

RESPONSE TO GRAND JURY REPORT FORM

Report Title: Holding the Bag

Report Date: May 8, 2013

Public Release Date: May 14, 2013

Response By: City of San Rafael

FINDINGS

- We agree with the findings numbered: F1, F2, F3 and F4.
- We disagree with wholly or partially with the findings numbered: NONE.

RECOMMENDATIONS

- Recommendations numbered: NONE have been implemented.
- Recommendations numbered: NONE have not yet been implemented, but will be implemented in the future.
- Recommendations numbered: R1, R2, and R3 require further analysis.

See attached explanations.

- Recommendations numbered: NONE will not be implemented because it is not warranted or are not reasonable.

DATED: 7/22/2013

Signed: _____


GARY C. PHILLIPS, Mayor

ATTEST: _____

Esther Beirne
Esther Beirne, City Clerk

Number of pages attached: 1

ATTACHMENT 1

RESPONSE OF THE CITY OF SAN RAFAEL TO GRAND JURY REPORT "HOLDING THE BAG"

EXPLANATIONS REGARDING RECOMMENDATIONS

- Explanation for Recommendation R1:

The JPA is in the process of preparing a Model Ordinance and associated CEQA analysis for use by all of Marin's Cities and Towns. Their stated intention is to encourage consistency between all cities and towns in Marin. However, as mentioned above, the CEQA analysis will explore the impacts of ordinances that ban single use plastic bags at all retailers, including restaurants, and under a variety of circumstances. Each local jurisdiction such as San Rafael may therefore adopt specific measures based on the CEQA analysis that best match their Councils' desires. The JPA has stated their desire to promote bag ordinances that are highly beneficial to the environment. However, the Grand Jury does not specify what the "strictest rules possible" are, therefore, this cannot be adequately addressed. The JPA anticipates completion of the CEQA review by October/November 2013. City of San Rafael adoption and implementation timeline is To Be Determined.

- Explanation for Recommendation R2:

The JPA has stated their intention to facilitate a well-designed, comprehensive educational campaign that will involve as many outreach channels as possible including schools, stores, farmers markets and various other public events. The City of San Rafael has already shown its commitment to an outreach process such as this, when it convened the Single Use Plastics Advisory Committee in 2011. The City currently works with the JPA on zero waste outreach programs such as the Zero Waste Grant program, and will continue to do so. The JPA anticipates completion of the CEQA review by October/November 2013. City of San Rafael adoption and implementation timeline is To Be Determined.

- Explanation for Recommendation R3:

One of the JPA's goals in developing a Model Ordinance is to promote consistency amongst jurisdictions. However because each City and Town needs to adopt an ordinance individually, there is no guarantee there will be absolute consistency between the ordinances. San Rafael may desire to have a more aggressive ordinance than others, especially considering the City Council's earlier direction to consider phasing in other retailers beyond those covered by the County ordinance. The JPA anticipates completion of the CEQA review by October/November 2013. City of San Rafael adoption and implementation timeline is To Be Determined.



CITY OF
San Rafael

MAYOR GARY O. PHILLIPS
VICE MAYOR BARBARA HELLER
COUNCILMEMBER KATE COLIN
COUNCILMEMBER DAMON CONNOLLY
COUNCILMEMBER ANDREW CUYUGAN McCULLOUGH

CITY CLERK'S OFFICE
PHONE: 415-485-3065
FAX: 415-485-3133

July 23, 2013

The Honorable Judge James Ritchie
Marin County Superior Court
P.O. Box 4988
San Rafael, CA 94913-4988

Rich Treadgold, Foreperson
Marin County Civil Grand Jury
3501 Civic Center Drive, Room #275
San Rafael, CA 94903

Honorable Judge Ritchie:
Mr. Treadgold:

RE: Marin County Civil Grand Jury Report: "Holding the Bag"

We are forwarding to you the following documents:

- A certified copy of Resolution No. 13576 adopted by the San Rafael City Council on July 15, 2013 approving and authorizing the Mayor to execute the City's response;
- Original of the "Response to Grand Jury Report Form," executed by Mayor Phillips on July 22, 2013;
- Copy of the City Council Staff report dated July 15, 2013.

