

AGENDA ITEM 8.1

CITY OF LARKSPUR Staff Report

April 16, 2014

DATE: April 11, 2014

TO: Honorable Mayor Morrison and Larkspur City Council

FROM: Neal Toft, Director of Planning and Building
Anna Camaraota, Associate Planner

SUBJECT: Review and Adoption of Amendments to Title 6 (Health and Sanitation) of the Larkspur Municipal Code to Add Chapter 6.18, Regulating the Use of Single-Use Carryout Bags and Making Findings Pursuant to CEQA Guidelines Section 15096.

ACTION REQUESTED

That the City Council introduce an ordinance establishing Chapter 6.18 of the Larkspur Municipal Code regulating the use of Single-use carryout bags by specified retailers, and making findings pursuant to CEQA, review the staff report and bring the ordinance back for the second reading and adoption at the next regular City Council meeting.

FISCAL IMPACT:

The City has received \$3,800 from the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) for implementation, outreach, and enforcement of the ordinance. Fiscal impacts of the adoption of the codes are minimal. The City, however, may incur future costs due to enforcement actions.

BACKGROUND:

It is estimated that each year retailers in the City of Larkspur Novato provide customers with well over six million single-use Carryout bags to carry their purchases (about 530 bags per person per year). The great majority of these distributed bags are made of thin, lightweight high density polyethylene, which are sturdy, relatively inexpensive sacks generally intended for one use before disposal. Only about 5% of these plastic film bags are recycled each year in the State of California.

Concern has been expressed by the public, governmental agencies and environmental groups regarding the impacts of Single-use plastic carryout bags. Due to their shape and weight, these bags become windblown litter if discarded and are frequently found along local roadways and in storm drainage facilities and in local open spaces such as wetlands and riparian corridors, ultimately finding their way to the Bay and the ocean. Such polyethylene bags are very slow to degrade naturally, and therefore are one of the more persistent forms of litter, remaining in the environment and habitat areas for many years. Biological studies have demonstrated the

deleterious effects that plastic bags have on animal species which become entangled with the discarded bags or ingest them, believing they are food.

Governmental agencies spend substantial staff time and revenues removing plastic bags from storm drains, and citizens devote many collective hours during voluntary clean up efforts to eliminate them from open space. The Redwood Landfill employees a full time employee to collect windblown bags. On May 7, 2013 the Marin County Grand Jury issued its report "Holding the Bag" which encouraged, "*The Marin Hazardous and Solid Waste Joint Powers Authority (JPA) prepare the Model Single-Use Bag Ordinance to implement the strictest rules possible and encourage all agencies to adopt the Ordinance with minimal changes. A ban on single-use plastic Carryout bags should be imposed in all grocery stores, convenience stores, pharmacies and restaurants within the County and apply to all establishments, no matter how large or small.*" A copy of the report can be found at:

<http://www.marincounty.org/main/boardactions/2013/july/~media/Files/MarinGov/Board%20Actions/2013/2013Jul/20130716CAOCGJBagREPORT.pdf>

Regulatory Setting

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 may to be introduced in the legislature again this year.

Since adoption of AB 2449 over 90 California cities and counties have enacted some form of restrictions on the provision of Single-use carryout bags (see Attachment 2 for examples). Since state legislation precluded local government from placing a fee on plastic bags, most ordinances have banned the distribution of plastic carryout bags and required that stores charge a minimum fee for recycled content paper carryout bags to shift consumers from plastic bags to either recycled paper or reusable bags. In Marin County, Fairfax, Mill Valley and the unincorporated County have existing bans of distribution of plastic carryout bags. The County and Mill Valley ordinances establish a minimum fee of 5 cents for recycled content paper bags to give retailers the ability to offer a reasonably priced alternative bag.

The adoption of plastic bag ban ordinances by local governments in California has been hamstrung by legal actions initiated by the Save the Plastic Bag Coalition (STPBC) which has sued several jurisdictions citing violations of the California Environmental Quality Act (CEQA). STPBC correctly points out that the manufacture and distribution of plastic carryout bags produce less greenhouse gases than paper bags and has pressed for the preparation of full environmental impact reports to assess these impacts. The County of Marin was sued for its ordinance adoption which utilized a CEQA Categorical Exemption. The California Court of Appeals ruled in favor of Marin County in June, 2013.

Due to concerns over potential CEQA litigation by member agencies, the Marin County Hazardous and Solid Waste Management Joint Powers Authority authorized and paid for the preparation of a model single-use carryout bag ordinance and an EIR that could then be used by member agencies for ordinance adoption. The Draft EIR was published on November 1,

2013 for a 45-day public review period, and the Final EIR was published in January, 2014 and certified by the JPA Board on January 16, 2014.

