

Addendum to the  
Final Environmental Impact Report

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**Single-Use Carryout Bag  
Ordinance**

File No. PP13-078  
SCH # 2009102095

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Prepared by the:



July 2013

# **PREFACE**

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## **PURPOSE OF THIS ADDENDUM**

The California Environmental Quality Act (CEQA) recognizes that between the date an environmental document is completed and the date the project is fully implemented, one or more of the following changes may occur: 1) the project may change; 2) the environmental setting in which the project is located may change; 3) laws, regulations, or policies may change in ways that impact the environment; and/or 4) previously unknown information can arise. Before proceeding with a project, CEQA requires the Lead Agency to evaluate these changes to determine whether or not they affect the conclusions in the environmental document.

In March 2011, the City of San José certified the Final Environmental Impact Report (EIR) for a Single Use Carryout Bag Ordinance (SCH# 20091202095). The Final EIR addressed the implementation of an ordinance that: (1) prohibited the distribution/giveaway of single-use carryout plastic bags at all retail stores in San José, with certain limited exceptions and (2) required the same businesses to charge for single-use paper bags with 40 percent recycled content that were otherwise exempted from the ban. The charge for the paper bags was set initially at ten cents, and would go up to 25 cents in two years. The reason stated for the fee increase after two years was to limit any increase in single-use paper bag use, should such an increase occur.

Since the certification of the Final EIR and initial implementation of the ordinance, new information has arisen based on experiences with single-use bag regulations in San José and elsewhere. The ordinance is presently in its second year of implementation, so the minimum charge for single-use recycled paper bags is ten cents.

The purpose of this Addendum is to analyze the new information and the impacts that could result from changes proposed to the previously approved project.

The CEQA Guidelines §15162 state that when an EIR has been certified or negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

- a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
- b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

CEQA Guidelines §15164 state that the lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in §15162 (see above) calling for preparation of a subsequent EIR have occurred.

Based on the proposed project description, knowledge of the project location, and the new information reflected in the attached analysis, it is determined that the proposed project would not result in any new impacts not previously disclosed in the Single-Use Carryout Bag Ordinance Final EIR and would not result in a substantial increase in the magnitude of any environmental impacts previously identified in the EIR. For these reasons, an addendum to the Single-Use Carryout Bag Ordinance Final EIR has been prepared for the proposed project.

This addendum will not be circulated for public review, but will be attached to the Single-Use Carryout Bag Ordinance Final EIR, pursuant to CEQA Guidelines §15164(c).

