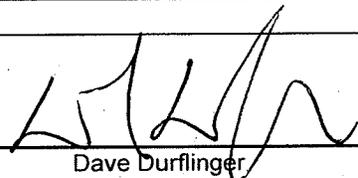


STAFF REPORT
COUNCIL MEETING DATE:
June 25, 2012

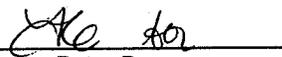
ITEM FOR COUNCIL CONSIDERATION:

Initiation of amendment to Carpinteria Municipal Code Chapter 8.51 pertaining to commercial establishments dispensing single-use carryout bags to customers in the City of Carpinteria.

City Manager


Dave Durlinger

City Attorney


Peter Brown

STAFF RECOMMENDATION:

ACTION ITEM X ; NON-ACTION ITEM

Direct staff concerning amendment to the City's single-use bag regulations at CMC 8.51.

Sample Motion: I move to direct staff to prepare a draft ordinance amending the City's single-use bag regulations at CMC 8.51, and to suspend the first phase of implementation of the existing single-use bag regulations.

I. BACKGROUND:

At its regular meetings of March 12, 2012, the City Council adopted Ordinance No. 655, (attached) an amendment to the Carpinteria Municipal Code, which established regulations pertaining to the distribution by business operators to customers of single-use bags in the City of Carpinteria. The provisions of the ordinance were established as Carpinteria Municipal Code Chapter 8.51, and titled "Single-Use Bag Regulations".

Ordinance No. 655, became effective on April 11, 2012, and its provisions are scheduled to apply to designated Large and Small Businesses on July 11, 2012, and April 11, 2013, respectively.

Shortly after its adoption, the Save the Plastic Bag Coalition filed a lawsuit in Santa Barbara Superior Court (*Save the Plastic Bag Coalition v. City of Carpinteria*, Case No. 1385674), claiming that the use of single-use bags by restaurants in California is regulated by State law under the Health & Safety Code and therefore California cities, including the City of Carpinteria, are preempted from regulating the use of such bags by restaurants.

The City disagrees with the claims made by the Save the Plastic Bag Coalition concerning preemption by State law and has concluded that materials used for carryout bags provided to customers are not regulated by the State as a matter of food safety; however, in light of the uncertainties and costs associated with litigation, the City and the Save the Plastic Bag Coalition have reached a Settlement Agreement (attached). The Settlement Agreement lays out some proposed amendments to the City's Ordinance that would exempt restaurants from the Ordinance. If the City amends its Ordinance to conform to those terms, the Save the Plastic Bag Coalition will dismiss the litigation.

The purpose of this agenda matter is to allow the City Council an opportunity, if it so wishes, to initiate an amendment to CMC 8.51, Single-Use Bag Regulations, pursuant to the terms of the Settlement Agreement, and to direct staff on the specifics of the changes to be proposed. Once direction is received from the City Council, staff will include any proposed amendments as a part of a draft ordinance that will be considered at a future noticed public meeting.

II. ANALYSIS:

The City's Single-Use Bag regulations, as established by Ordinance No. 655 and codified as Carpinteria Municipal Code Chapter 8.51, serve to limit the use by commercial establishments of all single-use bags, i.e., paper or plastic, being provided to customers for carryout purchases. The purpose of the regulations is to protect the local environment, including unique coastal resources and environmentally sensitive habitat areas, to reduce the amount of waste produced by the community, and to prevent trash and debris from polluting creeks and ocean waters.

The effect of the regulations, as currently adopted, will be to prohibit all commercial establishments from providing single-use plastic bags to customers for carryout purchases. Certain businesses that are defined as Large Commercial Establishments, including Grocery Stores, will also be prohibited from providing paper single-use bags to customers for carryout purchases. Restaurants are included in the definition of Small Commercial Establishments that will be allowed to provide customers with single-use paper bags.