The model ordinance outlined in the EIR would ban the distribution of plastic carryout bags by certain retailers and require that retailers who choose to make paper bags available to customers as an alternative charge at least five cents for each recyclable paper carryout bag provided. The ordinance would exempt plastic or paper product bags (bags without handles used for produce, meat or bulk food items) or bags for prescription drugs as allowed by state law. The minimum paper bag charge would not be applicable to customers who participate in the state's Supplemental Food Program. The charges accumulated by the sale of recycled paper carryout bags would be retained by the merchant to offset the increased costs of paper vs. plastic bags.

The proposed model ordinance would only be applicable to three types of retailers:

- Supermarkets with over \$2,000,000 in annual sales,
- Pharmacies over 10,000 square feet in size, and
- Convenience or liquor stores that include the sale of milk, bread, soda and snack foods.

The proposed ordinance would also require that affected stores:

- Offer reusable bags for sale,
- Provide clear signage for the charges for paper and reusable bags,
- Place the charge for each recyclable paper or reusable bag on the customer receipt, and
- Encourage patrons to use reusable bags through signage and verbal communications.

The EIR also examined a range of alternatives to the model ordinance to give member agencies a range of options in terms of preferred regulations. These include:

Alternative 1: No project (i.e., no new regulations are adopted)

Alternative 2: Expand the range of retailers subject to the ordinance to include all retail establishments *except* restaurants.

Alternative 3: Expand the range of retailers subject to the ordinance to include all retail establishments *including* restaurants.

Alternative 4: Increase the minimum charge for recycled paper carryout bags to 10 cents, applicable only to supermarkets, pharmacies and convenience/liquor stores

Alternative 5: Increase the minimum charge for recycled paper carryout bags to 25 cents applicable only to supermarkets, pharmacies and convenience/liquor stores

Alternative 6: Expand the plastic bag ban to include product bags (bags without handles used for produce, meat or bulk food items) with a minimum fee of 5 cents for recycled paper carryout bags

Alternative 7: Increase the minimum charge for recycled paper carryout bags to 25 cents applicable to all retailers

It should be noted that the EIR concluded that, for each environmental issue area studied, impacts would either be less-than-significant or beneficial and the model ordinance would not result in any significant, unavoidable impacts that require mitigation. Alternative 5 (mandatory charge of at least \$0.25 for a paper bag) was found to be the environmentally superior

alternative since it resulted in the greatest shift from single-use carryout bags (both plastic and recycled paper) to reusable bags.

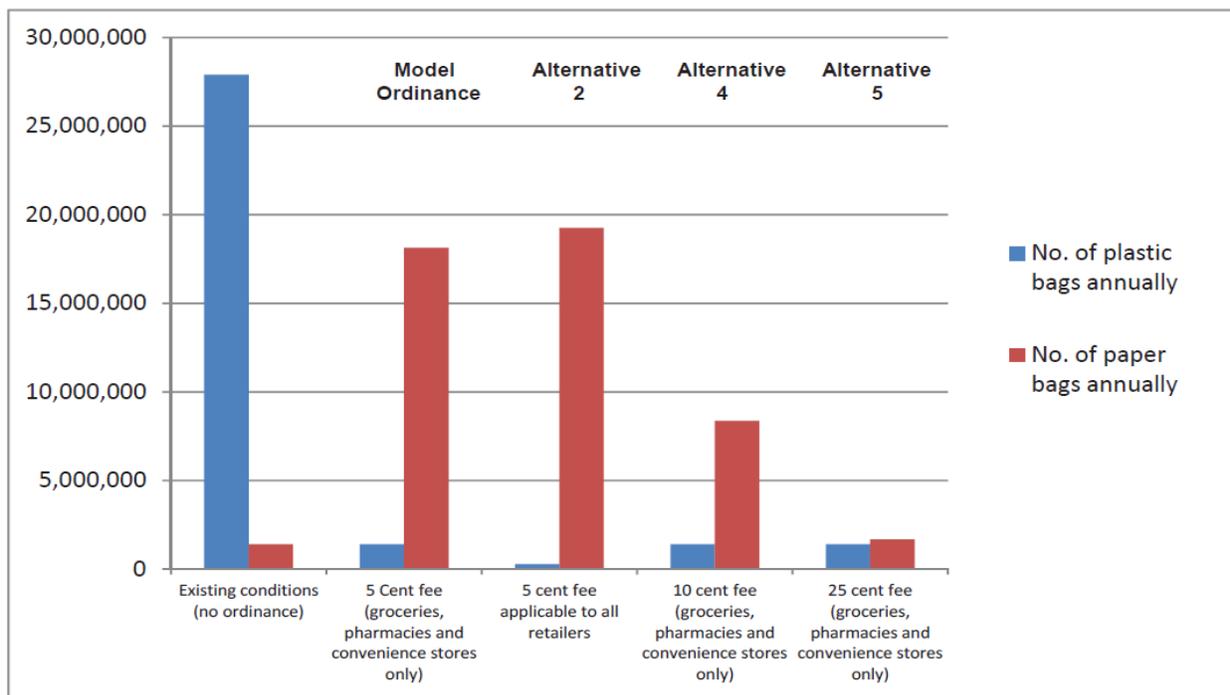
DISCUSSION

Proposed Ordinance

Staff is recommending that the City Council consider adoption of Alternative 4, which would create an ordinance applicable only to supermarkets, pharmacies and convenience/liquor stores that sell milk, bread, soda and snack foods, with a minimum charge of 10 cents for a recycled paper carryout bag. Staff has included provisions applying the regulations to public events farmers markets and/or outdoor fairs, as was applied in San Rafael. In addition, it is recommended that the ordinance become effective six months from the date of adoption of the ordinance, to provide retailers opportunity to inform their customers, exhaust their inventory of bags, and implement business protocols. The rationale for staff’s recommendation includes:

1. *Increased Use of Reusable Bags.* The objective of the Single-Use Carryout Bag ordinance is to both eliminate the use of plastic bags and to shift consumers from plastic bags to reusable bags which have far fewer environmental impacts than either plastic or recyclable paper bags. The EIR demonstrates that the minimum fee set for recycled paper bags has a major effect on consumer behavior. As shown in the summary chart below, the model ordinance with a 5-cent fee would shift 65% of carryout bag use to paper bags. However, Alternative 4, with a 10-cent fee, would shift 30% of carryout bag use to paper bags, more than halving the distribution of paper bags, and increasing the use of reusable bags to 65%.

Comparison of Alternatives



A 25-cent fee on paper bags, the environmentally superior Alternative 5, would cause an estimated 89% switch to reusable bags. However, surveys in nearby communities have found this approach somewhat unpopular, even by those that support the principles of the ordinance. Staff believes that Alternative 4 is a less punitive approach that would result in a significant shift

from plastic to reusable carryout bags at a 10-cent fee. A higher fee may be considered in the near future as the use of reusable bags becomes more widely practiced.

2. *Focus on Highest Users and Most Impact to the Local Environment.* Applicability of the ordinance to supermarkets, pharmacies and convenience stores is estimated to reduce plastic bag use by about 95%. There are roughly four supermarkets and pharmacies in Larkspur that qualify, along with an estimated 5-10 convenience stores. The EIR estimates that applying the single-use carryout regulations bag ordinance to all retailers would further reduce plastic bag use by only an additional 4%. Given the limited additional bag reduction that would be achieved by applying the ordinance to all retailers (increasing bag reduction from 95% to 99%), it is debatable whether the increased monitoring and enforcement responsibilities necessary to regulate all retailers would be worth the additional effort and staff resources. A significant amount of reduction can be achieved through this limited, but focused, application of the restrictions.

Like San Rafael, staff has included provisions for restricting use of single-use carryout bags in public events (e.g. Farmer's Markets). As there are a very limited number of events of this type in Larkspur, staff believes that enforcement needs would be minimal. Further, most customers to such events, and their vendors, already follow more 'eco-friendly' practices. However, the Farmer's Market and other community events are held outdoors and may often occur in areas near the wetlands and open water of Corte Madera Creek (e.g. Marin Country Mart, Piper Park).

3. *Consistency with Other Jurisdictions.* There is a preference for consistent regulations among Marin's jurisdictions to reduce confusion among customers and retailers who have stores in multiple cities/towns. While the unincorporated County and the cities of Fairfax and Mill Valley have had similar regulations already in place, the cities of San Rafael, Novato, and Sausalito have recently adopted ordinances based on Alternative 4. Staff understands that the other Marin jurisdictions that are considering adopting restrictions on single-use carryout bags are likely adopted a version of Alternative 4.

Implementation and Enforcement

Initial outreach and enforcement to affected stores would be from City staff. 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. Following the effective date of the ordinance City staff or volunteers will visit the affected stores to verify compliance. The ordinance contains a graduated level of fines for non-compliance. Apparently, 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. The Marin County Hazardous and Solid Waste JPA has provided over \$3,800 to the City of Larkspur, a portion of which will remain available to offset future education and enforcement efforts.

Staff has already sent flyers to the Managers of numerous stores that are anticipated to fall within the Ordinance provisions (see attached) and will send follow-up flyers and conduct site visits when the ordinance is adopted. Staff has already heard positive response from Trader Joes.

ENVIRONMENTAL STATUS:

As discussed above, the Marin County JPA was assigned the role of administering the California Environmental Quality Act ("CEQA") process. On November 1, 2013 the Single Use Carryout Bag Reduction Ordinance Draft EIR was completed and published for public review.

Subsequently, on January 16, 2014 the JPA Board of Directors held a duly-noticed public hearing and adopted Resolution No. 2014-01 certifying the Single Use Carryout Bag Reduction Ordinance Final EIR. The Final EIR can be viewed at the 'zerowastemarin' website here:

<http://zerowastemarin.org/zero-waste-101/single-use-carryout-bag/>

The City of Larkspur, as a member of the JPA, is a 'Co-Lead Agency" and therefore the City Council is required to take action to certify the Final EIR prior to adoption of a single use carryout bag reduction ordinance for Larkspur. 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 the ordinance). A draft resolution has been prepared (Attachment No. 1) for sets forth the requisite findings for certification of the Final EIR. Staff recommends that the City Council adopt this resolution prior to taking action on the proposed ordinance. Following adoption of the ordinance, the City will file a Notice of Determination (NOD) per CEQA Guidelines(Section 15094).

