

Tues July 19, 2016

(R-2016-774) Item

332

Subitem B

RESOLUTION NUMBER R- 310614

DATE OF FINAL PASSAGE JUL 27 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT, ADOPTING FINDINGS, A STATEMENT OF OVERRIDING CONSIDERATIONS, AND A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE SINGLE-USE CARRYOUT BAG REDUCTION ORDINANCE.

WHEREAS, the City Council of the City of San Diego considered Final Environmental Impact Report No. 412659 (FEIR) prepared for the Single-Use Carryout Bag Reduction Ordinance (Project); NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego that it is certified that the FEIR has been completed in compliance with the California Environmental Quality Act of 1970 (CEQA) (Public Resources Code Section 21000 et seq.), as amended, and the State CEQA Guidelines thereto (California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq.), that the FEIR reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said FEIR, together with any comments received during the public review process, has been reviewed and considered by the City Council of the City of San Diego in connection with the approval of the Project.

BE IT FURTHER RESOLVED, that pursuant to CEQA Section 21081 and State CEQA Guidelines Section 15091, the City Council hereby adopts the Findings made with respect to the Project, which are attached hereto as Exhibit A.

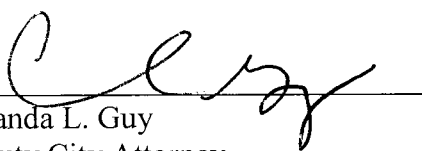
BE IT FURTHER RESOLVED, that pursuant to State CEQA Guidelines Section 15093, the City Council hereby adopts the Statement of Overriding Considerations with respect to the Project, which is attached hereto as Exhibit B.

BE IT FURTHER RESOLVED, that pursuant to CEQA Section 21081.6, the City Council hereby adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the Project as required by the City Council of the City of San Diego in order to mitigate or avoid significant effects on the environment, which is attached hereto as Exhibit C.

BE IT FURTHER RESOLVED, that the FEIR and other documents constituting the record of proceedings upon which the approval is based are available to the public at the Office of the City Clerk, 202 C Street, San Diego, CA 92101.

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Determination with the Clerk of the Board of Supervisors for the County of San Diego regarding the Project.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Amanda L. Guy
Deputy City Attorney

ALG:js
06/30/2016
Or.Dept:ESD
Doc. No. 1316607

Attachments: Exhibit A, Findings
Exhibit B, Statement of Overriding Considerations
Exhibit C, Mitigation Monitoring and Reporting Program

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 19 2016

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 7/22/16
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

EXHIBIT A

**DRAFT CANDIDATE FINDINGS
REGARDING FINAL ENVIRONMENTAL IMPACT REPORT FOR THE
CITY OF SAN DIEGO SINGLE-USE CARRYOUT BAG REDUCTION ORDINANCE
PROJECT NUMBER 412659
SCH No. 2015051034**

I INTRODUCTION

The following Candidate Findings are made for the City of San Diego Single-use Carryout Bag Reduction Ordinance (hereinafter referred to as the "Project"). The environmental effects of the Project are addressed in the Final Environmental Impact Report ("FEIR") dated June 30, 2016 (State Clearinghouse No. 2015051034), which is incorporated by reference herein.

The California Environmental Quality Act (CEQA) (Pub. Res. Code §§ 21000, *et seq.*) and the State CEQA Guidelines (Guidelines) (14 Cal. Code Regs §§ 15000, *et seq.*) promulgated thereunder, require that the environmental impacts of a proposed project be examined before a project is approved. In addition, once significant impacts have been identified, CEQA and the CEQA Guidelines require that certain findings be made before project approval. It is the exclusive discretion of the decision maker certifying the EIR to determine the adequacy of the proposed candidate findings. Specifically, regarding findings, Guidelines Section 15091 provides:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
 - 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.
 - 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
 - 3. Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.
- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.

- (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.
- (d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.
- (e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.
- (f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

These requirements also exist in Section 21081 of the CEQA statute. The “changes or alterations” referred to in Section 15091(a)(1) above, that are required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects of the project, may include a wide variety of measures or actions as set forth in Guidelines Section 15370, including:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

Should significant and unavoidable impacts remain after changes or alterations are applied to the project, a Statement of Overriding Considerations must be prepared. The statement provides the lead agency’s views on whether the benefits of a project outweigh its unavoidable adverse environmental effects. Regarding a Statement of Overriding Considerations, Guidelines Section 15093 provides:

- (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region- wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse

environmental effects, the adverse environmental effects may be considered “acceptable.”

- (b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.
- (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

Having received, reviewed and considered the Final Program Environmental Impact Report for the Project, State Clearinghouse No. 2015051034 (FEIR), as well as all other information in the record of proceedings on this matter, the following Findings of Fact (Findings) are made by the City of San Diego (City) in its capacity as the CEQA Lead Agency. These Findings set forth the environmental basis for current and subsequent discretionary actions to be undertaken by the City and responsible agencies for the implementation of the project.