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**APPENDICES**

Appendix A: Existing Single-Use Carryout Bag Ordinance

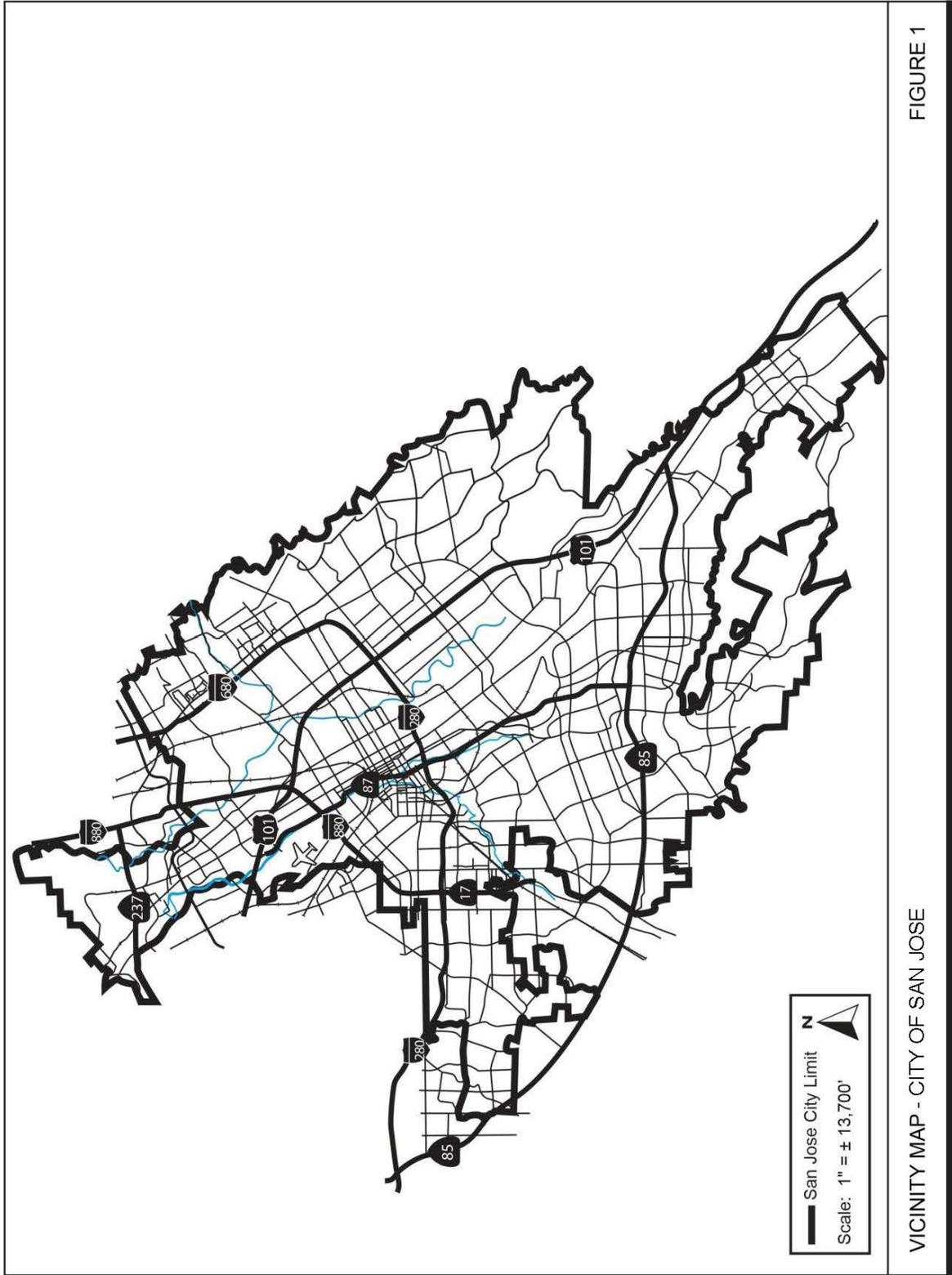


FIGURE 1

VICINITY MAP - CITY OF SAN JOSE

## **SECTION 1.0 INTRODUCTION**

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This Addendum to a Final EIR was prepared in conformance with the requirements of the California Environmental Quality Act (CEQA) as amended through 2012, the CEQA Guidelines (California Code of Regulations §15000 *et. seq.*), and the regulations and policies of the City of San José.

This Addendum evaluates the potential environmental impacts which might reasonably be anticipated to result from the proposed revisions to a previously approved City Ordinance restricting the distribution and sale of single-use carryout bags.

The City of San José is the Lead Agency under CEQA and has prepared this Addendum to address the impacts of implementing the project with proposed revisions throughout the City of San José.

## **SECTION 2.0 PROJECT INFORMATION**

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### **2.1 PROJECT TITLE**

Revisions to City of San José Single-Use Carryout Bag Ordinance, Municipal Code Chapter 9.10, Chapter 13.

### **2.2 PROJECT LOCATION**

The Ordinance now applies to all retail sites within the City of San José except for restaurants and charitable re-use stores. There are no changes proposed to the applicability. See Figure 1 for the boundaries of the City of San José.

### **2.3 PROJECT DESCRIPTION**

The City of San José is considering revisions to its adopted Single-use Carryout Bag Ordinance (Municipal Code §9.10.2020). The City proposes to revise the ordinance to require a minimum 10 cent charge for reusable bags. Additionally, the City proposes to revise the ordinance to eliminate the automatic increase in the required charge for recycled content paper bags. Under the existing ordinance, the required charge would increase to 25 cents from 10 cents beginning in 2014.

The complete text of the existing ordinance is attached to this Addendum as Appendix A. The ordinance defines recycled paper bags and requires that businesses must charge for them. The ordinance also defines reusable bags, but does not currently require that businesses charge for them.

### **2.3.1 Minimum Charges for Paper and Reusable Bags**

The existing ordinance includes the following language:

- B. On or before December 31, 2013, a retail establishment may make available for sale to a customer a recycled paper bag for a minimum charge of ten cents. [MC §9.10.2020(B)]
- C. On or after January 1, 2014, a retail establishment may make available for sale to a customer a recycled paper bag for a minimum charge of twenty-five cents. [MC §9.10.2020(C)]
- D. Notwithstanding this section, no retail establishment may make available for sale a recycled paper bag unless the amount of the sale of the recycled paper bag is separately itemized on the sale receipt. [MC §9.10.2020(D)]

It is proposed to modify Subsection 9.10.2020(B) as follows:

- B. A retail establishment may make available for sale to a customer a recycled paper bag and/or a reusable bag for a minimum charge of ten cents.