Pursuant to the proposed Municipal Code amendments in the Settlement Agreement, restaurants would be exempted from the City's single-use bag regulations. If the Council wishes to amend its single-use bag regulations to conform with the proposed amendments in the Settlement Agreement, Staff recommends changes to the existing regulations as follows:

- A. Settlement Agreement Changes. The proposed amendments detailed in the Settlement Agreement include the following:
1. Amend Subsection C of section 8.51.030, the definition of Small Commercial Establishment, to read as follows: "Small Commercial Establishment" is a commercial establishment that does not qualify as a large commercial establishment.
 2. Subsection D of section 8.51.030, the definition of "Food Provider" would be deleted and replaced by a definition of "Restaurant". The definition of restaurant would read: "Restaurant" means any person or establishment doing business within the City of Carpinteria, that provides prepared food or beverage for public consumption on or off its premises and includes any restaurant, café, bakery, grocery or convenience store food counter or delicatessen, or catering truck vehicle.
 3. Subsection F would be added to Section 8.51.050 (Exemptions) and read: All Restaurants shall be exempt from the requirements of this Chapter.
- B. Hybrid Markets/Food Counters. Most Grocery Stores in Carpinteria are hybrids that include food counters or delicatessens, which would be included into the proposed definition of Restaurant. The changes proposed above pursuant to the Settlement Agreement would allow restaurants to provide customers with any type of single-use bag.

In larger Grocery Stores such as Vons or Albertsons, the bags would be provided at the food service counter or area. For example, in supermarkets such as Vons or Albertsons, it is expected that single-use bags would be provided at the deli counter but not at the check-out stands and that the distinction between areas of the store subject to different standards with regard to single-use bags would be fairly easy to establish.

Markets with small floor areas in Carpinteria also include hybrid stores that are both Grocery Stores and Restaurants. In these stores, the restaurant food is typically sold from the same counter that sundries and other grocery items are sold. Staff is concerned that at these stores it may be impractical for operators to make distinctions between customers that may be provided single-use bags, i.e., Restaurant customers, and those that are not permitted to be provided a single-use bag, i.e., Grocery Store customers, and difficult for the City to establish an effective compliance program.

As such staff recommends amending the definition of Grocery Store; section F of CMC 8.51.030, to include stores of greater than 3,000 square feet in area. With this

Address #	Street	Square feet	Name
4502	Carpinteria Avenue	2,240	Mi Fiesta Market
4795	Carpinteria Avenue	2,482	Reyes Market
4860	Carpinteria Avenue	1,098	Coastal Liquor
4928	Carpinteria Avenue	1,500	La Tiendita
5292	Carpinteria Avenue	1,200	City Market Center
1047	Casitas Pass Road	1,152	The Meat n Place/La Carniceria
1116	Casitas Pass Road	1,663	Arco-AM/PM
501	Linden Avenue	2,080	City Market #15
794	Linden Avenue	2,052	Beach Liquor
944	Linden Avenue	1,968	Pacific Health Foods
4290	Via Real	2,159	Chevron
4410	Via Real	2,400	7-11

- C. Timing of Implementation. As identified earlier in this report, the first phase of implementation of the City's single-use bag regulations is schedule to begin July 11, 2012, applying to those businesses defined as Large Commercial Establishments. Staff has already begun outreach and been in contact with 13 of these businesses.

If the Council opts to make changes to the single-use bag regulations of the Municipal Code, as described above, it would do so by adopting an Ordinance. The new Ordinance would alter the standards that apply to many businesses but would not become effective until after the July 11 implementation date of the existing regulations. As such, staff recommends that the City Council direct that the first phase of implementation of the existing single-use bag regulations (effecting Large Commercial establishments) be suspended and that the amended regulations include a new first phase implementation date that is 60 days from the effective date of the revised Ordinance. For example, if the second reading of the revised Ordinance is projected to be July 23, 2012, the Ordinance should become effective

30 days thereafter on August 22, 2012, and therefore the Ordinance should be amended to apply to Large Commercial Establishments beginning on Monday, October 22, 2012. Staff recommends that the second phase of implementation that applies to Small Commercial Establishments beginning April 11, 2013, would remain unchanged because even with the potential amendment to the Ordinance, there would still be significant time before April 11, 2103 to reach out to those businesses.

III. LEGAL ISSUES:

If the Council amends the Ordinance to conform to the proposed terms in the Settlement Agreement, the Settlement Agreement requires the Save the Plastic Bag Coalition to dismiss the existing challenge to the Ordinance with prejudice. The Coalition could not challenge the new Ordinance with any type of claim (i.e., preemption by the Retail Food Code, California Environmental Quality Act (CEQA), or some other legal theory) so long as the terms generally conform to the amendments discussed above and in the Settlement Agreement which exempt Restaurants from the Single-Use Bag regulations.