RECOMMENDATION:

Recommended City Council Action:

1. Conduct a Public Hearing.
2. Adopt Resolution certifying the Final Environmental Impact Report and adopting CEQA Findings of Fact.
3. Waive Second Reading and adopt Ordinance No. 996.

ALTERNATIVES

The Council may choose to:

- Approve the amendments to the Municipal Code by adoption of the attached ordinance.
- Modify or eliminate any of the proposed amendments, including consideration of other Alternatives evaluated in the EIR (e.g., application to all retailers or a minimum charge of either 5 cents or 25 cents for a recycled paper carryout bag)
- Continue consideration of the amendments for further analysis, or
- Choose to not adopt regulations on single use carryout bags.

Attachments:

1. Ordinance No. 996
2. Resolution No.21/14
3. Flyer to Stores

**CITY OF LARKSPUR
RESOLUTION No. 21/14**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LARKSPUR
CERTIFYING THE ENVIRONMENTAL IMPACT REPORT
(SCH #2013062049) RELATED TO THE ADOPTION OF ORDINANCE 996
REGULATING THE USE OF SINGLE-USE CARRYOUT BAGS**

WHEREAS, it is the desire of the City of Larkspur to conserve natural resources, to protect wildlife and natural habitat, to reduce waste, litter and marine pollution and to protect the public health and welfare;

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

WHEREAS, other cities and towns in Marin County have expressed an interest in adopting an ordinance to restrict the use of single-use carryout bags in order to conserve natural resources, protect wildlife and natural habitat, reduce waste, litter and marine pollution and protect the public health and welfare;

WHEREAS, the cities and towns in Marin County have collectively worked with the Marin County Hazardous and Solid Waste Management to form a Joint Powers Authority (JPA) to serve as a lead in: a) developing a "model ordinance" that could be considered for adoption by all participating cities and towns; and b) administering the environmental review of the model ordinance, as required by the California Environmental Quality Act (CEQA) Guidelines;

WHEREAS, in 2013 the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) prepared a draft Model Single Use Carryout Bag Reduction Ordinance that participating JPA member agencies within Marin County (including the City of Larkspur) could consider for adoption;

WHEREAS, the JPA was assigned the role of administering the California Environmental Quality Act ("CEQA") process and a determination was made that the JPA would prepare an Environmental Impact Report ("EIR") through Final EIR completion for adoption of the model ordinance in all of the member municipalities;

WHEREAS, the JPA prepared a Notice of Preparation for an EIR for the draft model ordinance, which was published on June 21, 2013, initiating a 30-day review period. On July 9, 2013, the JPA conducted a public scoping meeting;

WHEREAS, on November 1, 2013 the Single Use Carryout Bag Reduction Ordinance Draft EIR was completed and published for public review (State

Clearinghouse #2013062049). Commencing on November 1, 2013, a 45-day public review period was observed, ending on December 15, 2013;

WHEREAS, the Draft EIR concluded that: a) for each environmental issue studied, impacts would either be less-than-significant or beneficial; b) the draft model ordinance would not result in any significant, unavoidable impacts, or any significant impacts that require mitigation;

WHEREAS, in accordance with requirements of the CEQA Guidelines, the Draft EIR analyzed alternatives to the project (model ordinance) and identified an environmentally superior alternative to the project. Seven alternatives were evaluated in the Draft EIR (Section 6.0), and concluded that Alternative 4 (Mandatory Charge of \$0.10 for Recyclable Paper Carryout Bags) and Alternative 5 (Mandatory Charge of \$0.25 for Recyclable Paper Carryout Bags) would be environmentally superior compared to other alternatives studied in the draft model ordinance;

WHEREAS, pursuant to Public Resources Code Section 21091(d)(2)(A) and CEQA Guidelines Sections 15088 and 15089, the JPA responded to all environmental comments that were submitted on the Draft EIR during the public review period. A Final EIR was prepared and published;

WHEREAS, on January 16, 2014 the JPA Board of Directors held a duly-noticed public hearing on the Final EIR, accepting all oral and written public testimony and the written report of the JPA staff. Following closure of the public hearing and deliberation, the JPA Board of Directors, on an 11-0 vote, adopted Resolution No. 2014-01 certifying the Single Use Carryout Bag Reduction Ordinance Final EIR. This certification was based on and supported by findings, which are incorporated herein by reference;

WHEREAS, on April 16, 2014, the City Council of the City of Larkspur held a duly-noticed public hearing on the proposed Regulation of Single-Use Carryout Bags Ordinance and the Single Use Carryout Bag Reduction Final EIR, accepting all oral and written public testimony and the written City staff report; and

WHEREAS, the custodian of documents which constitute the record of proceedings upon which this decision is based, is the City Clerk's Office at 400 Magnolia Avenue, Larkspur, California, 94939.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Larkspur as follows:

Section 1. CEQA Actions and Findings.