Subsection 9.10.2020(C) as shown above would be deleted.

Subsection 9.10.2020(D) would be revised as shown:

- C. Notwithstanding this section, no retail establishment may make available for sale a recycled paper bag or a reusable bag unless the amount of the sale of the recycled paper bag or reusable bag is separately itemized on the sale receipt.

### **2.3.2 Reason for Project Revisions**

#### **Fee Change**

Since adoption of the ordinance and certification of the Final EIR, new information has become available.

City Staff has done visual surveys of customers leaving grocery stores before and after implementation of the ordinance and documented the patterns of bag use. In January 2012, the City's "Bring Your Own Bag" (or BYOB) Ordinance took effect in San José. In a recent report to the City Council, City staff reported that:

To assess behavior change in bag use, City staff conducted visual observations of customers at retail stores before and after the ordinance went into effect. City staff observed shoppers leaving selected retail stores for one hour and counted the number and type of bags, or absence of a bag, that customers used to carry their purchases. Visual observations were made at a variety of store types, including grocery stores, pharmacies, and general retailers in different San José neighborhoods at the same stores both before and after implementation of the BYOB Ordinance. Observation records show that reusable bag use increased greatly following the implementation of the ordinance, from almost 4 percent of bags observed to approximately 62 percent of bags observed. In addition, the percentage of customers that chose not to use a bag, and instead carry items by hand, more than doubled. The overall impact was that the average number of single-use bags used per customer decreased from 3

bags to 0.3 bags per visit following the implementation of the ordinance. Results from store observations reflect that the ordinance has had the intended effect of reducing the use of single-use bags.<sup>1</sup>

The same staff report quoted above also identifies significant reductions in plastic bag litter found in creeks, stormwater catch basins, and on neighborhood sidewalks. Litter surveys were compared for 2009, 2010, and 2012 (the latter being after the implementation of the ordinance). The litter surveys demonstrated a reduction in overall bag litter of approximately 89 percent in the storm drain system, 60 percent in the creeks and rivers, and 59 percent in City streets and neighborhoods. While there was a substantial reduction in overall bag litter, there was a fractional increase in the number of paper retail bags found at each survey site. Average numbers for the three years included:

- (1) an average of .45 (forty-five one-hundredths) of a paper bag at each survey site in 2009;
- (2) an average of .70 (seven-tenths) of a paper bag per survey site in 2010; and
- (3) an average of .84 (eighty-four hundredths) of a paper bag per survey site in 2012.

In other words, less than one whole bag was found at each site surveyed, both before and after the ordinance was implemented. It is important to note that paper bag litter was increasing prior to the implementation of the ordinance in 2011.

Additionally, the two recycling processing facilities serving most of San José reported measurable reductions in film plastic received. CWS, who processes recycling for 80 percent of single-family homes in San José, reported “a significant reduction” in the amount of plastic film wrapping around machine disks and axles, and 35-50 percent reduction in equipment downtime directly associated with incoming plastic bags and plastic film; this confirms the substantial decrease in plastic bag use.

A phone survey of grocery stores in November 2012 done by the CEQA consultants found that, of the 16 stores responding to the survey, eight reported a reduction in paper bag use, six reported an increase, and two reported that usage stayed about the same. Very few of the store representatives contacted had specific numbers (only at Trader Joe’s and Lunardi’s). Seven additional stores were contacted, but four stores were new and had no basis of comparison, and three stores had previously not offered paper bags.

In addition to the evaluation of consumer practices in San José, a recent report was released by Los Angeles County on the implementation of their single-use carryout bag regulations which included required reporting of results from large and small retail stores. During the first nine months of the ordinance, the number of single-use paper carryout bags distributed from the businesses had declined by 16 percent and was continuing to decline as residents became further accustomed to taking reusable bags shopping with them. Overall, the number of all single-use carryout bags was reduced by 95 percent. The Los Angeles County ordinance is similar to San José’s, prohibiting all single-use plastic carryout bags and requiring a ten-cent charge for single-use paper carryout bags that include 40 percent post-consumer recycled content.