It should be noted, however, that if the Ordinance is amended, the City will be taking a new discretionary action that could be challenged by another entity under any legal theory, including preemption under the Retail Food Code and CEQA. As we have discussed previously, there are three main types of challenges that have been filed against single-use bag bans by local agencies: CEQA, Proposition 26, and preemption under the Retail Food Code.

CEQA. The City previously relied on two categorical CEQA exemptions (Guideline §§ 15307 and 15308) when enacting the previous Ordinance. Staff anticipates that a similar exemption would appropriately apply to the subject Ordinance.

Proposition 26. Other local agencies have adopted a charge for paper bags in an attempt to prevent customers from switching from plastic to paper after the ban. Since the City has been banning paper bags at large commercial establishments, it has not adopted a charge for paper bag use. As long as the City does not amend the Ordinance to charge for paper bags, there is limited risk of attracting a Proposition 26 challenge to the Ordinance.

Preemption under the Retail Food Code. The Coalition is the only entity challenging local Ordinances claiming preemption by the Retail Food Code; however, another entity could make a similar claim. No trial court in Santa Barbara County or Court of Appeal in California has ruled on the issue, so although we do not believe the claim is supported by the case law, due to the uncertainties of litigation, it is impossible to know how a Court would rule on the issue.

IV. FINANCIAL ISSUES:

The City will incur additional costs through staff time and the City Attorney's office in order to draft and process for approval the proposed ordinance that are estimated to be less than \$5,000.

V. ATTACHMENTS:

Ordinance No. 655, Single-Use Bag Regulations
Settlement Agreement

ORDINANCE NO. 655

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA,
CALIFORNIA, ESTABLISHING CHAPTER 8.51 OF THE CARPINTERIA
MUNICIPAL CODE PERTAINING TO THE REGULATION OF SINGLE-USE BAGS**

WHEREAS, the City of Carpinteria ("City") pursuant to its police powers has the authority to enact laws which promote the public health, safety and general welfare of its residents; and

WHEREAS, the City is required under state and federal law to implement policies and programs to protect unique coastal resources and environmentally sensitive habitat areas (California Coastal Act), reduce the amount of waste produced by the community (i.e., AB 939, AB 341, AB 32), and prevent storm water runoff, trash, and debris from polluting creek and ocean waters (National Pollutant Discharge Elimination System Permit Program and the State Municipal Storm Water Permitting Program); and

WHEREAS, the State Legislature passed the Environmental Protection – Recycling – Plastic Carryout Bags Act (AB 2449) in 2007, with the stated intent of encouraging the use of reusable bags by consumers and retailers, and reducing the consumption of single-use bags state-wide; and

WHEREAS, the Carpinteria community is attractive to residents, businesses, and visitors due to a local economy and quality of life that is centered on a clean and healthy environment, including but not limited to, parks, public open spaces, creeks, estuary, tidelands and the ocean; and

WHEREAS, commercial establishments in Carpinteria distributed an estimated millions of single-use plastic bags and hundreds of thousands single-use paper bags in 2010; and

WHEREAS, most single-use paper and plastic bags are not recycled and so they end up in the waste stream or as litter in the environment. For example, the State of California estimates that 5 percent of single-use plastic bags distributed by commercial establishments subject to the At-Store Recycling Program (Pub. Res. Code § 42250-42257) are recycled through the Program and the EPA estimated that (nationally) approximately 50 percent of single-use paper shopping bags were recycled in 2009; and

WHEREAS, the City Council of the City of Carpinteria has held publicly noticed meetings on June 25, 2007, July 9, 2007, February 25, 2008, September 22, 2008, May 11, 2009, June 28, 2010, March 28, 2011, August 8, 2011, October 10, 2011, December 12, 2011, and February 27, 2012 and hosted community workshops on November 8, 2011 and February 1, 2012 in order to discuss issues and alternative responses to the use of single-use bags in the City; and

WHEREAS, the City Council received testimony and other information documenting the negative local and global impacts of single-use plastic bags on the environment and the waste stream; and

WHEREAS, the City larger stores and grocery stores cause the majority of single-use bag distribution in Carpinteria; and