Should you need further assistance, please contact me at (415) 485-3065.

Sincerely,

ESTHER C. BEIRNE
City Clerk

cc: Gary O. Phillips, Mayor of the City of San Rafael
Nancy Mackle, City Manager

RESOLUTION NO. 13576

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE CITY OF SAN RAFAEL RESPONSE TO THE 2012-2013 MARIN COUNTY GRAND JURY REPORT ENTITLED "HOLDING THE BAG"

WHEREAS, pursuant to Penal Code section 933, a public agency which receives a Grand Jury Report addressing aspects of the public agency's operations, must comment on the Report's findings and recommendations contained in the Report in writing within ninety (90) days to the Presiding Judge of the Superior Court with a copy to the Foreperson of the Grand Jury; and

WHEREAS, Penal Code section 933 specifically requires that the "governing body" of the public agency provide said response and, in order to lawfully comply, the governing body must consider and adopt the response at a noticed public meeting pursuant to the Brown Act; and

WHEREAS, the City Council of the City of San Rafael has received and reviewed the 2012-2013 Marin County Grand Jury Report, dated May 1, 2013, entitled "Holding the Bag" and has agendized it at this meeting for a response.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of San Rafael hereby:

1. Approves and authorizes the Mayor to execute the City of San Rafael's response to the 2012-2013 Marin County Grand Jury Report entitled "Holding the Bag," copy attached hereto.
2. Directs the City Clerk to forward the City's Grand Jury Report response to the Presiding Judge of the Marin County Superior Court and to the Foreperson of the Marin County Grand Jury.

I, Esther Beirne, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the San Rafael City Council held on the 15th day of July, 2013, by the following vote to wit:

AYES: Councilmembers: Colin, Connolly, Heller, McCullough & Mayor Phillips

NOES: Councilmembers: None

ABSENT: Councilmembers: None



ESTHER C. BEIRNE, City Clerk



San Rafael

Agenda Item No:

Meeting Date: July 15, 2013

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Management Services

Prepared by: Cory Bytof,
Sustainability & Volunteer Program Coordinator

City Manager Approval: *M. Mitchell*

SUBJECT: CONSIDERATION OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE CITY OF SAN RAFAEL RESPONSE TO THE 2012-2013 MARIN COUNTY GRAND JURY REPORT ENTITLED "HOLDING THE BAG."

BACKGROUND:

In its report dated May 1, 2013, "Holding the Bag," the 2012-2013 Marin County Grand Jury makes several findings and recommendations. The Grand Jury has requested responses from the Marin County Board of Supervisors, Marin County Department of Public Works, the Marin Hazardous and Solid Waste Joint Powers Authority (JPA), and all local city and town councils in Marin, including the San Rafael City Council. The San Rafael City Council is requested to respond to the following findings and recommendations:

Findings

1. F1. Single-use plastic carry-out bags cause harm to the environment and wildlife.
2. F2. Reduction or ban of single-use plastic carry-out bags will help Marin County reach its zero waste goal.
3. F3. Reduction or ban of single-use plastic carry-out bags will help keep the land and waters of the County cleaner.
4. F4. Most Marin County governments do not currently have bans against single-use plastic carry-out bags. However, most are responsive to enacting policies against single-use plastic carry-out bags.

Recommendations

1. R1. The Marin Hazardous and Solid Waste Joint Powers Authority (JPA) prepare the Model Single-Use Bag Ordinance to implement the strictest rules possible and encourage all agencies to adopt the Ordinance with minimal changes. A ban on single-use plastic carry-out bags should be imposed in all grocery stores, convenience stores,

FOR CITY CLERK ONLY

File No.: 269

Council Meeting: 7/15/2013

Disposition: RESOLUTION 13576

pharmacies and restaurants within the County and apply to all establishments, no matter how large or small.