In Washington D.C., an ordinance was implemented that requires a five-cent charge on all single-use carryout bags, paper and plastic. After the first full year, staff estimated a reduction of between 50 and 80 percent in use of all single-use carryout bags, paper and plastic. (Uncertainty about the

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<sup>1</sup> Staff report to Transportation and Environment Committee of San José City Council, from Kerrie Romanow. **November 20, 2012.**

numbers was partially related to an unknown number of businesses that were not in compliance with the ordinance.)

All available fact-based information on implementation of single-use carryout bag regulations is that charging for a bag that was previously free results in a substantial reduction in use of that type of bag. This is occurring whether or not there are easily available alternatives in the store. The EIR certified by the City of San José for the existing ordinance refers repeatedly to the likelihood that this situation would be the case, but could not then identify any specific examples (see DEIR pages 28, 52, 74, 96, 104, 114, 126, etc.). Because of multiple statements from representatives of the plastic bag industry that they would sue the City over the ordinance, the EIR conservatively assumed that an impact resulting from increased paper bag use might conceivably occur. That assumption (ie, that paper bag usage would increase with the banning of single-use plastic bags) is now demonstrated to be erroneous.

The Final EIR states on page 26 that “Modifications can be made to the ordinance in the future, based on ongoing monitoring, in order to achieve a closer approximation of the City’s goals – including increasing the store charge.” Increasing the store charge was never one of the City’s objectives; it was only one of the tools identified for reducing reliance on single-use paper bags.

There is no longer any environmentally-based purpose for raising the fee to 25 cents from 10 cents for single-use paper carryout bags with 40 percent recycled content that is consistent with the intent of the project analyzed in the Final EIR because the 10 cent store charge is effective in changing customer behavior away from the use of disposable bags.

### **Reusable Bags**

In a recent report to the San José City Council, Staff reported that the percentage of stores giving away for free plastic bags that are slightly thicker than those given away before passage of the ordinance but which meet the Ordinance’s minimum definition of “reusable bag” has nearly doubled (15 percent to 29 percent) over the past eight months. Because they are free, the consumer has no incentive to save and reuse the bags; they are perceived to be without value. The Ordinance did not require that businesses charge for reusable bags because it was assumed that businesses would operate within the spirit of the law – encouraging customers to bring reusable bags and selling the bags for a reasonable price.

The proposed 10 cent minimum charge for reusable bags will prevent stores from freely distributing plastic reusable bags as de facto single-use bags. As described in the EIR, when items have a value placed on them, even as small as 10 cents, customers will be less likely to treat them as single-use items to be discarded after just one shopping trip. Customers also will be more likely to keep and reuse the bag in order to avoid a 10 cent charge the next time they shop. Additionally, instead of automatically receiving a bag for free during a transaction, customers will now be asked if they would like to purchase a reusable bag, which reinforces the notion that the bag is an item the customer has purchased in order to be reused. The minimum charge will result in fewer thin plastic bags being distributed and discarded in San Jose, which is consistent with the intentions of the single-use bag ordinance as it was originally drafted as well as the overall environmental goals of the City.

## SECTION 3.0 ANALYSIS OF IMPACTS

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### 3.1 SUMMARY OF IMPACTS ANALYSIS IN EIR

In the Final EIR certified by the City of San José in March 2011, the analysis done for the imposition of a fee of ten cents initially, to be raised to 25 cents after two years, identified a highly conservative set of assumptions about bag use after the ordinance was implemented. The assumptions included (1) that 5.5 percent of the single-use plastic carryout bags were used by exempted businesses (restaurants and charitable reuse stores) and would continue to be so used; (2) that single-use paper bags with less than 40 percent recycled content would virtually disappear; (3) that use of single-use plastic carryout bags would decrease by 94.5 percent; and (4) that use of single-use paper carryout bags might double.

The Final EIR identified nine less-than-significant impacts, which are summarized below in direct quotations from the Summary section of the Final EIR:

#### Aesthetics and Land Use

The ordinance may lead to a short term increase in single-use paper bag usage if consumers unable to use single-use plastic bags are willing to pay a fee for paper bags. A short term increase in demand for paper bags could result in a slightly higher percentage of the litter stream being comprised of paper bags for that period of time... The relatively minor aesthetic impacts of a short term increase in paper bags entering the litter stream, should the increase occur, would be offset by the substantial reduction in the much more visible and long-lived plastic bag litter. The result will be a net improvement.