WHEREAS, data gathered by City staff has documented the prevalence of single-use bags in the local environment, including in creeks and on beaches, and that many single-use bags are disposed of in the trash and sent to the landfill used by the City's trash hauler. These single-use bags negatively impact the local environment and create clean-up costs for the City, and are costly to dispose of and take up limited landfill space; and

WHEREAS, reusable bags are an available alternative to single-use bags; and

WHEREAS, in order to protect public health and safety and maintain and improve quality of life and the environment of Carpinteria, it is in the City's interest to establish programs and services that minimize the amount of single-use plastic and paper material that is manufactured and transported for use in Carpinteria, and which must then be handled, processed and disposed of; that minimize trash pollution in riparian, estuarine, ocean and other sensitive habitat areas; that minimize litter on public and private property: including but not limited to streets, beaches, parks, sidewalks, and storm drains; and, that reduce the amount of material in the Carpinteria waste stream.

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

SECTION 1. INCORPORATION OF RECITALS

The City Council finds and determines that the above recitals are incorporated herein and are each relied upon independently by the City Council for its adoption of this Ordinance.

SECTION 2. CREATION OF CHAPTER 8.51

Chapter 8.51 of the Carpinteria Municipal Code shall hereby be created and shall read as follows:

8.51.010 Title.

The title of this chapter shall be "Single-Use Bag Regulations"

8.51.020 Purpose

The purpose of these provisions is to promote:

A. The protection of unique coastal resources found in Carpinteria and identified for protection in policies of the City's General Plan/Local Coastal Plan, including the Carpinteria "El Estero" Salt Marsh, Beaches, Tidelands, and Offshore Reefs, Harbor Seal Hauling Grounds, and Creekways and Riparian Habitat;

B. Compliance with federal and state mandates for Clean Water (including National Pollutant Discharge Elimination System Permit Program and waste stream reduction (AB 939 and AB 341));

C. A reduction in the amount of plastic and paper material that is manufactured, transported, handled/processed, and discarded, and the impacts associated with such activities.

D. A reduction in the amount of waste/debris in City parks, public open spaces, creeks, estuary, tidelands and the ocean, and the amount of material going to landfills;

8.51.030 Definitions.

The following definitions shall govern the construction of this chapter:

A. "Commercial Establishment" means any person, including any corporation, partnership, business, facility, vendor, organization or individual located in or doing business within the City of Carpinteria that sells or provides perishable or non-perishable goods.

B. "Large Commercial Establishment" is a commercial establishment with over \$5,000,000 in annual gross retail sales volume, as reported to the State Board of Equalization or is a grocery store as defined in this section.

C. "Small Commercial Establishment" is a food provider or a commercial establishment that does not qualify as a large commercial establishment. If a portion of a large commercial establishment qualifies as a food provider, that portion of the large commercial establishment shall qualify and be treated as a small commercial establishment under this chapter.

D. "Food Provider" means any person or establishment doing business within the City of Carpinteria, that provides prepared food for public consumption on or off its premises and includes, without limitation, any store, shop, sales outlet, restaurant, grocery store, delicatessen, or catering truck vehicle.

E. "Gift Bag" means a decorated bag capable of containing a volume no greater than 6 liters made largely of paper, with handles that is designed to be used as gift packaging .

F. "Grocery Store" means a commercial establishment greater than 500 square feet in area that sells a line of dry goods, canned goods, or non-food items and some perishable items.

G. "Point of Sale" means the location in the commercial establishment where purchase is made.

H. "Product Bag" means any bag provided to a customer within a commercial establishment for the purposes of transporting items to the point of sale. An illustrative list of product bags includes bags used to contain produce, vegetables, meat, prescription drugs, any bulk goods, as well as dry cleaning bags, newspaper bags, and prepackaged goods.

I. "Paper Bag" means any paper bag that has a post-consumer recycled content of at least 40 percent and is 100 percent recyclable.

J. "Reusable Bag" means any bag with handles that is specifically designed and manufactured for multiple reuse, has a minimum lifetime capability of 125 or more uses carrying 22 or more pounds over a distance of at least 175 feet, and is either (1) made of cloth or other machine washable fabric or (2) made of other durable material, including plastic that is at least 2.25 mils thick.

K. "Single-Use Bag" means any bag that is provided to customers for carryout purchases by a commercial establishment, excluding gift bags, product bags, and reusable bags, as defined in this section.