- A. The foregoing recitals are true and correct and made a part of this Resolution.
- B. The EIR, consisting of the Draft EIR and the Final EIR attached as Exhibits A and B respectively, has been completed in compliance with CEQA and the

CEQA Guidelines. The Draft EIR and Final EIR are collectively referred to hereafter as “EIR” and incorporated herein by reference.

- C. The City Council of the City of Larkspur has independently reviewed and considered the information contained in the EIR, including the written comments received during the Draft EIR review period and the oral and written comments received at the public meeting, prior to acting on the proposed Regulation of Single-Use Carryout Bags Ordinance.
- D. The EIR reflects the City Council of the City of Larkspur’s independent judgment and analysis on the potential environmental impacts of the proposed Regulation of Single-Use Carryout Bags Ordinance. The EIR provides information to the decision-makers and the public on the environmental consequences of the proposed Regulation of Single-Use Carryout Bags Ordinance.
- E. The EIR adequately describes the proposed Regulation of Single-Use Carryout Bags Ordinance, its significant environmental impacts, mitigation measures and a reasonable range of alternatives.
- F. The EIR concludes that all potentially significant impacts are determined to be less than significant. The EIR determines that the proposed Ordinance will result in either no impact or beneficial effects for most of the areas analyzed. The EIR does not include nor does it recommend any mitigation measures to substantially lessen or avoid the otherwise significant adverse environmental impacts of the project. Since there are no significant impacts of the project, the City is not required to adopt findings on environmental impacts under CEQA.

Section 2. EIR Certification.

Based on its independent review, the City hereby certifies the Marin County Hazardous and Solid Waste Management JPA Single Use Carryout Bag Reduction Ordinance EIR based on the following findings:

- 1. The EIR has been completed in compliance with the CEQA Guidelines following the appropriate format, content, technical analysis of potential impact areas, and assessment of project alternatives. Further, the prescribed public review periods and duly noticed public hearings were held for the initial Notice of Preparation (NOP); the Notice of Completion (NOC) for public review of the Draft EIR; and the Notice of Availability following publication of the EIR.
- 2. The EIR has been prepared using the City's independent judgment and analysis finding that it:
 - a. Appropriately analyzes and presents conclusions on impacts.
 - b. Analyzes a reasonable range of alternatives to the project that could feasibly attain most of the basic objectives of the project while avoiding or substantially lessening any significant effect of the project.

- c. Concludes that all potentially significant impacts have been determined to be less than significant, dismissed as having no impact or beneficial effects. Therefore, the EIR does not include nor does it recommend any mitigation measures to substantially lessen or avoid the otherwise significant adverse environmental impacts of the project. The findings and recommendations in the document are supported by technical studies prepared by professionals experienced in the specific areas of study.
- d. The information contained in the EIR is current, correct and complete for document certification. The EIR presents factual, quantitative and qualitative data and studies, which find and support the conclusion that the proposed ordinance will not result in any significant environmental impacts that necessitate mitigation.

Section 3. Effective Date. This Resolution shall take effect immediately upon its adoption.

* * * * *

IT IS HEREBY CERTIFIED that the City Council of the City of Larkspur duly introduced and regularly adopted the foregoing resolution at a regular meeting held on the 16th day of April, 2014, by the following vote, to wit:

AYES: COUNCILMEMBER:

NOES: COUNCILMEMBER:

ABSENT: COUNCILMEMBER:

ABSTAIN: COUNCILMEMBER:

MAYOR

ATTEST:

CITY CLERK

ORDINANCE No. 996

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LARKSPUR
AMENDING TITLE 6 (HEALTH AND SANITATION) OF THE CITY OF
LARKSPUR MUNICIPAL CODE TO ADD CHAPTER 6.18,
REGULATING THE USE OF SINGLE-USE CARRYOUT BAGS**

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

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

WHEREAS, nearly twenty billion single-use plastic bags are used annually in California but less than 5% are recycled;

WHEREAS, it is estimated that 6,383,151 single-use plastic bags are used annually in Larkspur;

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

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

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

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;

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

WHEREAS, reusable carryout bags are readily available in the City of Larkspur;
and

WHEREAS, it is the desire of the City of Larkspur to conserve natural resources, to protect wildlife and natural habitat, to reduce waste, litter and marine pollution and to protect the public health and welfare;

WHEREAS, in 2013 the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) prepared a draft Model Single- Use Carryout Bag Reduction Ordinance that participating JPA member agencies within Marin County (including the City of Larkspur) can consider for adoption;

WHEREAS, the JPA was assigned the role of administering the California Environmental Quality Act (“CEQA”) process and a determination was made that the JPA would prepare an Environmental Impact Report (“EIR”) through Final EIR completion for adoption of the model ordinance in all of the member municipalities;

WHEREAS, on November 1, 2013 the Single Use Carryout Bag Reduction Ordinance Draft EIR was completed and published for public review (State Clearinghouse #2013062049);

