sale. However, some cities and publications also point to the embedded cost in consumer goods for checkout bags. Some also point to free alternatives for things like dog waste, including newspaper bags, use of newspaper itself, bread bags, and other materials, and the prevalence of biodegradable bags at dog waste stations at parks and trails.

On January 16, 2014, the JPA certified the Final EIR (Resolution 2014-01). As the City is a “Co-Lead Agency,” it is recommended that the City certify the Final EIR prior to taking action on the proposed ordinance. As outlined in the attached resolution (Attachment 1), the Final EIR: a) has been prepared in accordance with the CEQA Guidelines and the City of San Rafael Environmental Review Procedures; b) is adequate in content and technical analysis; and c) is complete for certification.

EIR Addendum. As discussed above, the proposed ordinance is a variation of and slightly different from EIR Alternative 4. The Final EIR was reviewed to ensure that the environmental impacts of the proposed ordinance have been adequately analyzed and addressed. It was determined that the proposed ordinance would not result in any new, additional or significantly different information, nor result in any new, significant impacts than previously disclosed or studied in the Final EIR. As a result, an EIR Addendum was prepared consistent with the CEQA Guidelines. The EIR Addendum is provided as Exhibit A to Attachment 1 of this staff report. It is recommended that the City Council adopt the EIR Addendum concurrent with the certification of the Final EIR.

CEQA Findings of Fact. When approving a project for which an EIR has been prepared and certified, the CEQA Guidelines require the lead agency to adopt “Findings of Fact” to support the action (in this case the adoption of an ordinance). A draft resolution has been prepared (Attachment 2) addressing these required findings. It is recommended that the City Council adopt this resolution prior to taking action to adopt the proposed ordinance.

Note that the Draft EIR, Final EIR and EIR Addendum are available for review in the City Clerk’s Office and on the City of San Rafael website and can be accessed by the following link (under “Hot Links”): <http://www.cityofsanrafael.org/citymgr-green-home/>

PUBLIC NOTICING/COMMUNITY SUPPORT

Four, regularly-noticed City Council study sessions have been held with public input on this subject. In addition, staff has presented at the Governmental Affairs Committee of the San Rafael Chamber of Commerce, has published a public hearing notice in the local newspaper, and has sent public hearing notice postcards out to all of the potentially affected businesses. Outreach has also gone out electronically to the Business Improvement District and the California Grocers Association. The proposed ordinance and EIR documents have been posted on the City web site. This proposed ordinance has also been discussed at our regular quarterly public CCAP implementation forums over the past three years.

There is significant support for this ordinance in the general public, business community, and nonprofit community in San Rafael and the region. The City has received numerous verbal and written messages of support at each Council meeting where this has been discussed, the San Rafael Chamber of Commerce Board voted recently to support the ordinance, and letters of support have been sent in by Save the Bay and the League of Women voters, among others. Some of these are included in the Attachments.

FISCAL IMPACT:

It is anticipated that initial outreach will comprise the majority of financial resources. Climate Corps Bay Area Fellows (interns) will do initial outreach to businesses and customers. The Fellows are funded through the JPA’s Zero Waste Grant Program. Printed materials, bag giveaways, and outreach activities will be funded by the JPA funds set aside for each jurisdiction for these purposes. San Rafael’s portion of these funds is \$10,707.32. Once in effect, there may also be unknown, but probably limited amounts of Code Enforcement staff time enforcing non-compliance.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the ordinance as proposed;
2. Continue action for additional information and response to Council comments and concerns; or
3. Deny the proposed ordinance

RECOMMENDED ACTION:

1. Open the public hearing and accept public testimony;
2. Close the public hearing;
3. Adopt the Resolution Certifying the Final Environmental Impact Report, and adopt an EIR Addendum (Attachment 1);
4. Adopt the Resolution Adopting the CEQA Findings of Fact (Attachment 2);
5. Pass ordinance (Attachment 3) to print.

ATTACHMENTS:

1. Resolution Certifying the Final Environmental Impact Report and adopting an EIR

Addendum

2. Resolution Adopting CEQA Findings of Fact
3. Proposed Ordinance
4. Final EIR- excerpt from Section 8.0, response to City comments on the Draft EIR
5. San Rafael Plastic Bag Litter Photo Collage
6. Support letters: San Rafael Chamber of Commerce, Save the Bay
7. Affidavit of Publication, Marin Independent Journal