8.51.040 Prohibition and Reporting Requirement.

A. Commencing on July 11, 2012 large commercial establishments are prohibited from dispensing to any customer at the point of sale a single-use bag.

B. Commencing on April 11, 2013 small commercial establishments are prohibited from dispensing to any customer at the point of sale a single-use bag, except gift bags or paper bags, as defined in this chapter.

8.51.050 Exemptions.

A. During a locally declared emergency, the City, emergency response agencies operating within the City, users of City facilities, and commercial establishments shall be exempt from the provisions of this chapter.

B. The City Manager, or his/her designee, may exempt an affected commercial establishment, from the requirements herein for a period of up to six months, upon showing by the commercial establishment that the application of the provisions herein would cause undue hardship. In determining whether undue hardship exists, the city manager or his/her designee shall consider:

1. Situations unique to the commercial establishment where there are no reasonable alternatives to using any bags that are not in compliance with this chapter and compliance with this chapter would cause significant economic hardship to that commercial establishment;

2. The existence of franchise or other contractual obligations which require a commercial establishment to use bags that are not in compliance with this chapter.

C. The decision of the City Manager or his/her designee to grant or deny an exemption shall be final. Exemptions granted under the provisions of this section are valid for up to six months, as determined by the City Manager. A commercial establishment granted an exemption by the City must re-apply prior to the end of the exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed six months.

D. An exemption application shall include all information necessary for the City to make its decision, including but not limited to documentation showing the factual support for the claimed exemption.

E. Commercial Establishments must exercise best efforts during exemption period to meet ordinance requirements.

8.51.060 Penalties and Enforcement.

A. The presence at the point of sale of a non-exempt commercial establishment of prohibited bags not in compliance with this chapter shall constitute a rebuttable presumption of violation of this chapter.

B. Violations of this ordinance shall be enforced as follows:

1. For the first violation, upon a determination that a violation of this chapter has occurred, the City shall issue a written warning notice to the commercial establishment which will specify the violation and the appropriate penalties in the event of future violations.

2. Thereafter, any person violating or failing to comply with any of the requirements of this chapter shall be subject to remedies specified pursuant to Chapters 1.06 and 1.08 of this Code.

3. Each and every sale or other transfer of a single-use bag shall constitute a separate violation of this ordinance.

4. The city attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

C. The remedies and penalties provided in this chapter are cumulative and not exclusive of other remedies and penalties available under other provisions of applicable law.

8.51.070 Construction; Preemption

This chapter and any provisions thereof shall be null and void upon the adoption of any state or federal law or regulation imposing the same or essentially the same limits on the use of prohibited products as set forth in this chapter. This chapter is intended to be a proper exercise of the City's police power, to operate only upon its own facilities and commercial establishments acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

SECTION 3. CEQA FINDINGS.

The adoption of this Ordinance is not subject to the California Environmental Quality Act, as this ordinance does not constitute a project, as defined by Public Resources Code Section 21065 and even if it is determined that the proposed action constitutes a project, the project would be exempt pursuant to CEQA Guidelines §§ 15307 [exemptions for actions to protect natural resources], 15308 [exemptions for actions to protect the environment], or 15061(b)(3) [common sense exemption].

SECTION 4. EFFECTIVE DATE.

This Ordinance shall be in full force and effect thirty (30) days following a second reading of the ordinance; and before the expiration of fifteen (15) days of its passage shall be published once with the names of the City Council voting for and against the same in the Coastal View, a newspaper of general circulation, published in the City of Carpinteria.

SECTION 5. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or application thereof to any person or circumstances, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed such section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases may be declared unconstitutional or invalid or ineffective.

PASSED, APPROVED, AND ADOPTED this 12th day of March, 2012, by the following called vote:

AYES: COUNCILMEMBERS: Carty, Reddington, Stein, Clark

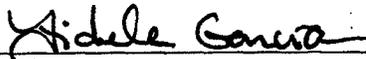
NOES: COUNCILMEMBERS: Armendariz

ABSENT: COUNCILMEMBERS: None



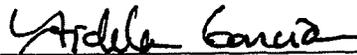
Mayor of the City of Carpinteria

ATTEST:



City Clerk, City of Carpinteria

I hereby certify that the foregoing Ordinance was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held this 12th day of March, 2012.