#### Biology

A significant increase in the number of single-use recycled content paper bags, even a short term increase, could result in an associated increase in paper bag litter. While the increased organics loading represented by the increased paper that enters waterways would be an adverse impact,... The impact itself (creation of increased paper litter) would be short term, since experience in other locations and the survey of local residents indicates that even if there should be a significant increase in single-use paper bag use immediately after project implementation, the quantity of single-use carryout paper bags will return to existing levels within a brief period of time, or two years at most, when the full fee of \$.25 takes effect. The \$.25 fee for single-use paper carryout bags is anticipated to reduce the use of such bags to substantially fewer bags than are currently used in San José.

A short term increase in paper bag use, should it occur, may also result in a short term increase in trees cut down for virgin material to manufacture the paper bags... By the second year of the ordinance, the number will decrease, and the increase to a \$.25 fee on the single-use exempt paper bags is expected to further reduce the number of single-use paper bags used back to existing conditions or fewer.

Washing reusable bags in mixed laundry loads will not result in a measurable increase in water pollution that could adversely impact wildlife.

### Hydrology

The proposed ordinance will increase the use of reusable bags, which will sometimes be laundered... Since any reusable bags that are washed would be part of a larger laundry load, the increase in water use and detergents resulting from bag laundering would be negligible.

A temporary incremental increase in water use at various paper plants, should the increase occur, would not be likely to result in a significant environmental impact.

### Air Quality

If the City bans single-use plastic carryout bags and charges a fee for the use of a single-use paper carryout bag, there would not be a significant increase in air pollution from the manufacturing and delivery of additional single-use paper carryout bags, should an increase in demand occur.

### Energy

Based on available information, even a short term increase in single-use paper carryout bags used in San José as a result of the ban on single-use plastic carryout bags would not result in a significant increase in energy use in the manufacture of single-use bags at various locations.

### Greenhouse Gas Emissions

... reusable bags will generate less greenhouse gases per use than either paper or plastic single-use carryout bags. The City's proposal to encourage a transition to reusable bags instead of single-use bags would... have fewer greenhouse gas impacts than allowing continued reliance on single-use bags.

Of the nine impacts summarized above, four of them were identified as potential impacts that *might* occur only if there were an increase in paper bag use. The impacts (were they to occur) were assumed to be limited in time by the increased fee levied within two years of implementation, which meant that these temporary impacts would all be less than significant. These four "contingent" impacts were increased paper bag litter (aesthetics and land use), increased organics loading in waterways from increased paper bag litter (biology), increased trees cut down (biology), and an increased amount of water use in manufacturing paper bags (hydrology). The FEIR also says that "Based on available information, it cannot be definitively determined what the net increases or decreases in greenhouse gas emissions might be." The calculations in an LCA prepared by the plastic bag manufacturers' consultant identified a reduction in greenhouse gas emissions impacts even if paper bag use were to increase.<sup>2</sup> A bigger fee (reducing paper bag use) would therefore result in a bigger decrease in greenhouse gas emissions.

## **3.2 EFFECTS OF NEW INFORMATION**

### **Effects of Not Imposing the Fee Increase on Recycled Content Paper Bags**

Both Washington, D.C. and Los Angeles County have reports from affected businesses in their jurisdictions about the changes in consumer behavior since adoption of mandatory fees on single-use paper carryout bags. Their evidence is that paper bag use has gone down in both areas. Washington, D.C. requires a five-cent fee on both paper and plastic single-use carryout bags. Los Angeles County bans plastic single-use carryout bags and requires that businesses charge ten cents for paper single-

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<sup>2</sup> Boustead Consulting & Associates. *Life Cycle Assessment for Three Types of Grocery Bags*. 2007.

use carryout bags. The Los Angeles County ordinance is virtually identical to San José's ordinance, except that San José would require that the charge for paper bags go up to 25 cents in January 2014.

Visual surveys of businesses in San José before and after implementation of the ordinance identified substantial increases in both the use of reusable bags and the number of people who decline to use a bag at all (i.e., carried purchases in their hands). Reusable bag use increased from almost four percent of bags observed prior to implementation of the ordinance to approximately 62 percent of bags observed after the ordinance went into effect, and the percentage of customers that chose not to use a bag, and instead carry items by hand, more than doubled from 19 percent to 43 percent. The surveys also revealed a decrease in the use of paper bags after implementation of the ordinance. Paper bag use decreased from a rate of .35 bags per person to a rate of .28 bags per person. The overall impact was that the average number of single-use bags used per customer decreased from three bags to 0.3 bags per visit following the implementation of the ordinance.