II. PROJECT SUMMARY

A. Project Location

The City of San Diego (City) is located within the County in the southwestern corner of California. The Project would apply throughout the City, which encompasses approximately 372 square miles, from Rancho Bernardo in the northern part of the City, to the Pacific Ocean on the west, east to the communities of Encanto, Navajo, and City Heights, and south to Otay Mesa and the International Border. Adjoining jurisdictions include: unincorporated San Diego County and the cities of Solana Beach, Del Mar, Escondido, Poway, La Mesa, El Cajon, Santee, Lemon Grove, Coronado, National City, Chula Vista, and Imperial Beach.

B. Project Background

In California, nearly 20 billion (20,000,000,000) single-use plastic carryout bags are used annually, and most end up as litter or in landfills. Based on a City population of approximately 1,326,238 persons in January 2013 and a statewide estimate of approximately 531 plastic single-use carryout bags used per person per year, retail customers in the City currently use an estimated 700,000,000 plastic single-use carryout bags per year. These millions of single-use plastic bags impact local communities and the environment, especially when littered. Less than five (5) percent of used single-use plastic carryout bags are returned for recycling. The City spends millions of dollars each year on prevention, cleanup, and other activities to reduce litter.

For decades, the City has proactively addressed waste reduction and litter control, with planning including the City Council-approved “Recycling and Waste Reduction Plan” in 1988, the “Source Reduction and Recycling Element” in 1992, updated in 1994 and annually thereafter, and, in July 2015, the City Council unanimously approved a “Zero Waste Plan,” which includes plastic bag reduction as one of its components.

One of the more challenging aspects of solid waste management is determining which approach to managing waste has the least impacts on the environment. The California Public Resources Code (PRC), Section 41780 *et seq.* specifies that “source reduction,” also known as waste prevention, is the most preferable approach to solid waste management, because recycling, which is typically preferable to disposal in landfills, is often associated with greenhouse gas production from transportation and remanufacture. Using the United States Environmental Protection Agency’s (USEPA) Waste Reduction Model (WARM) to track greenhouse gases associated with different management strategies shows that source reduction results in fewer impacts than any other approach. Both source reduction and recycling are considered “diversion” from landfills, and both help reduce impacts associated with products made from “virgin” (un-recycled) materials.

Paper bags can be recycled or composted. Depending on the constituent materials, plastic bags can be recycled; however, recycling has a market-driven component. Most items entering landfills today are technically recyclable. The problem is separating them out and finding a market for them. Most bags can be incinerated in appropriate facilities for waste-to-energy conversion, where such facilities exist. If disposed of improperly, however, plastic bags can create unsightly litter and harm some types of wildlife.

California has established a state goal, found in PRC section 41780 *et seq.*, of diverting 75 percent of the material being disposed of in landfills by 2020. However, based on AB 939 reporting to the state, local governments are not evaluated on whether they recycle more, but rather on whether they dispose of less. Therefore, reducing waste is the overall goal.

In 2014, the California legislature passed, and Governor Brown signed, Senate Bill (SB) 270, which imposed statewide regulations on retailer provision of plastic single-use carryout bags. SB 270 preempts any local ordinance adopted on or after September 1, 2014, that is related to single-use carryout bag reduction. However, on February 24, 2015 California Secretary of State Alex Padilla certified a referendum for the November 8, 2016 General Election ballot to repeal the requirements of SB 270. Thus, if the ordinance is approved by the City Council and the referendum fails in November 2016, the City’s ordinance would be preempted by state law and retail stores within the City would be regulated under SB 270. If the referendum succeeds in overturning SB 270, then the City’s ordinance, if approved, would regulate single-use carryout bags in the City.

C. Project Description and Purpose

The purpose of the Project is to encourage source reduction and reduce the adverse environmental impacts associated with plastic single-use carryout bags, including plastic bag litter. The City proposes to adopt and implement the Project to regulate the use of single-use plastic carryout bags and promote the use of reusable bags within the City. The ordinance would prohibit stores subject to the ordinance from distributing plastic single-use carryout bags at the point of sale. More specifically, the ordinance would:

1. Prohibit stores subject to the ordinance from distributing plastic single-use carryout bags and paper single-use carryout bags that do not qualify as “recyclable paper single-use carryout bags” to point-of-sale customers.
2. Require stores subject to this ordinance to collect a \$0.10 charge for each recyclable paper single-use carryout bag provided to point-of-sale customers.