City Clerk, City of Carpinteria

APPROVED AS TO FORM:



CITY ATTORNEY

SETTLEMENT AGREEMENT

This **Settlement Agreement** (Agreement) is made effective as of June 21, 2012 (Effective Date), at Carpinteria, California, by and between **THE SAVE THE PLASTIC BAG COALITION** (Coalition), and the **CITY OF CARPINTERIA** (City) with reference to the following facts and intentions.

A. WHEREAS, on March 12, 2012, the City approved on second reading Ordinance No. 655, entitled "An Ordinance of the City Council of the City of Carpinteria, California, Establishing Chapter 8.51 of the Carpinteria Municipal Code Pertaining to the Regulation of Single-Use Bags" (Ordinance), which regulates distribution at the point of sale of paper and plastic single-use carry-out bags at commercial establishments in the City.

B. WHEREAS, the Coalition subsequently filed a legal action challenging the Ordinance, Santa Barbara Superior Court Case No. 1385674, naming the City as Defendant (Litigation).

C. WHEREAS, beginning on April 11, 2013, the Ordinance will prohibit the distribution of single-use plastic bags at the point of sale by "food providers," which is defined to include any person or establishment in the City that provides prepared food for public consumption on or off its premises, including restaurants.

D. WHEREAS, because litigation is costly and outcomes are uncertain, the parties intend by this Agreement to permanently resolve and conclude their differences and disputes regarding all matters at issue in the Litigation and regarding the Ordinance.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated into the operative provisions of this Agreement by this reference, and for all the good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Settlement. In full and complete settlement and release and discharge of any and all claims and causes of action made in the Litigation, and in release and discharge of any and all claims and causes of action arising out of the events or incidents referred to in the pleadings in the Litigation, including any potential claims for attorneys' fees, out-of-pocket expenses, and costs of suit against the City, the Coalition and City agree to the following.

a. If the City amends the Ordinance to include the modifications described below, the Coalition agrees that within ten (10) court days of the second reading of the Ordinance, the Coalition shall file a Request for Dismissal with Prejudice of *Save the Plastic Bag Coalition v. City of Carpinteria*, Santa Barbara Superior Court Case No. 1385674 that dismisses all claims in the litigation with prejudice. The Coalition shall provide a conformed copy of the Request for Dismissal to the City by e-mail or fax within three (3) business days.



b. Proposed modifications to the Ordinance:

Subsection C. of section 8.51.030: "Small Commercial Establishment" is a commercial establishment that does not qualify as a large commercial establishment.

Deletion of Subsection D. of section 8.51.030, defining "food provider."

Addition of a definition for "Restaurant" to section 8.51.030: "Restaurant" means any person or establishment doing business within the City of Carpinteria that provides prepared food or beverages for public consumption on or off its premises such as a restaurant, café, bakery, grocery or convenience store food counter or delicatessen, or catering truck vehicle.

Subsection F shall be added to Section 8.51.050 (Exemptions) reading: All Restaurants shall be exempt from the requirements of this Chapter.

c. Within thirty (30) days of the filing of the Request for Dismissal with Prejudice, the City shall pay to the Stephen L. Joseph Attorney Client Trust Account the sum of Eleven Thousand Five Hundred and Twenty dollars (\$11,520) in reimbursement of the Coalition's costs incurred in the Litigation;

d. In light of this Agreement and to allow the City the opportunity to consider an amendment to the Ordinance, the Coalition agrees to sign a stipulation with the City to submit to the Court to request an extension of the City's time to answer from June 15, 2012 to September 15, 2012.

2. **No Future Challenges.** Except as stated herein, if the Ordinance is amended and remains as described in this Agreement, the Coalition and its members individually and in any combination, hereby agree that they will not make any claim or file any action against the City related to the Ordinance, including but not limited to, any action under CEQA, any preemption claim, or any other action or claim challenging the legality or validity of the Ordinance or the Ordinance as amended. If the Ordinance at any time in the future does not conform to this Agreement, the Coalition and its members may make any claim or file an action against the City related to the Ordinance without restriction of any kind.

