

FILED BY FAX

ALAMEDA COUNTY

November 27, 2007

CLERK OF
THE SUPERIOR COURT
By Denise Wells, Deputy

CASE NUMBER:
RG07339097

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6 Attorneys for Respondents and Defendants
 CITY OF OAKLAND et al.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

10 COALITION TO SUPPORT PLASTIC BAG
 RECYCLING an incorporated association,

Case No. RG07339097

ANSWER

Petitioner and Plaintiffs,

v.

14 CITY OF OAKLAND, a municipal corporation,
 CITY COUNCIL OF THE CITY OF
 15 OAKLAND, collectively and in their official
 capacities, and DOES 1 through 20 inclusive,

Respondents and Defendants.

18 Respondents and Defendants City of Oakland et al. (collectively, the "City") hereby respond
 19 to the Petition for Writ of Mandate ("Petition") filed by Petitioner Coalition to Support Plastic Bag
 20 Recycling et al. (collectively, "Petitioner") as follows:

21 1. Answering paragraphs 1, 16, 17, 23 and 24, the allegations contained therein seek to
 22 characterize the contents of public records which speak for themselves, and no answer is required.
 23 To the extent that the foregoing does not answer any factual allegations in these paragraphs, the
 24 City denies each such allegation.

25 2. Answering the first sentence of paragraph 2, the City admits the allegations stated
 26

1 therein. Answering the remainder of paragraph 2, the City denies each and every allegation stated
2 therein.

3 3. Answering paragraphs 3, 4, 8, 13, 14 18, 19, 20, 21, 22, 29, 30, 31, 32, 34, 37, 40
4 and 44, the City denies each and every allegation stated therein.

5 4. Answering the last sentence of paragraph 5, the allegations contained therein seek to
6 characterize the contents of public records which speak for themselves, and no answer is required.
7 To the extent that the foregoing does not answer any factual allegations in the last sentence of
8 paragraph 5, the City denies each such allegation. Answering the remainder of paragraph 5, the
9 City lacks sufficient information and belief to admit or to deny the allegations stated therein, and on
10 that basis denies each and every allegation stated therein.

11 5. Answering paragraph 6, the City lacks sufficient information and belief to admit or
12 to deny whether Petitioner is an organization formed after the approval of the project or whether
13 Petitioner and/or any of its members own property, do business and/or reside in any area which may
14 be affected by the subject ordinance, and on that basis denies such allegations. Answering the
15 remainder of paragraph 6, the City denies each allegation stated therein.

16 6. Answering the last sentence of paragraph 7(a) and the second sentence of paragraph
17 7(b), the allegations contained therein seek to characterize the contents of public records which
18 speak for themselves, and no answer is required. To the extent that the foregoing does not answer
19 any factual allegations in these sentences, the City denies each such allegation. Answering the
20 remainder of paragraph 7, he City lacks sufficient information and belief to admit or to deny the
21 allegations contained therein, and on that basis denies such allegations.

22 7. Answering the first sentence of paragraph 9, the City admits that it is a municipal
23 corporation and subdivision of the State exercising local governmental power. Answering the
24 second sentence of paragraph 9, the City denies each and every allegation stated therein. Answering
25 the third sentence of paragraph 9, the allegations contained therein are legal contentions for which
26 no response is required. Answering any remaining allegations of paragraph 9, the City denies each

1 such allegation.

2 8. Answering the second sentence of paragraph 10, the allegations contained therein are
3 legal contentions for which no response is required. To the extent the remaining allegations of this
4 sentence contain purported allegations of fact, the City denies each such allegation. Answering the
5 first and last sentences of paragraph 10, the allegations contained therein seek to characterize the
6 contents of public records which speak for themselves, and no answer is required. To the extent
7 that the foregoing does not answer any factual allegations in this paragraph, the City denies each
8 such allegation.

9 9. Answering paragraphs 11 and 12, the City lacks sufficient information and belief to
10 admit or to deny the allegations stated therein, and on that basis denies each and every allegation
11 stated therein.

12 10. Answering paragraphs 15, 35, 39 and 41, the allegations contained therein are legal
13 contentions for which no response is required. To the extent the remaining allegations of these
14 paragraphs contain purported allegations of fact, the City denies each such allegation.