WHEREAS, on January 16, 2014 the JPA Board of Directors held a duly-noticed public hearing and adopted Resolution No. 2014-01 certifying the Single Use Carryout Bag Reduction Ordinance Final EIR (“Final EIR”);

WHEREAS, following the certification of the Final EIR by the JPA Board of Directors, the City of Larkspur determined to proceed with one of the alternatives (Alternative 4: Mandatory Charge of \$0.10 for Recyclable Paper Carryout Bags) in the Final EIR as a basis for adoption of a citywide ordinance (Regulation of Single-Use Carryout Bags);

WHEREAS, on April 16, 2014, the Larkspur City Council held a duly-noticed public hearing on the proposed ordinance, and did consider all oral and written public comment, the staff reports, the Final EIR, and the Record as a whole prior to making a determination on the proposed ordinance; and

WHEREAS, the City of Larkspur, prior to the adoption of this Ordinance adopted a Resolution certifying the Final EIR.

NOW THEREFORE, the City Council of the City of Larkspur does hereby ordain as follows:

SECTION 1. FINDINGS. The City Council of the City of Larkspur finds as follows:

1. The proposed ordinance to regulate single-use carryout bags is consistent with Goal 6 (Reduce The Total Volume Of The City’s Waste Stream) of the City of Larkspur General Plan.
2. The proposed ordinance to regulate single-use carryout bags is consistent with Goal 3.6 (Waste Reduction, Recycling and Zero Waste) of the Larkspur Climate Action Plan.
3. The public health, safety and general welfare will not be adversely impacted by the proposed ordinance to regulate single-use carryout bags. Rather, the public

health, safety and general welfare will be enhanced and further protected as the ban for use of this material would reduce land-filling of waste products, reduce long-lasting litter, and reduce public clean-up costs.

SECTION 2. AMENDMENT TO THE LARKSPUR MUNICIPAL CODE. Chapter 6.18 'Regulation of Single-Use Carryout Bags' is hereby added to Title 6 (Health and Sanitation) of the City of Larkspur Municipal Code to read as follows:

CHAPTER 6.18
REGULATION OF SINGLE-USE CARRYOUT BAGS

Sections:

- 6.18.010 Purpose.
- 6.18.020 Definitions.
- 6.18.030 Plastic Carryout Bags Prohibited.
- 6.18.040 Permitted Bags.
- 6.18.050 Regulation of Recyclable Paper Carryout Bags.
- 6.18.060 Use of Reusable bags.
- 6.18.070 Exempt Customers.
- 6.18.080 Operative Date.
- 6.18.090 Enforcement and Penalties.
- 6.18.100 Severability.
- 6.18.110 No Conflict with Federal or State Law.

6.18.010 Purpose.

The purpose of this chapter is to reduce the amount of plastic bag pollution in the environment, to reduce the impacts of paper bags which cause other forms of pollution and greenhouse gas emissions, and to encourage reusable bags by consumers and retailers.

6.18.020 Definitions.

For the purpose of this chapter, the following words and phrases are defined as follows:

- A. "Checkout bag" means a carryout bag intended to convey or protect goods, products or packaged food products provided by a store to a customer at the point of sale.
- B. "Customer" means any person purchasing goods from a store.
- C. "Operator" means the person in control of, or having the responsibility for, the operation of a store, which may include, but is not limited to, the owner of the store.
- D. "Plastic carryout bag" means any bag made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or other plant sources, which

is provided to a customer at the point of sale. "Plastic carryout bag" includes compostable and biodegradable bags but does not include reusable bags or product bags.

E. "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 by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

F. "Product bag" means any bag without handles used exclusively to carry produce, meats, or other food items such as bulk foods to the point of sale inside a store or to prevent such food items from coming into direct contact with other purchased items.

G. "Public event" means an event which is open to and may be attended by the general public, including but not limited to such events as farmers' markets, parades, craft fairs, festivals, concerts, performances or other exhibitions, regardless of any fee or age requirement.

H. "Recyclable" means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

I. "Recyclable paper carryout 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%) post-consumer 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 of Larkspur; (5) has printed on the bag the name of the manufacturer, the location (country) 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.

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; (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 Carryout 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 that is not a reusable bag and does not meet the requirements of a reusable bag. A "single-use carryout bag" does not include a "product bag" or 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.

L. "Store" means a retail establishment located within the incorporated area of the City of Larkspur that meets any one or more of the following definitions:

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.

6.18.030 Plastic Carryout Bags Prohibited.

A. No operator of a store shall provide to any customer a plastic carryout bag.

B. This prohibition applies to bags provided for the purpose of carrying away goods from the point of sale and does not apply to product bags.

C. No vendors at a public event shall provide to any customer a plastic carryout bag, except product bags.

6.18.040 Permitted Bags.

All operators of stores and vendors at a public event shall provide or make available to a customer only recyclable paper carryout bags or reusable bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this Chapter. Nothing in this Chapter prohibits customers from using bags of any type that they bring to the store themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the store.