A November 2012 telephone survey of grocery stores in San José found that most stores responding identified reductions in paper bag use over the previous 11 months, or use at the same levels as before. Because San José does not have actual monitoring results from local stores (because the ordinance did not require reporting), it cannot be proven conclusively that there has been a substantial decrease in single-use paper bags as large as that seen in Los Angeles County. It can be deduced from available information, however, that there has NOT been a significant increase.

**Conclusion:** The 10 cent store charge is effective in changing customer behavior away from the use of disposable bags. Modifying the ordinance to not require a fee increase to 25 cents for exempt paper bags would result in a continuation of current (2012) conditions, which has not included any new significant environmental impacts nor a substantial increase in previously identified adverse environmental effects, compared to conditions before the ordinance was adopted.

### **Fee for Reusable Bags**

An unintended consequence of the single-use carryout bag ordinance has been an increase in businesses giving away carryout bags made of heavier plastic that meet the definition of a reusable bag. The bag shown in Figure 2 (which was given away by a grocery store in San José in December 2012) says that it is recyclable and reusable. Since these relatively lightweight reusable bags are given away free, and are rarely seen being reused by shoppers, it is assumed that they are often discarded after one or two uses. The ordinance would require that businesses charge the same amount (ten cents) for these bags as for paper bags with 40 percent post-consumer recycled content. Alternatively, if shoppers pay for them, they may be used more than once, or shoppers may encourage businesses to supply larger and/or more sturdy bags. This would be consistent with the purpose and goal of the ordinance.

To the extent that shoppers are encouraged by the extension of the fee to apply to reusable bags to remember to re-use their own reusable bags, the effects of this modification would be environmentally benign. Since this is the pattern of behavior that was assumed in the Final EIR for the ordinance, no new impacts would result.

**Conclusion:** Requiring that businesses charge at least the same fee for reusable bags as for single-use recycled paper bags would not result in any new significant environmental impacts or in a substantial increase in previously identified environmental effects.

## **SECTION 4.0 FINDINGS OF THIS ADDENDUM**

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The CEQA Guidelines §15162 state that when an EIR has been certified or negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
  - a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
  - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

As reflected in the previous analysis in this Addendum, the following conclusions can reasonably be reached regarding the proposed revisions to the Single-Use Carryout Bag Ordinance of the City of San José:

1. The new information available and the changes proposed to the ordinance do not require any major revisions to the Final EIR. The Final EIR already reflects the likelihood that there would not be significant increases in paper bag use if the ordinance were adopted. The proposal to require a fee for reusable bags is proposed to further strengthen the outcome anticipated in the Final EIR (that reusable bags would not be widely given away for free).
2. The only changes in circumstances that have occurred since the Final EIR was prepared are those that support the assumptions in the Final EIR that a significant increase in paper bag use would not occur if the ordinance were adopted. The modifications to the project are consistent with the analysis in the EIR and with the information disclosed.
3. As stated previously, the new information now available is fully consistent with the information in the EIR and supports the modification to the proposed project to not raise the fee to 25 cents from 10 cents for exempt recycled-content paper bags. The proposed fee for reusable bags is explicitly consistent with the behavior assumed in the EIR (that businesses would not give away reusable bags) and will further reinforce the need to utilize reusable bags multiple times, which is a basic goal of the ordinance.

There is no evidence that the proposed modifications could result in new significant impacts or that it could increase the severity of previously identified effects. No need for additional technical analysis can be identified and preparation of an Addendum to the Final EIR is appropriate.



"REUSABLE BAGS"

FIGURE 2

## SECTION 5.0 REFERENCES

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City of San José. Kerrie Romanow, memo to Transportation and Environment Committee: *Bring Your Own Bag Ordinance Implementation Results and Actions to Reduce EPS Foam Food Ware*. November 20, 2012.

County of Los Angeles. County Staff Update, September 2012.

<http://www.dpw.lacounty.gov/epd/aboutthebag/>

Green Seal. GS-16 Reusable Bags, published standard for reusable shopping bags.

<http://www.greenseal.org/GreenBusiness/Standards.aspx?vid=ViewStandardDetail&cid=0&sid=13>