- Participants in the California Special Supplement Program for Women, Infants and Children (WIC) or in the Supplemental Food Program would be exempt from this \$0.10 bag charge.
3. Apply to the following:
 - a. Full-line retail stores with two million dollars or more in gross annual sales that offer for sale perishable items in addition to a line of dry groceries, canned goods, or non-food items (Category A stores).
 - b. Stores of at least 10,000 square feet of retail space that generate sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law and that have a pharmacy licensed pursuant to the Pharmacy Law (Category B stores).
 - c. Drug stores, convenience food stores, food marts, pharmacies, or other entities engaged in the retail sale of goods that include milk, bread, soda, and snack foods, including those retail establishments with a Type 20 or 21 license issued by the California Department of Alcoholic Beverage Control (Category C stores).
 4. Not regulate:
 - a. "Product bags" - these include plastic or paper bags without handles, that are provided to a customer to carry meat, produce, or other food items to the point of sale, or to protect food or merchandise from being damaged or contaminated by other food or merchandise when items are placed together in a reusable bag or a recyclable paper single-use carryout bag at the point of sale.
 - b. Restaurants.
 - c. Non-profit stores that sell used goods.
 5. Require stores subject to the ordinance to provide or make available to customers only recyclable paper single-use carryout bags or reusable bags for carrying away goods or materials from the point of sale.
 6. Require stores subject to the ordinance to charge at least \$0.10 per reusable bag at the point of sale to customers.
 7. Allow stores subject to the ordinance to provide reusable bags for free to customers during an infrequent and limited time promotion that cannot exceed a total of 90 calendar days within any consecutive 12-month period.
 8. Require stores subject to the ordinance to keep complete and accurate records of the number of recyclable paper single-use carryout bags provided each calendar month, for those provided at a cost and those provided for free to customers, and the total amount of monies collected each calendar month for the sale of recyclable paper single-use carryout bags to customers.
 9. Not require periodic reporting, although the City may request data from regulated stores.

Restaurant, farmers' market vendor, pharmacy, clothing, and dry cleaner bags would be exempt from the ordinance. There is a grace period of approximately six months for large retailers (Category A and B stores) and of approximately one year for small retailers (Category C stores) to allow retailers to phase out stocks of plastic single-use carryout bags and paper bags that do not qualify as "recycled paper single-use carryout bags." The grace periods are approximate as they will actually cease upon the 1st of the month to occur immediately following the passage of the six month and one year periods. The City's Environmental Services Department has conducted a public education program for several years and would continue these activities through the grace periods.

D. Statement of Objectives

The City's objectives for the Project include:

- Reducing the millions of plastic single-use carryout bags currently used in the City;
- Reducing the adverse environmental impacts associated with plastic single-use carryout bags, including impacts to air quality, biological resources (including the marine environments), water quality, and solid waste;
- Deterring the use of paper single-use carryout bags by retail customers in the City;
- Promoting a shift toward the use of reusable carryout bags; and
- Reducing litter and the associate adverse impacts to storm water facilities, aesthetics, and the environment.

III. ISSUES ADDRESSED IN FEIR

The FEIR concludes that the Project will have **no potentially significant impacts** and requires no mitigation measures with respect to the following issues:

- Air Quality
- Forest and Agricultural Resources
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Utilities and Service Systems
- Mineral Resources
- Energy
- Visual Impacts/Aesthetics
- Biological Resources
- Cultural Resources
- Geology/Soils
- Land Use, Planning
- Noise
- Population/Housing
- Public Services (Other than Solid Waste, Water, and Sewer)
- Recreation
- Transportation/Traffic

No feasible mitigation measures are available to reduce impacts to below a level of significance for the following issue:

- Greenhouse Gas Emissions

IV. CANDIDATE FINDINGS

A. Findings Regarding Infeasible Mitigation Measures (CEQA §21081(a)(3) and CEQA Guidelines §15091(a)(3))

Based on a conservative analysis, the FEIR concluded that the Project would have potentially significant and unmitigable Greenhouse Gas (GHG) impacts. While certain mitigation measures are identified in the FEIR that could reduce the GHG impacts resulting from implementation of the Project, no feasible mitigation measures are available that would reduce the identified impacts to below a level of significance with certainty. “Feasible” is defined in Section 15364 of the CEQA Guidelines to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” The CEQA statute (Section 21081) and Guidelines (Section 15019(a)(3)) also provide that “other” considerations may form the basis for a finding of infeasibility. Case law makes clear that a mitigation measure or alternative can be deemed infeasible on the basis of its failure to meet project objectives or on related public policy grounds.

The City, as part of these findings, has adopted a Statement of Overriding Considerations pursuant to Pub. Res. Code sections 21081(b) and 21081.5 and CEQA Guidelines section 15093, which balances the economic, legal, social, technological, or other benefits of the Project against the unavoidable environmental impacts described in the FEIR (see Exhibit B).

Finding: Pursuant to Pub. Res. Code section 21081(a)(1) and (3) and CEQA Guidelines section 15091(a)(1) and (3), changes or alternations have been required in, or incorporated into, the Project which would mitigate the GHG impacts related to the Project; however, these impacts cannot be fully mitigated. Therefore, specific economic, legal, social, technological, or other considerations, make additional mitigation measures infeasible.