6.18.050 Regulation of Recyclable Paper Carryout Bags.

- A. Any operator of a store or vendor at a public event that provides a recyclable paper carryout bag to a customer shall charge the customer at least ten cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.
- B. The Larkspur City Council may increase the ten cent (\$0.10) minimum charge by Resolution.
- C. No operator of a store or vendor at a public event shall rebate or otherwise reimburse a customer any portion of the minimum charge required in Subsection A, except as otherwise provided in this Chapter.
- D. All operators of stores and vendors at public events shall post signage clearly indicating the per bag charge for recyclable paper carryout bags.
- E. All operators of stores shall indicate on the customer receipt the number of recyclable paper carryout bags provided and the total amount charged for the bags.
- F. All monies collected by an operator of a store or a vendor at a public event for recyclable paper bags under this Chapter shall be retained by the operator of the store or the vendor.

6.18.060 Use of Reusable bags.

- A. All stores shall make reusable bags available for purchase by a customer for at least five cents (\$0.05) for each bag provided, except as otherwise provided in this Chapter.
- B. The Larkspur City Council may increase the five cent (\$0.05) minimum charge by Resolution.
- C. A store may provide reusable bags to customers at no cost until three (3) months after the effective date of the ordinance. On and after three (3) months after effective date of the ordinance, a store may provide reusable bags to customers at no cost only when combined with a time-limited store promotional program. Such events shall not exceed a total of 60 days within any consecutive 12-month period.
- D. Each store is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging customers to use reusable bags.
- E. No store shall rebate or otherwise reimburse a customer any portion of the minimum charge required in Subsection A, except as otherwise provided in this Chapter.
- F. All stores must post signage clearly indicating the per bag charge for reusable bags.

G. All stores must indicate on the customer receipt the number of reusable bags provided and the total amount charged for the bags.

H. Each store is strongly encouraged to charge for a reusable bag at least what it cost to procure the reusable bags in order to encourage maximum reusability and not cause them to be treated as throw-away.

I. All monies collected by a store for reusable bags under this Chapter will be retained by the store.

6.18.070 Exempt Customers.

All stores must provide at the point of sale, free of charge, either reusable bags or recyclable paper carryout bags or both, at the store's option, to any customer participating either 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 Health and Safety Code or in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code.

6.18.080 Operative Date.

This Chapter shall become operative on and after June 7, 2014.

6.18.090 Enforcement and Penalties.

A. The City Manager, or his/her designee, shall have primary responsibility for enforcement of this Chapter. The City Manager, or his/her designee, is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, investigating violations, issuing fines and entering the premises of any store during business hours.

B. If the City Manager, or his/her designee, determines that a violation of this Chapter has occurred, he/she will issue a written warning notice to the operator of a store that a violation has occurred and the potential penalties that will apply for future violations.

C. Any person, firm, or corporation violating any provision of this title after a written warning notice has been issued for that violation, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as specified in Section 1.01.110 of this code. Such person, firm, or corporation shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this title is committed, continued, or permitted. In addition, to the penalties hereinabove described, any condition caused or permitted to exist in violation of any provision of this title is a public nuisance and shall be regarded as a new and separate offense.

6.18.100 Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the ordinance. The City/Town Council 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 this ordinance would be subsequently declared invalid.

6.18.110 No Conflict with Federal or State Law.

Nothing in this ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

SECTION 3: Severability. If any article, section, subsection, subdivision, paragraph, sentence, clause, phrase, or word of this ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The City Council of the City of Larkspur hereby declares that it would have adopted each article, section, and sentence thereof, irrespective of the fact that any one or more of said provision be declared unconstitutional or invalid.

SECTION 4. Effective Date And Publication. This ordinance of the City of Larkspur shall be effective thirty (3) days after the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance or a summary thereof as provided in California Government Code Section 36933, shall be published at least once in a newspaper of general circulation published and circulated in the City of Larkspur, along with the names of the members of the City Council voting for and against its passage.

[signature page immediately follows]

IT IS HEREBY CERTIFIED that the foregoing ordinance was duly introduced at a regular meeting of the Larkspur City Council held on the 16th day of April, 2014, and thereafter passed and adopted by the Larkspur City Council on the 7th day of May, 2014 by the following vote, to wit:

AYES: COUNCILMEMBER:

NOES: COUNCILMEMBER:

ABSTENTIONS: COUNCILMEMBER:

ABSENT: COUNCILMEMBER:

ATTEST:

MAYOR

CITY CLERK

2262180.2



League of Women Voters of Marin County

March 24, 2014

Larkspur City Council
400 Magnolia
Larkspur, CA 94934

Dear Mayor Morrison and Members of the City Council:

Subject: Plastic, Single Use, Carryout Bag Regulations

I am writing on behalf of the League of Women Voters of Marin County (LWVMC) to urge that the City of Larkspur adopt legislation regulating the provision of plastic, single use, carryout bags within city limits.

