

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO. 1590

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NOVATO ESTABLISHING SECTION 7-7 OF CHAPTER VII THE NOVATO MUNICIPAL CODE REGULATING THE USE OF SINGLE USE CARRYOUT BAGS

WHEREAS, it is estimated that almost 28 million plastic single use carryout bags are distributed by retailers in the City of Novato each year, amounting to almost 540 such bags for each resident each year; and

WHEREAS, the manufacture and distribution of single-use carryout bags requires utilization of finite natural resources; and

WHEREAS, the use of single-use shopping bags have severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, water consumption and solid waste generation; and

WHEREAS, plastic bag litter results in costs to the City through removal of bag debris from storm drains, public roadways and open space; and

WHEREAS, statewide the rate of recycling of plastic bags is only approximately five percent (5%); and

WHEREAS, the Novato Sanitary District has adopted a waste diversion goal of 80 percent by 2025; and

WHEREAS, it is the desire of the City of Novato 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; and

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 Novato) can consider for adoption; and

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. 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, and

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. 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. Further, as required by 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. The analysis of alternatives is presented in Section 6.0 of the Draft EIR, which concluded that Alternative 4 (Mandatory Charge of \$0.10 for Recyclable Paper Carryout Bags) would be environmentally superior compared to the draft model ordinance; and

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; and

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 Board of Directors, on an 11-0 vote, adopted Resolution No. 2014-01 certifying the Single Use Bag Reduction Ordinance Final EIR. This certification was based on and supported by findings, which are incorporated herein by reference; and

WHEREAS, following the certification of the Final EIR by the JPA Board of Directors, the City of Novato 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 (proposed ordinance); and

WHEREAS, the Final EIR was reviewed to determine if it adequately analyzed the environmental impacts of the proposed ordinance. Based on this review, and as set forth in the findings below, the City Council has determined that adoption of the proposed ordinance would not result in any significant new information or new significant impacts that had not been previously analyzed in the Final EIR. Consistent with the requirements of the CEQA Guidelines Section 15096 the City of Novato has considered the Final EIR prepared by the JPA as the lead

agency, and has reached its own conclusions on whether and how to approve the proposed ordinance based on findings of fact contained herein; and

WHEREAS, on February 25, 2014, the Novato 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

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

SECTION 1. FINDINGS. The City Council of the City of Novato hereby finds that:

- A. General Plan Consistency. The proposed ordinance to ban the use of plastic single use carryout bags is consistent with the policies and programs of the Novato General Plan, including Policies EN-3 (Wildlife Habitat), EN-7 (Water Quality), EN-10 (Wetlands Ecology), EN-12 (Bayland Area Protection) and EN-38 (Solid Waste Reduction) in that the proposed ordinance would reduce the presence and impacts of plastic bag litter in areas of natural habitat and reduce generation of solid waste, as set forth in Exhibit A, attached hereto and incorporated herein by reference.
- B. Public Health, Safety and Welfare. The public health, safety and general welfare will not be adversely impacted by the proposed ordinance to restrict the distribution of single use carryout bags. Rather, the public health, safety and general welfare will be enhanced and further protected by reducing land-filling of waste products, reducing long-lasting litter throughout the community and natural areas, reducing costs of removal of debris from storm drains and other public clean-up costs.
- C. Final EIR. The Final EIR has been prepared in accordance with the CEQA Guidelines and adequately analyzes the environmental effects of the proposed ordinance.
- D. Record of Proceedings. The following information is incorporated by reference and made part of the Record supporting these findings:
  - The Notice of Preparation (NOP) and all other public notices issued by the JPA in conjunction with the project;
  - All comments submitted by agencies or members of the public during the 45-day public comment period for the Draft EIR;
  - All comments and correspondence submitted to the JPA and City of Novato with respect to the Project, in addition to timely comments on the Draft EIR;
  - All findings and resolutions adopted by JPA decision makers and the Novato City Council in connection with the project, and all documents cited or

referred to therein;

- All reports, studies, memoranda, staff reports, maps, exhibits, illustrations, diagrams or other planning materials relating to the Project prepared by the JPA, City or by consultants to the JPA/City or responsible or trustee agencies, with respect to the City's compliance with the requirements of CEQA and with respect to the City's actions on the Project;
- All documents submitted to the City by other public agencies or members of the public in connection with the project, up through the close of the public hearing on February 25, 2014;
- Minutes, as available, of all public meetings and public hearings held by the JPA and the City in connection with the Project;
- Any documentary or other evidence submitted to the JPA and City at public meetings and public hearings;
- Matters of common knowledge to the JPA and City, including, but not limited to, those cited above; and
- Any other materials required to be in the Record of Proceedings by Public Resources Code Section 21167.6, subdivision (e).

Consistent with Section 21081.6(d) of the California Environmental Quality Act, the documents which constitute the record of proceedings for approving this project are located in and may be obtained from the Novato City Clerk's Office, 922 Machin Ave, Novato, CA. The City Clerk is the custodian of records for all matters before the City Council.