2. R2. Marin County and The Marin Hazardous and Solid Waste Joint Powers Authority (JPA) Members educate the public on the benefits of reusable bags. Marin County and The Marin Hazardous and Solid Waste Joint Powers Authority (JPA) Members develop standardized educational guides for all public schools showing the environmental harm done by plastic single-use carry-out bags. Marin County and The Marin Hazardous and Solid Waste Joint Powers Authority (JPA) Members develop educational materials and distribute them at public events such as farmers' markets and street fairs.
3. R3. Marin Towns and Cities adopt an ordinance to ban all single-use plastic carry-out bags using the Model Single-Use Bag Ordinance with minimal, or no, changes, in order to create a true County-wide ordinance.

This Background section will review prior Council actions, City activities, and other local, state and regional activities related to single use plastic bags. The Analysis section will detail proposed responses to the above findings and recommendations for Council consideration.

City Actions

In 2009, the City Council adopted the San Rafael Climate Change Action Plan (CCAP), which was subsequently incorporated into the San Rafael General Plan as the Sustainability Element in 2011. The CCAP identifies sustainability goals, and lays out actions San Rafael can undertake to reduce its emissions in concert with State recommendations.

The CCAP has four main areas of focus: Economy, Buildings, Lifestyles, and Environment. In addition, it contains goals and recommendations related to Community Outreach and Empowerment, as well as Implementation. In the Lifestyles section, Program LF 11 specifies that the City should "Adopt a Zero Waste Goal and develop a Zero Waste Strategic Plan." It also specifies in Program LF 17 that the City should "Investigate options for banning single use items, such as plastic bags and polystyrene takeout food containers."

In 2010, the City applied for and received a grant from the JPA to fund development of single-use plastics ordinances and facilitate a process involving 6 Marin jurisdictions. From February to May 2011 a Single-Use Plastics Advisory Committee (SUPAC) process was convened to investigate options for enacting an ordinance in San Rafael that could be utilized by other jurisdictions as well. SUPAC included the cities of Novato, Mill Valley, San Anselmo, Tiburon, and Sausalito, the County of Marin, local businesses, residents, the California Grocers and Restaurants associations, and community members. Based on their findings, SUPAC recommended that the City adopt an ordinance to reduce single-use carryout bags similar to the one adopted by the County. This was to ensure consistency amongst jurisdictions in Marin as well as initial enforcement assistance from the County.

In August 2011, a City Council study session was held to get direction on how staff should move forward on this issue. At that time, Marin County was involved in a lawsuit brought about by the Save the Plastic Bag Coalition, which contended that the County could not enact such a ban without doing a full Environmental Impact Report. The Council accepted the SUPAC recommendation and directed staff to analyze the requirements of the California Environmental Quality Act and the outcome of the lawsuit against the County consistent with the SUPAC recommendations. The Council further directed staff to start the background work necessary to prepare an ordinance, to conduct research for enforcement, and to consider phasing in all retailers after one year of implementation.

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

State, County, and Regional Actions

In 2006, the State of California passed AB 2449, which limited local government regulation of plastic bags. It required large grocery stores to have plastic bag recycling receptacles, but precluded cities from requiring a fee for distribution of plastic bags. For the past several years, various bills that would have banned grocery stores, convenience stores, and pharmacies from providing plastic bags have been introduced in the State legislature, but none have been adopted.

In 2008, the Town of Fairfax adopted a plastic bag ban upon voter initiative. This was taken to the voters in response to a threat of lawsuit when the Fairfax Town Council considered an ordinance. Lawsuits for bag bans typically relate to California Environmental Quality Act (CEQA) compliance and occasionally are challenged based on Prop 26 or Prop 218, which limit new taxes and fees.

As mentioned, in January 2011, the County of Marin passed an ordinance banning single-use carry out plastic bags by grocery stores, convenience stores, and pharmacies and requiring stores to charge a fee (at least 5 cents) for recyclable single-use carry out bags. The ordinance is based on a Categorical Exemption to CEQA which asserts that the ordinance did not require environmental review based on a CEQA exemption. In September 2011, the Marin County Superior Court decided that Marin County's ban using a Categorical Exemption was appropriate. This ruling was under appeal until just recently, and on June 24, 2013, the First District Court of Appeals ruled in favor of the County specific to their ordinance in the unincorporated areas of Marin.