Mitigation Measures: The following mitigation measures are identified in the FEIR and included in the MMRP, which is adopted in accordance with CEQA Guidelines section 15091(d):

Mitigation Measure GHG-1

The City will:

- Provide an education program regarding the ordinance, including for Town Councils and Community Groups.
- Provide outreach regarding reusable bags at major events.
- Promote consumer paper bag recycling.
- Find partners to donate reusable bags and then distribute those bags within the City, free of charge.
- Promote consumer transition to reusable bags, the reduction of double bagging, and in-store reuse and recycling of paper bags.
- Consider increasing the \$0.10 paper bag fee if paper bag use increases after Project implementation.

Facts in Support of Finding: The finding is based on the analysis in Section 3.0 of the FEIR. The FEIR concludes that the Project would have significant unmitigable GHG impacts under

a conservative, worst case scenario that assumes the Project would cause paper single-use carryout bag use to increase to 30 percent of current total single-use carryout bag use. As explained in Section 3.1.3.2 of the FEIR, the expected effect of the Project on consumer behavior is to decrease overall single-use bag use. Some jurisdictions that have implemented similar ordinances have reported a decline in single-use paper bag use, including as much as 16%. As further explained in section 3.2.3.1 of the FEIR, studies indicate that single-use carryout bag reduction ordinances, such as the Project, do not result in a GHG impact. On the contrary, such ordinances result in a lower impact, over time, in GHG emissions. This is the expected effect of the Project. However, when the conservative, worst case scenario assumes a large increase in paper bag use of 30 percent of all current single-use carryout bag use, this assumption results in an increase in overall GHG emissions due to the Project. This is because per bag GHG emissions, on a per bag basis, are greater for paper single-use carryout bags than for plastic single-use carryout bags.

The \$0.10 fee on paper single-use carryout bags is intended to reduce the use of single-use paper bags. An increase in this fee, to further reduce paper single-use carryout bag use, is a project alternative, and is discussed below in Section IV.B. Public education programs during the grace periods that promote the use of reusable bags at major events are included in the project description, but the worst case analysis assumes that single-use paper bag use would increase to 30 percent of total bag use despite this effort. The mitigation measures are expected to reduce the Project's GHG impacts to the maximum extent feasible by increasing public awareness of the ordinance, promoting reuse and recycling of paper bags, and promoting reusable bag use.

As discussed in the Section 3.2.4 of the FEIR, GHG emissions may result from a potential increase in paper single-use carryout bag manufacturing; however, those manufacturing facilities are subject to regulatory oversight authority in the location where manufacturing occurs. No known single-use carryout bag manufacturing facilities exist within the Project area, and the City does not have the ability to control or regulate GHG emissions from bag manufacturing facilities located outside its jurisdiction. Similarly, GHG emissions may result from carryout bag degradation in landfills within the Project area, but those landfills are subject to applicable regulations pertaining to GHG emissions. GHG emissions may also result from a potential increase in carryout bag transportation; however, the City has no ability to control interstate commerce activities such as carryout bag transportation. Due to the foregoing, no additional feasible mitigation measures are available. Any remaining GHG emission impacts are overridden as described in the Statement of Overriding Considerations.

Finding: The mitigation measures identified in the FEIR are feasible and made binding via the MMRP. Implementation of these mitigation measures would lessen the significant GHG impacts identified in the FEIR. However, even with implementation of those mitigation measures, the GHG impacts remain potentially significant. The City finds that there are no other feasible mitigation measures to reduce the GHG impacts associated with the Project to below a level of significance.

B. Findings Regarding Alternatives (CEQA § 21081(a)(3) and CEQA Guidelines §15091(a)(3))

Because the proposed project will cause an unavoidable significant environmental effect, the City must make findings with respect to the alternatives to the Project considered in the FEIR, evaluating whether these alternatives could feasibly avoid or substantially lessen the Project's unavoidable significant environmental effect while achieving most of its objectives.

The City, having reviewed and considered the information contained in the FEIR and the Record of Proceedings, and pursuant to Public Resources Code §21081(a)(3) and State CEQA Guidelines §15091(a)(3), makes the following findings with respect to the alternatives identified in the FEIR.

Specific economic, legal, social, technological, or other considerations, including considerations of the provision of employment opportunities for highly trained workers, make infeasible the alternatives identified in the FEIR as described below.

“Feasible” is defined in Section 15364 of the CEQA Guidelines to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” The CEQA Statute (Section 21081) and Guidelines (Section 15019(a)(3)) also provide that “other” considerations may form the basis for a finding of infeasibility. Case law makes clear that an alternative can be deemed infeasible on the basis of its failure to meet project objectives or on related public policy grounds.