3. **Mutual Release and Compromise.** Except as stated herein, the Coalition, on behalf of itself, its assigns, agents, insurers, employees, partners, representatives, attorneys, guarantors, predecessors, successors, officers, directors, shareholders, owners, members and all other persons or entities acting by, through, under, or in concert with them, hereby fully releases and discharges the City, its agents, employees, representatives, attorneys, predecessors, successors, officers, and directors of and from any and all action or actions, cause or causes of action, in law or equity, suits, debts, claims, contracts, agreements, promises, liability, demands, obligations, damages, losses, costs or expenses of any nature, including those for attorneys' fees,

out-of-pocket expenses and costs of suit, known or unknown, fixed or contingent, which the Coalition now has or may hereafter have against the City by reason of any matter, cause or thing whatsoever from the beginning of time to the date hereof related to or arising out of the Ordinance or the Litigation (Claims). Except as stated herein, the City fully releases and discharges the Coalition and its attorneys and employees, as well as its directors, officers, employees, and members, from any and all claims, including those for attorneys' fees, out-of-pocket expenses and costs of suit, and claims for malicious prosecution and abuse of process, which the City may contend exist based on the Litigation.

4. General Release of Unknown Claims. The Coalition and the City, by executing this Agreement, agree that there is to be a complete bar of the Claims specified in the previous Section. In recognition of this intention, the Coalition and the City hereby expressly waive any and all rights or benefits conferred by the provisions of Section 1542 of the California Civil Code, which provides:

"A release does not extend to claims which a creditor does not know or expect to exist in his favor at the time of executing the release, which if known by him would have materially affected his settlement with the debtor."

This settlement shall act as a release of future Claims which may arise from the above-mentioned compromised disputes, whether such Claims are currently known, unknown, foreseen or unforeseen. The Coalition and the City understand and acknowledge the significance and consequence of such specific waiver of Section 1542 of the California Civil Code and hereby assume full responsibility for the injuries, damages, losses or liability that they may hereafter incur by reason of the within settlement and waiver. The Coalition and the City each acknowledge that they consciously intend these consequences even as to claims for damages, attorneys' fees and out-of-pocket expenses which may exist as of the date of this release but which are not known to exist and which, if known, would materially affect their decision to execute this release, regardless of whether their lack of knowledge is a result of ignorance, oversight, error, negligence or any other cause.

5. Assignment/Transfer. The Coalition and the City, and each of them, represent and warrant that there has not been, and that there will not be, any assignment or transfer of any interest in any Claims that they may have against one another. The Coalition and the City each agree to indemnify, defend and hold the other harmless from any Claims, liability, damage, demand, cost, expense or attorneys' fees incurred by any party as a result of any person asserting any Claims or any rights under an assignment or transfer of any Claims.

6. Voluntary Release. The release set forth in this Agreement is freely and voluntarily executed by the Coalition and the City, after having been apprised of all relevant information and applicable law. The parties, in executing this Agreement, have not relied upon any inducements, promises or representations made by any other party, their representatives or their attorneys which have not been specifically incorporated in

writing into the terms of this Agreement. The Coalition and the City each have read this Agreement and have had its terms and consequences explained by their respective attorneys, or if they have not consulted with an attorney, they have waived this right and voluntarily accept the Agreement, with its terms and consequences, as written. It is further understood and acknowledged by the Coalition and the City that this release is a compromise and settlement of disputed claims and in no way constitutes an admission by any party of any fault or liability whatsoever. Further, each of the releasees herein denies any liability for any of the Claims, demands, damages, actions, causes of actions or suits herein released. The undersigned further understand and agree that neither the payment of any sum of money nor the execution and performance of this Agreement shall constitute or be construed as an admission of liability whatsoever by any party.

7. Mediation. The Coalition and the City agree that neither shall be entitled to file a legal action enforcing this Agreement without first attempting in good faith to engage in mediation with a mediator mutually selected by the Coalition and the City.