We understand that the Marin County Hazardous and Solid Waste Authority Joint Powers Authority (JPA) has certified the Environmental Impact Report (EIR) on a proposed model ordinance for Marin County Cities and Towns. Furthermore, The State Supreme Court on October 3, 2013, declined to review the appeal of the First District Court of Appeals decision upholding the Marin Superior Court finding that the County Ordinance No. 3553, affective in unincorporated areas of Marin would have no environmental impact. It is now timely for cities and towns in Marin County to consider legislation affecting the areas within their jurisdictions. Since Fairfax and Mill Valley ordinances are in effect and San Rafael, Sausalito, and Novato have adopted ordinances that will go into effect in September of this year, it is possible there could be a county-wide approach.

Members of the Marin League have been studying the issue of plastic, single use, carryout bags and have agreed that the use of these bags should be discouraged for the following reasons:

Our members are concerned about the volume of plastic bags that is not disposed of properly, or escapes from proper disposal, and ends up as litter along the roadsides, paths, and beaches or in streams, rivers and oceans. Plastic bags strangle, choke, and kill animals both on land and in water. Plastic bags do not biodegrade. They photo-degrade into microscopic particles that accumulate toxins and can enter the ocean food chain and, consequently, the human food supply.

We are concerned about the greenhouse gases created in the manufacturing process of most plastic bags and the use in that process of petroleum and natural gases, non-renewable resources.

Additionally, we are concerned about the high cost of taking care of improperly discarded plastic bags.

Regulating the provision of single use, carryout plastic bags within the City of Larkspur will contribute to the beneficial impact being made on the natural environment by similar legislation in other local jurisdictions. We suggest that the more consistent each ordinance is with other ordinances enacted in the county, the more convenient it will be for shoppers and retailers. Consistency will also facilitate implementation and educational efforts.

The LWVMC urges the adoption of the model ordinance prepared by the JPA.

Sincerely,

Ann Batman
First Vice President



Consideration of a Plastic Bag Ban Ordinance

Dear Store Manager:

The City of Larkspur is considering adoption of an ordinance which would ban the distribution of plastic carry-out bags at retail stores.

Summary of the Draft Ordinance

The County of Marin and many other cities and towns are considering or have already adopted ordinances that prohibit the distribution of plastic carry-out bags. The ordinance, which will be considered by the Larkspur City Council on April 16, 2014, would:

- Ban retailers from providing plastic carry-out bags to customers.
- Allow retailers to provide recycled content paper carryout bags to customers for a minimum price of 10 cents, with revenues being retained by retailers to offset the higher costs of paper bags.
- Not be applicable to plastic bags without handles used for transporting produce or packaged meats, or for prescription bags.
- Go into effect in six months (October 1, 2014) and apply to grocery stores, pharmacies, convenience and liquor stores which sell milk, bread, soda and snack foods, among other items. The ordinance would also apply to public events, such as farmer's markets.

Frequently Asked Questions

Why ban plastic carry-out bags?

- Plastic bags are generally not recycled. They often end up in storm drains and open space, costing public agencies for removal and impacting wildlife.
- State law prohibits local agencies from placing a fee on plastic carry-out bags, so the only way to limit their use is to ban such bags entirely.
- To ease the impact on customers, retailers are allowed to charge a fee for paper bags, which will both cover the higher cost of paper bags but also will cause many consumers to switch to reusable carry-out bags which are much better for the environment.
- It is estimated that the 10-cent fee on paper bags would reduce use of plastic bags by 95% and result in a 65% shift to reusable bags.

Who gets the money paid by consumers for paper carry-out bags?

The payments for paper bags will stay with the retailer to offset their higher costs for paper bags.

400 Magnolia Avenue, Larkspur, CA 94949

(415) 927-5110

Are paper bags better for the environment than plastic bags?

Yes and no. They are better in the long run, since they naturally decompose in landfills or when littered. However, the manufacture and distribution of paper bags requires slightly more energy and resources to produce and thus produces more greenhouse gases than plastic bags. By banning plastic bags and placing a fee on paper bags, the intent of the ordinance is to shift consumer behavior back to reusable carry-out bags.

How will enforcement occur?

Jurisdictions that have implemented plastic bag ban ordinances have reported excellent compliance from retailers. Following adoption of the ordinance City staff would contact all affected stores to make them aware of the new regulations. After the effective dates of the Ordinance City staff will visit affected stores to verify compliance. Stores that continue to provide plastic carry-out bags after formal warnings may be subject to fines, which would gradually increase. Fines can be issued for each day of non-compliance.

Will all cities in Marin have similar regulations?

While each jurisdiction may adopt differing regulations, consistency among jurisdictions is beneficial to consumers and to retailers who operate in different cities. Larkspur is proposing to adopt an ordinance which is largely consistent with several cities in Marin, including Novato and San Rafael; the two largest Marin jurisdictions.

Who can I contact with questions or comments?

Please contact Planning and Building Director Neal Toft at ntoft@cityoflarkspur.org or 415-927-6713.