Five alternatives received a detailed analysis in the FEIR:

- Alternative 1: No Project Alternative
- Alternative 2: Apply the Single-Use Carryout Bag Reduction Ordinance to all Retail Vendors
- Alternative 3: Apply the Single-Use Carryout Bag Reduction Ordinance to Only Large (“Big-Box”) Retail Vendors
- Alternative 4: Apply the Single-Use Carryout Bag Reduction Ordinance, But Impose a Higher Fee on Recyclable Paper Single-Use Carryout Bags
- Alternative 5: Apply the Single-Use Carryout Bag Reduction Ordinance to Both Plastic Single-Use Carryout Bags and Paper Single-Use Carryout Bags

These five project alternatives are summarized below, along with the findings relevant to each alternative.

No Project Alternative

The No Project Alternative, required to be evaluated in the FEIR, considers “existing conditions...as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services” [CEQA Guidelines Section 15126.6(e)(2)].

Under the No Project alternative, no Single-Use Carryout Bag Reduction Ordinance would be enacted, and the existing use of carryout bags in the City would remain unchanged. Impacts associated with plastic single-use carryout bags would remain at current levels, increasing proportionately with increases in the City’s population size. The City’s objectives for the project would not be achieved with the No Project alternative.

Finding: The City finds that specific economic, legal, social, technological, or other considerations make this alternative infeasible and therefore rejects this alternative.

Facts in Support of Finding: The City finds that the No Project Alternative would fail to achieve any of the Project’s stated objectives. This alternative would not reduce consumption of plastic single-use carryout bags within the City, would not promote the use of reusable

bags, and would not reduce the adverse environmental effects associated with plastic bags, including litter impacts.

Alternative 2: Apply the Single-Use Carryout Bag Reduction Ordinance to all Retail Vendors

Under Alternative 2, the proposed ordinance's restrictions would be applied to all retailers in the City. The FEIR assumes a 95 percent reduction in plastic single-use carryout bags used in the City as a result of the Project, with five percent of plastic single-use carryout bags continuing to be used annually. Alternative 2 would capture most, if not all, of the remaining estimated five percent of plastic single-use carryout bags not covered by the Project.

As compared to the Project, Alternative 2 would result in slightly higher ozone emission levels (8,032 kg/yr as compared to 7,731 kg/year), atmospheric acidification (561,218 kg/year versus 523,263 kg/year) and GHG levels (35,000 metric tons per year versus 31,070 metric tons per year). Alternative 2 would have a higher water consumption rate (approximately 258 million gallons/year, compared to approximately 213 million gallons/year); however, this amount of additional wash is not considered a significant impact given the region's overall water supply. Overall, the Project and this alternative are close in their projected impacts and, given the variability of the data, the differences are not considered significant.

Alternative 2 would virtually eliminate the provision of plastic single-use carryout bags in the City and thus would promote the shift towards reusable bags to a greater extent than the ordinance. However, Alternative 2 would result in a larger increase of GHG emissions as compared to the Project and, thus, has a potentially significant GHG impact based upon the FEIR's conservative analysis.

Finding: The City finds that specific economic, legal, social, technological, or other considerations make this alternative infeasible and therefore rejects this alternative.

Facts in Support of Finding: Alternative 2 would achieve all Project objectives, and would further reduce plastic single-use carryout bag use in the City and promote a greater shift towards reusable bags.

However, the City finds that Alternative 2 is infeasible on public policy grounds. A primary goal of the City is to implement a single-use carryout bag reduction ordinance that will be readily supported by both retailers and customers. The absence of such support would undermine ordinance compliance, present challenges for the City's enforcement, and reduce the effectiveness and environmental benefits of the regulation. Alternative 2 is not consistent with the majority of local single-use carryout bag reduction ordinances throughout the state, or SB 270. Therefore, the City anticipates that Alternative 2 would be more difficult for customers to support, and understand and follow, and for retailers to implement as compared to the Project, thereby undermining the potentially greater benefits of this alternative. A lack of support prior to Project adoption means that City residents would be more likely to oppose adoption of the ordinance, which creates a likelihood that the ordinance would not pass and, if that happened, none of the Project objectives would be achieved. Further, a lack of support for the Project during its implementation means less public buy-in for its source reduction objectives and a greater likelihood of public resistance to transitioning from single-use carryout bags to reusable bags.

Further, Alternative 2 is not environmentally superior to the Project as it has greater potential impacts for GHGs, Air Quality, and Water. These impacts are due to a potentially greater increase in paper single-use carryout bag use as compared to the Project.

Alternative 3: Apply the Single-Use Carryout Bag Reduction Ordinance to Only Large (“Big-Box”) Retail Vendors

Under Alternative 3, the City would only apply the single-use carryout bag reduction ordinance to large retail vendors (those defined as Category A and B stores in the ordinance). The number of plastic single-use carryout bags precluded from distribution within the City would be less than the Project due to the exemption of smaller vendors (those defined as Category C stores in the ordinance). Under this alternative, 81.2 million plastic single-use carryout bags would be used annually, instead of 35 million under the Project. This alternative is also anticipated to result in approximately 216 million paper bags as compared to the Project’s approximate 221 million.