8. General Provisions.

a. Good Faith. Wherever in this Agreement a party has the right to approve an act of another party, the former shall exercise such discretion in good faith and according to normal commercial standards. Similarly, where a party is required to satisfy a condition or complete an act in a certain fashion or within a specified time period, that party shall pursue such objectives in good faith and make all reasonable efforts to accomplish the same; the other party shall likewise in good faith cooperate and assist the other party in accomplishing this task to cause the consummation of the agreement as intended herein.

b. Other Instruments. The parties hereto shall, whenever and as often as reasonably requested to do so by the other parties, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all documents and instruments as may be necessary, expedient or proper in the reasonable opinion of the requesting party to carry out the intent and purposes of this Agreement, provided that the requesting party shall bear the cost and expense of such further instruments or documents (except that each party shall bear its own attorneys' fees).

c. General Interpretation. The terms of this Agreement have been negotiated by the parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the agreement. No rule of strict construction will be applied against any person.

d. Signatures - Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the parties of at least one set



of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any of such completely executed counterparts shall be sufficient proof of this Agreement. Fax signatures shall be deemed acceptable for all purposes.

e. Captions and Headings. The captions and headings of this Agreement are for convenience only and have no force and effect in the interpretation or construction of this Agreement.

f. Severability. If any term, provision, covenant or condition of this Agreement shall be or become illegal, null, void or against public policy, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated thereby. The term, provision, covenant or condition that is so invalidated, voided or held to be unenforceable shall be modified or changed by the parties to the extent possible to carry out the intentions and directives set forth in this Agreement.

h. Waiver. The waiver of any breach of any provision hereunder by any party to this Agreement shall not be deemed to be a waiver of any preceding or subsequent breach hereunder, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

i. Governing Law. The validity and interpretation of this Agreement shall be governed by the laws of the State of California, with venue for all purposes to be proper only in the County of Santa Barbara, State of California.

j. Notices. All notices, requests, demands, and other communications required to or permitted to be given under this Agreement shall be in writing and shall be conclusively deemed to have been duly given (i) when hand delivered to the receiving party; or (ii) three business days after the same have been deposited in a United States post office with registered or certified mail return receipt requested postage prepaid and addressed to the parties as set forth below; or (iii) the next business day after same have been deposited with a national overnight delivery service (Federal Express, DHL Worldwide Express, Express Mail, etc.), postage prepaid, addressed to the parties as set forth below with next-business-day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery service provider.

To the Coalition:

Stephen L. Joseph
350 Bay Street, Suite 100-328
San Francisco, CA 94133
Tel: (415) 577-6660
Fax: (415) 869-5380
E-mail: savetheplasticbag@earthlink.net



To the City: ATTN: Dave Durlinger, City Manager
 5775 Carpinteria Ave.
 Carpinteria, CA 93103
 Tel: (805) 684-5405 x449
 Fax: (805) 684-5305

With copy to: Peter Brown, City Attorney
 Brownstein Hyatt Farber Schreck
 21 E. Carrillo St.
 Santa Barbara, CA 93101-2706
 Tel: (805) 882-1401
 Fax: (805) 965-4333

Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this paragraph and that any person to be given notice actually receives such notice. A party may change or supplement the addresses given above, or designate additional addresses, for purposes of this Section by giving the other party written notice of the new address in the manner set forth above.

k. Time Is Of The Essence. Timely performance of the parties' duties under this Agreement is of the essence.

l. No Third Party Rights. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

m. No Precedent. This Agreement is entered into as a compromise and with the specific understanding that it is without any admission of fault by any party and is without precedential value. It is not intended to be, nor shall it be construed as an interpretation of any preexisting agreement and shall not be used as evidence, or in any other manner, in any court or dispute resolution proceeding (with the exception of an action or proceeding to enforce the terms of this Agreement) to create, prove or interpret the obligations of any party hereto or any of its individual members, associates, successors or predecessors under any other agreement(s) with a party or any nonparty to this Agreement.

n. Enforcement and Attorneys' Fees. This Settlement Agreement may be enforced by an action at law or in equity.

o. Authorizations. Individuals executing this and other documents on behalf of the respective parties do hereby certify and warrant that they have the capacity and have been duly authorized to so execute the documents on behalf of the individuals and entities so indicated. Each signatory shall also indemnify the other parties to this Agreement, and hold them harmless, from any and all damages, costs, attorneys' fees, and other expenses, if the signatory is not so authorized.

p. Entire Agreement and Amendment. In conjunction with the settlement described herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their right to claim, contest or assert that this Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

IN WITNESS WHEREOF, the parties hereto set forth their signatures as of the date and at the place first written above.

THE SAVE THE PLASTIC BAG COALITION

BY: 
STEPHEN L. JOSEPH, COUNSEL

THE CITY OF CARPINTERIA

BY: 
DAVE DURFLINGER, CITY MANAGER

ATTEST:


Michelle Gomez
City Clerk