Since Council has expressed eagerness to enact a bag ordinance, City staff has been working with the Sustainability Subcommittee of the Council to pursue one. In fall 2012 City Manager Nancy Mackle asked the JPA to perform an environmental review and develop a model ordinance that San Rafael and all other jurisdictions in Marin could utilize in order to accelerate the adoption of a bag ordinance throughout the county. Currently, the JPA is engaged in that review and hopes to have a model ordinance finished by the end of this year.

ANALYSIS:

The resolution of the County lawsuit occurred five weeks after the release of this Grand Jury report. The City Attorney's Office is reviewing the case for Council. In the meantime, it should be noted that the JPA has stated that their environmental review should be completed in November or December 2013, and therefore should provide an opportunity for Council to act sometime soon thereafter. This review will examine various alternatives beyond what the County has adopted, giving Council more options to consider, including the following draft alternatives in the environmental review:

- *Ban on Single use Plastic Bags at all Retail Establishments, Except Restaurants* - This alternative would prohibit all retail establishments (including non-food/non-grocery stores such as clothing or electronics retailers) from providing single use plastic bags to

customers at the point of sale, but restaurants and other food establishments would still be excluded from the Proposed Ordinance.

- *Mandatory Charge of \$0.10 for Paper Bags* - This alternative would continue to prohibit retail establishments from providing single use plastic bags to customers at the point of sale, but would increase the mandatory charge for single use paper bags from \$0.05 to \$0.10.
- *Mandatory Charge of \$0.25 for Paper Bags* - This alternative would continue to prohibit retail establishments from providing single use plastic bags to customers at the point of sale, but would increase the mandatory charge for single use paper bags from \$0.05 to \$0.25.
- *Ban on Single-Use Plastic Bags at all Retail Establishments (including restaurants)* - This alternative would prohibit all retail establishments from providing single-use plastic carryout bags to customers at the point of sale, including restaurants and other retailers not covered by the model ordinance.
- *Ban on Single-use Plastic Bags including Product Bags, \$0.05 Fee for Single-use Paper Bags* - This alternative would be similar to the proposed ordinance in that it would ban single-use plastic bags and require a \$0.05 fee on single-use paper bags. However, in addition to banning single-use plastic bags, this alternative would also ban the use "product bags". As defined by the proposed ordinance, a product bag means "any bag without handles used exclusively to carry produce, meats, or other food items such as bulk foods to the point of sale inside a store or to prevent such food items from coming into direct contact with other purchased items".

Findings

The Grand Jury's findings and recommendations are set out on page 18 of the report. The City of San Rafael is requested to respond to the following findings:

Finding F1: Single-use plastic carry-out bags cause harm to the environment and wildlife.

This finding is consistent with findings in the Single-Use Plastics Policy Analysis and Recommendations staff report accepted by Council on August 1, 2011.

Finding F2: Reduction or ban of single-use plastic carry-out bags will help Marin County reach its zero waste goal.

This finding is consistent with findings in the Single-Use Plastics Policy Analysis and Recommendations staff report accepted by Council on August 1, 2011. This finding is also consistent with the City's Climate Change Action Plan, and Council's Zero Waste Resolution, adopted August 1, 2011.

Finding F3: Reduction or ban of single-use plastic carry-out bags will help keep the land and waters of the County cleaner.

This finding is consistent with findings in the Single-Use Plastics Policy Analysis and Recommendations staff report accepted by Council on August 1, 2011.

Finding F4: Most Marin County governments do not currently have bans against single-use plastic carry-out bags. However, most are responsive to enacting policies against single-use plastic carry-out bags.

This finding is consistent with findings in the Single-Use Plastics Policy Analysis and Recommendations staff report accepted by Council on August 1, 2011 and the subsequent Analysis of Alternative Approaches to Eliminating Single-Use Plastics Staff Report accepted by Council on March 5, 2012.