Alternative 3 would result in more emissions of all types compared to the Project. This alternative would generate 8,613 kg per year ozone emissions, 559,330 kg per year of acidification emissions, and 31,558 metric tons per year of GHG emissions, compared to 7,731; 523,263; and 31,070, respectively, for the Project. Alternative 3 would also have a higher water consumption rate (approximately 221 million gallons/year, compared to approximately 213 million gallons/year for the Project); however, this amount of additional wash is not considered a significant impact given the region’s overall water supply. This alternative also has slightly greater solid waste impacts when compared to the Project. Overall, the two alternatives are close in their projected impacts and, given the variability of the data, the differences are not considered significant.

Finding: The City finds that specific economic, legal, social, technological, or other considerations make this alternative infeasible and therefore rejects this alternative.

Facts in Support of Finding: The City finds that Alternative 3 is infeasible as it would only partially achieve the Project objectives. This alternative would only apply to large retail vendors and therefore a greater number of plastic single-use carryout bags would continue to be distributed in the City as compared to the Project. As a result, this alternative would fail to fully achieve the objectives of deterring the use of single-use carryout bags, reducing the number of plastic single-use carryout bags in the City, and promoting a shift to reusable bags, as they would occur to a lesser extent under this alternative than with the Project. Additionally, Alternative 3 is not environmentally superior to the Project as it has greater potential impacts for GHGs, Air Quality, and Water.

Alternative 4: Apply the Single-Use Carryout Bag Reduction Ordinance, But Impose a Higher Fee on Recyclable Paper Single-Use Carryout Bags

Alternative 4 would impose a \$0.25 fee per recyclable paper single-use carryout bag as opposed to the Project’s \$0.10 fee on each recyclable paper single-use carryout bag. With a higher fee, it is anticipated that the use of paper single-use carryout bags would be reduced in comparison to the Project, and the EIR’s analysis assumes Alternative 4 would result in 73,150,00 paper bags as opposed to 221,053,000 under the Project.

Alternative 4 would result in lower emissions of all types compared to the Project. It would result in ozone emissions of 3,364 kg per year (compared to the Project’s 7,731 per year),

acidification emissions of 225,643 kg per year (compared to Project's 523,263 kg per year), and GHG impacts of 11,773 metric tons of CO₂e (compared to Project's 31,070 metric tons of CO₂e), primarily due to the decrease in paper bag use. This alternative would also reduce GHG emissions to below No Project levels. Alternative 4 would result in lower water consumption (75,180,000 gallons of water per year compared to Project's 213,083,000 gallons of water per year) and further reductions in solid waste compared to the Project.

Finding: The City finds that specific economic, legal, social, technological, or other considerations make this alternative infeasible and therefore rejects this alternative.

Facts in Support of Finding: Alternative 4 would achieve all Project objectives, and to a greater extent than under the Project. It is anticipated that recyclable paper single-use carryout bag use would decrease compared to the Project due to the higher paper bag fee. As a result, the objectives of deterring the use of paper single-use carryout bags would be achieved to a greater extent than under the Project, and the objective of promoting a shift to reusable bags could occur more rapidly than under the Project.

However, the City finds that Alternative 4 is infeasible on public policy grounds. A primary goal of the City is to implement a single-use carryout bag reduction ordinance that will be readily supported by both retailers and customers. The absence of such support would undermine ordinance compliance, present challenges for the City's enforcement, and reduce the effectiveness and environmental benefits of the regulation. Alternative 4 is not consistent with the majority of local single-use carryout bag reduction ordinances throughout the state, or SB 270, and therefore customers and retailers are less likely to be familiar with, to understand, and comply with its requirements. Further, the City finds that customers are likely to view Alternative 4's higher bag fee as too burdensome, particularly because customers may forget to bring reusable bags to regulated stores (or may require additional bags). The City finds that greater consumer flexibility is necessary as customers and retailers adapt their behavior and practices to comply with the regulation.

Therefore, the City anticipates that this alternative would be more difficult for customers and retailers to readily support, and finds that lower customer and retailer support would undermine this alternative's potentially greater benefits. A lack of support prior to Project adoption means that City residents would be more likely to oppose adoption of the ordinance, which creates a likelihood that the ordinance would not pass and, if that happened, none of the Project objectives would be achieved. Further, a lack of support for the Project during its implementation means less public buy-in for its source reduction objectives and a greater likelihood of public resistance to transitioning from single-use carryout bags to reusable bags.