The City Council has relied on all of the documents listed above in reaching its decision on the Project.

- E. CEQA Findings: The City Council hereby makes the findings, pursuant to CEQA Guidelines Section 15096 as set forth in Exhibit B, attached hereto and incorporated herein by reference.
- F. Mitigation Monitoring and Reporting Program. Consistent with Public Resources Code Section 21081.6, the City Council does not need to adopt a Mitigation Monitoring Program in that the adoption and implementation of the proposed ordinance would not result in any significant effects on the environment that would require mitigation

SECTION 2. A new Section 7-7 is hereby added to Chapter VII (Health) of the Novato Municipal Code as follows:

## Chapter 7-7 Regulation of Single Use Carryout Bags

### 7-7.1 Definitions.

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

- 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. "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.
- h. "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 Novato; (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.
- 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; (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 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.
- k. “Store” means a retail establishment located within the incorporated area of the City of Novato 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.

#### **7-7.2 Plastic carryout bags prohibited.**

- a. No 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.

#### **7-7.3 Permitted bags.**

All stores 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.

#### **7-7.4 Regulation of recyclable paper carryout bags.**

- a. Any store that provides a recyclable paper carryout bag to a customer must charge the customer at least ten cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.
- b. The City Council may increase the ten cent (\$0.10) minimum charge by Resolution.
- c. 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.
- d. All stores must post signage clearly indicating the per bag charge for recyclable paper carryout bags.
- e. All stores must 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 a store for recyclable paper bags under this Chapter will be retained by the store.

#### **7-7.5 Use of reusable bags.**

- a. All stores shall make reusable bags available for purchase by a customer for at least ten cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.
- b. The City Council may increase the ten cent (\$0.10) 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 30 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.

**7-7.6 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.

**7-7.7 Operative date.**

This Chapter shall become operative six (6) months after its effective date, for stores defined in Subsections k (1) and k (2) of Section 7-7.1. For stores defined in Subsection (k)3 of Section 7-7.1, this Chapter shall become operative twelve (12) months after its effective date.

**7-7.8 Enforcement and violation – penalty.**

- a. The City Code Enforcement official or his/her designee has primary responsibility for enforcement of this Chapter.
- b. If the Code Enforcement official 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 store that violates or fails to comply with any of the requirements of this Chapter after a written warning notice has been issued for that violation shall be guilty of an infraction.
- d. Violations of this ordinance shall be punishable as follows:

<b>Plastic Bag Compliance Fee Matrix</b>			
<b>Violations</b>	<b>Number of Scanners/Registers</b>		
	<b>1-3</b>	<b>4-9</b>	<b>10 or more</b>
First	Written Warning Notice		
Second	\$135.00	\$200.00	\$220.00
Third	\$185.00	\$250.00	\$270.00
Fourth	\$270.00	\$400.00	\$440.00
Fifth	Administrative Civil Penalty or Referral to DA		

- e. A fine shall be imposed for each day a violation occurs or is allowed to continue.
- f. Any store operator who receives a written warning notice or fine may request an

administrative review of the accuracy of the determination or the propriety of any fine issued, by filing a written notice of appeal with the City Manager no later than 30 days after receipt of a written warning notice or fine, as applicable. The notice of appeal must include all facts supporting the appeal and any statements and evidence, including copies of all written documentation and a list of any witnesses that the appellant wishes to be considered in connection with the appeal. The appeal will be heard by the City Manager. The City Manager will conduct a hearing concerning the appeal within 45 days from the date that the notice of appeal is filed, or on a later date if agreed upon by the appellant and the City Manager, and will give the appellant 10 days prior written notice of the date of the hearing. The City Manager may sustain, rescind, or modify the written warning notice or fine, as applicable, by written decision. The City Manager will have the power to waive any portion of the fine in a manner consistent with the decision. The decision of the City Manager is final and effective on the date of service of the written decision, is not subject to further administrative review, and constitutes the final administrative decision.

**7-7.9 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 section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional on their face or as applied.

SECTION 4: Publication and Effective Date:

This ordinance shall be published in accordance with applicable provisions of law, by either:

publishing the entire ordinance once in the *Novato Advance*, a newspaper of general circulation, published in the City of Novato, within fifteen (15) days after its passage and adoption, or publishing the title or appropriate summary in the *Novato Advance* at least five (5) days prior to adoption, and a second time within fifteen (15) days after its passage and adoption with the names of those City Councilmembers voting for and against the ordinance, and

This ordinance shall go into effect thirty (30) days after the date of its passage and adoption

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THE FOREGOING ORDINANCE was first read at a regular meeting of the Novato City Council on the 25<sup>th</sup> day of February, 2014, and was passed and adopted at a regular meeting of the Novato City Council on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

AYES: Councilmembers

NOES: Councilmembers

ABSTAIN: Councilmembers

ABSENT: Councilmembers

\_\_\_\_\_  
Mayor of the City of Novato

Attest:

\_\_\_\_\_  
City Clerk of the City of Novato

Approved as to form:

\_\_\_\_\_  
City Attorney of the City of Novato