The Grand Jury's findings and recommendations are set out on page 18 of the report. The City of San Rafael is requested to respond to the following recommendations:

Recommendation R1: The Marin Hazardous and Solid Waste Joint Powers Authority (JPA) prepare the Model Single-Use Bag Ordinance to implement the strictest rules possible and encourage all agencies to adopt the Ordinance with minimal changes. A ban on single-use plastic carry-out bags should be imposed in all grocery stores, convenience stores, pharmacies and restaurants within the County and apply to all establishments, no matter how large or small.

Response: The JPA is in the process of preparing a Model Ordinance and associated CEQA analysis for use by all of Marin's Cities and Towns. Their stated intention is to encourage consistency between all cities and towns in Marin. However, as mentioned above, the CEQA analysis will explore the impacts of ordinances that ban single use plastic bags at all retailers, including restaurants, and under a variety of circumstances. Each local jurisdiction such as San Rafael may therefore adopt specific measures based on the CEQA analysis that best match their Councils' desires. The JPA has stated their desire to promote bag ordinances that are highly beneficial to the environment. However, the Grand Jury does not specify what the "strictest rules possible" are, therefore, this cannot be adequately addressed. The JPA anticipates completion of the CEQA review by October/November 2013. City of San Rafael adoption and implementation timeline is To Be Determined.

Recommendation R2: Marin County and The Marin Hazardous and Solid Waste Joint Powers Authority (JPA) Members educate the public on the benefits of reusable bags. Marin County and Marin County and The Marin Hazardous and Solid Waste Joint Powers Authority (JPA) Members develop standardized educational guides for all public schools showing the environmental harm done by plastic single-use carry-out bags. Marin County and The Marin Hazardous and Solid Waste Joint Powers Authority (JPA) Members develop educational materials and distribute them at public events such as farmers' markets and street fairs.

Response: The JPA has stated their intention to facilitate a well-designed, comprehensive educational campaign that will involve as many outreach channels as possible including schools, stores, farmers markets and various other public events. The City of San Rafael has already shown its commitment to an outreach process such as this, when it convened the Single Use Plastics Advisory Committee in 2011. The City currently works with the JPA on zero waste outreach programs such as the Zero Waste Grant program, and will continue to do so. The JPA anticipates completion of the CEQA review by October/November 2013. City of San Rafael adoption and implementation timeline is To Be Determined.

Recommendation R3: Marin Towns and Cities adopt an ordinance to ban all single-use plastic carry-out bags using the Model Single-Use Bag Ordinance with minimal, or no, changes, in order to create a true County-wide ordinance.

Response: One of the JPA's goals in developing a Model Ordinance is to promote consistency amongst jurisdictions. However because each City and Town needs to adopt an ordinance individually, there is no guarantee there will be absolute consistency between the ordinances. San Rafael may desire to have a more aggressive ordinance than others, especially considering the City Council's earlier direction to consider phasing in other retailers beyond those covered by the County ordinance. The JPA anticipates completion of the CEQA review by October/November 2013. City of San Rafael adoption and implementation timeline is To Be Determined.

ACTION REQUIRED:

The City is required to respond to the Grand Jury Report. Penal Code section 933(c) states in part:

"No later than 90 days after the Grand Jury submits a final report...the governing body of the public agency shall comment to the presiding Judge of the Superior Court on the findings and recommendations...[contained in the report]."

To comply with this statute, the City's response to the Grand Jury report must be approved by Resolution of the City Council and submitted to the Presiding Judge of the Marin County Superior Court and the Foreperson of the Grand Jury on or before August 5, 2013. A proposed Resolution is attached that would approve the City's response.

OPTIONS:

- Adopt the Resolution and approve the Response Form
- Adopt the Resolution and approve the Response Form with specific modifications
- Modify Resolution and/or Responses to Findings and Recommendations

RECOMMENDATION:

Staff recommends that the City Council adopt the attached Resolution approving the proposed response to the Grand Jury report and authorizing the Mayor to execute the response.

ATTACHMENTS:

Attachment A: Resolution

Attachment B: Response Form

Attachment C: Grand Jury Report "Holding the Bag."

Attachment D: Single Use Plastics Policy Analysis and Recommendations Staff Report, August 1, 2011