Alternative 5: Apply the Single-Use Carryout Bag Reduction Ordinance to Both Plastic Single-Use Carryout Bags and Paper Single-Use Carryout Bags

Alternative 5 would prohibit the distribution of both plastic and paper single-use carryout bags at the same types of stores regulated under the Project. Prohibiting both paper and plastic single-use carryout bags would eliminate the possible impacts from customers potentially switching from plastic to paper single-use bags. This alternative would substantially reduce the number of bags in circulation; the EIR's analysis assumes Alternative 5 would result in 49,262,000 bags (plastic, paper, and reusable) as opposed to 265,264,000 bags under the Project.

Alternative 5 has significantly lower ozone emissions (1,258 kg per year, compared with 7,731 per year), lower acidification emissions (82,563 kg per year compared to 523,263 kg per year), and lower GHG impacts (2,458 metric tons of CO₂e compared to 31,070 metric tons of CO₂e) as compared to the Project. Alternative 5 would significantly lower water consumption (3,504,000 gallons of water per year compared to Project's 213,083,000 gallons of water per year) and would reduce solid waste impacts compared to the Project.

Finding: The City finds that specific economic, legal, social, technological, or other considerations make this alternative infeasible and therefore rejects this alternative.

Facts in Support of Finding: Alternative 5 would achieve all Project objectives, and to a greater extent than under the Project. By prohibiting both paper and plastic single-use carryout bags, customers of the regulated stores would have to use either reusable bags or no bag. There would be no anticipated negative environmental impacts due to a potential increase in paper single-use carryout bag use.

However, the City finds that Alternative 5 is infeasible on public policy grounds. A primary goal of the City is to implement a single-use carryout bag reduction ordinance that will be readily supported by both retailers and customers. The absence of such support would undermine ordinance compliance, present challenges for the City's enforcement, and reduce the effectiveness and environmental benefits of the regulation. Alternative 5 is not consistent with the majority of local single-use carryout bag reduction ordinances throughout the state, or SB 270, and therefore customers and retailers are less likely to be familiar with, to understand, and to comply with its requirements. Further, Alternative 5 would require a customer to always bring reusable bags to regulated stores (or to purchase reusable bag(s), if available), or use no bag at all. The City anticipates that customers, which include tourists, will find this alternative unduly limits consumer choice compared to current options at the regulated stores. The City finds that greater consumer flexibility is necessary as customers and retailers adapt their behavior and practices to comply with the regulation.

Therefore, the City anticipates that this alternative would be more difficult for customers and retailers to readily support, and that lower customer and retailer support would undermine this alternative's potentially greater benefits. A lack of support prior to Project adoption means that City residents would be more likely to oppose adoption of the ordinance, which creates a likelihood that the ordinance would not pass and, if that happened, none of the Project objectives would be achieved. Further, a lack of support for the Project during its implementation means less public buy-in for its source reduction objectives and a greater likelihood of public resistance to transitioning from single-use carryout bags to reusable bags.

EXHIBIT B

STATEMENT OF OVERRIDING CONSIDERATIONS

(PUBLIC RESOURCES CODE §21081(b))

Pursuant to Public Resources Code §§21081(b) and 21081.5, and CEQA Guidelines §§15093 and 15043, CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the Project.

If specific economic, legal, social, technological, or other benefits outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered acceptable pursuant to Public Resources Code §21081. CEQA further requires that when the lead agency approves a project that will result in the occurrence of significant effects that are identified in the FEIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the FEIR and/or other information in the record.

Pursuant to the Public Resources Code §21081(b) and CEQA Guidelines §15093, the decision-making body, having considered all of the foregoing, finds that the following specific overriding economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, associated with the proposed Project outweigh unavoidable adverse impacts related to GHG emissions. Each of the separate benefits of the proposed Project, as stated herein, is determined to be, unto itself and independent of the other Project benefits, a basis for overriding the unavoidable adverse environmental impacts identified in these Findings.

The decision-making body also has examined alternatives to the Project, and has found that those which meet the Project objectives, and that are environmentally preferable to the Project (Alternative 4 and Alternative 5), are infeasible.

The California Supreme Court has stated that, “[t]he wisdom of approving . . . any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced.” *Citizens of Goleta Valley v. Bd. of Supers.* (1990) 52 Cal.3d 553, 576.

Courts have upheld overriding considerations that were based on a variety of policy considerations including, but not limited to, furthering state renewable energy goals, new jobs, stronger tax base, implementation of an agency’s economic development goals, growth management policies, redevelopment plans, the need for housing and employment, conformity to community plans and general plans, and provision of construction jobs. See *Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503; *Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671; *Dusek v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029; *City of Poway v. City of San Diego* (1984) 155 Cal.App.3d 1037; *Markley v. City Council* (1982) 131 Cal.App.3d 656.

Therefore, the decision-making body expressly finds that in accordance with Public Resources Code §§21081(b) and 21081.5, and CEQA Guidelines §§15093 and 15043, based on the following specific considerations, the following benefits of the Project would outweigh the Project's significant effects on the environment:

- The Project would reduce the millions of plastic single-use carryout bags currently used in the City, by reducing the amount of plastic single-use carryout bags from 700,000,000 to 35,000,000. This would promote "source reduction" within the City, which is the most preferable approach to solid waste management, and would be consistent with the goals of the City's Zero Waste Plan. The Project would be a step towards, and consistent with, the goal of moving the public from a "consume and dispose" mentality toward a reluctance to waste resources.
- The Project would promote a shift toward the use of reusable carryout bags by prohibiting the provision of plastic single-use carryout bags and by requiring a \$0.10 per recyclable paper bag charge at regulated stores. The education and outreach component performed by the City during the Project's grace period would further encourage reusable bag use. Greater reusable bag use would be consistent with the goal of moving the public from a "consume and dispose" mentality toward a reluctance to waste resources.
- By significantly reducing the number of plastic single-use carryout bags used in the City, the Project would reduce the adverse environmental impacts associated with plastic single-use carryout bags, including impacts to air quality, biological resources (including marine environments), water quality, and solid waste.
- By significantly reducing the number of plastic single-use carryout bags used in the City, the Project would reduce litter and the associated adverse impacts to storm water facilities, aesthetics, and the environment.
- The Project is likely to be readily accepted/supported by retailers and customers. Customer and retailer support would promote ordinance compliance, reduce challenges for the City's enforcement of the ordinance, and promote the effectiveness and environmental benefits of the regulation. As the Project is similar to the majority of local single-use carryout bag reduction ordinances throughout the state, and SB 270, customers and retailers would be more likely to be familiar with, to understand, and to comply with its requirements.

Conclusion: For the foregoing reasons, the City finds that the Project's adverse, unavoidable environmental impact is outweighed by the above-referenced public benefits. Therefore, the City has adopted the Candidate Findings and Statement of Overriding Considerations.

EXHIBIT C

MITIGATION MONITORING AND REPORTING PROGRAM

Public Resources Code Section 21081.6 requires that a mitigation, monitoring, and reporting program be adopted upon certification of an EIR to ensure that the mitigation measures are implemented. The mitigation, monitoring, and reporting program specifies what the mitigation is, the entity responsible for monitoring the program, and when in the process it should be accomplished.

A draft Environmental Impact Report (EIR) has been prepared to analyze the potentially significant impacts associated with the Single-Use Carryout Bag Reduction Ordinance project. The EIR, incorporated herein as referenced, focused on issues determined to be potentially significant by the City. The issues addressed in the EIR include air quality; greenhouse gas (GHG) emissions; forestry and agricultural resources; hazards and hazardous materials; hydrology and water quality; utilities and service systems; mineral resources; and energy.

Public Resources Code Section 21081.6 requires monitoring of only those impacts identified as significant or potentially significant. After analysis, potentially significant impacts requiring mitigation were identified for GHG emissions.

The environmental analysis resulted in the identification of a mitigation framework that would reduce potentially significant impacts, but not below a level of significance. Specifically, mitigation measures for significant impacts related to GHG emissions were identified, but impacts remain significant and unavoidable, even with adherence to the mitigation framework.

The mitigation, monitoring and reporting program for the Single-Use Carryout Bag Reduction Ordinance project is under the jurisdiction of the City. The mitigation, monitoring and reporting program for the Single-Use Carryout Bag Reduction Ordinance project addresses only greenhouse gas emissions as potentially significant. The following is an overview of the mitigation, monitoring and reporting program to be completed for the Single-Use Carryout Bag Reduction Ordinance project.

Greenhouse Gas Emissions

Impact

Some reports estimate a beneficial effect, but for this analysis, which utilizes conservative assumptions, it is anticipated that as a result of the ordinance, GHG emissions increase associated with the manufacturing, transportation, and disposal of carryout bags used in the City, which would be approximately 8,498 metric tons of carbon dioxide (CO₂) per year. This represents an increase of approximately 0.006 CO₂ metric tons per capita, which is less than one tenth of one percent (0.06 percent) of the State 2020 target emission rate of 9.6 metric tons of CO₂ per capita. However, without a specific local project-level GHG threshold for comparison, the City cannot determine with certainty that this emission rate is below a level of significance for this particular project. Therefore, GHG impacts are considered potentially significant for this project.

Mitigation Framework

Mitigation Measure GHG-1

The City will:

- Provide an education program regarding the ordinance, including for Town Councils and Community Groups,
- Provide outreach regarding reusable bags at major events,
- Promote consumer paper bag recycling,
- Find partners to donate and then distribute reusable bags within the City free of charge,
- Promote consumer transition to reusable bags, the reduction of double bagging, and reuse, and in-store recycling of paper bags, and
- Consider increasing the \$0.10 paper bag fee if paper bag use increases.

Passed by the Council of The City of San Diego on JUL 19 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 27 2016

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By *Hy Ready*, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- <u>310614</u>