15 11. Answering the first and third sentences of paragraph 25, the City denies that the
16 City's response was inadequate and that Councilmembers Nadel and Quan offered only a "very
17 brief and incomplete statement that the Ordinance is exempt from CEQA. Answering the
18 remainder of paragraph 25, the allegations contained therein seek to characterize the contents of
19 public records which speak for themselves, and no answer is required. To the extent that the
20 foregoing does not answer any factual allegations in this paragraph, the City denies each such
21 allegation.

22 12. Answering the first, third, fifth and last sentence of paragraph 26, the City denies
23 each and every allegation stated therein. Answering the second and fourth sentences of paragraph
24 26, the allegations contained therein seek to characterize the contents of public records which speak
25 for themselves, and no answer is required. To the extent that the foregoing does not answer any
26 factual allegations in this paragraph, the City denies each such allegation.

1 13. Answering paragraph 27, the City denies that Oakland “failed to comply with
2 CEQA” and that the “Supplemental Agenda Report did not adequately respond to Petitioner’s
3 concerns.” Answering the remainder of paragraph 27, the allegations contained therein seek to
4 characterize the contents of public records which speak for themselves, and no answer is required.
5 To the extent that the foregoing does not answer any factual allegations in this paragraph, the City
6 denies each such allegation.

7 14. Answering paragraph 28, the City denies that it “ignored the comments.” Answering
8 the remainder of paragraph 28, the allegations contained therein seek to characterize the contents of
9 public records which speak for themselves, and no answer is required. To the extent that the
10 foregoing does not answer any factual allegations in this paragraph, the City denies each such
11 allegation.

12 15. Answering paragraph 33, the City incorporates by reference its responses to
13 paragraphs 1 through 32.

14 16. Answering the first sentence of paragraph 36, the City denies each and every
15 allegation stated therein. Answering the remainder of paragraph 36, the allegations contained
16 therein seek to characterize the contents of public records which speak for themselves, and no
17 answer is required. To the extent that the foregoing does not answer any factual allegations in this
18 paragraph, the City denies each such allegation.

19 17. Answering the first sentence of paragraph 38, the allegations contained therein seek
20 to characterize the contents of public records which speak for themselves, and no answer is
21 required. To the extent that the foregoing does not answer any factual allegations in this sentence,
22 the City denies each such allegation. Answering the second sentence of paragraph 38, the
23 allegations contained therein are legal contentions for which no response is required. To the extent
24 the remaining allegations of this paragraph contain purported allegations of fact, the City denies
25 each such allegation. Answering the last sentence of paragraph 38, the City denies each and every
26 allegation stated therein.

1 18. Answering paragraph 42, the City denies that there is "not substantial evidence that
2 adoption of the Ordinance falls within the scope of a categorical exemption" and denies that "there
3 is evidence in the record that approval of the Ordinance falls within an exception to the categorical
4 exemptions." Answering the remainder of paragraph 42, the allegations contained therein are legal
5 contentions for which no response is required. To the extent the remaining allegations of this
6 paragraph contain purported allegations of fact, the City denies each such allegation.

7 19. Answering the first sentence of paragraph 43, the allegations contained therein are
8 legal contentions for which no response is required. To the extent the remaining allegations of this
9 sentence contain purported allegations of fact, the City denies each such allegation. Answering the
10 remainder of paragraph 43, the City denies each and every allegation stated therein.

11 20. Answering the first sentence of paragraph 45, the allegations contained therein are
12 legal contentions for which no response is required. To the extent the remaining allegations of this
13 sentence contain purported allegations of fact, the City denies each such allegation. Answering the
14 second sentence of paragraph 45, the allegations contained therein seek to characterize the contents
15 of public records which speak for themselves, and no answer is required. To the extent that the
16 foregoing does not answer any factual allegations in this sentence, the City denies each such
17 allegation. Answering the third and fourth sentences of paragraph 45, the City denies each and
18 every allegation stated therein.

19 AFFIRMATIVE DEFENSES

20 1. The Petition, and each cause of action alleged therein, fails to state facts sufficient to
21 constitute a cause of action upon which relief may be granted.

22 2. The Petition, and each cause of action alleged therein, is barred by the applicable
23 statute(s) of limitations, including without limitation Public Resources Code section 21167 and
24 Code of Civil Procedure sections 1094.5 and 1094.6.

25 3. Petitioner lack standing to bring the claims alleged in the Petition.

26 4. The Petition, and each cause of action alleged therein, is barred by the related

1 doctrines of collateral estoppel and res judicata.

2 5. The causes of action, if any, in the Petition are barred by the equitable doctrine of
3 estoppel.

4 6. The causes of action, if any, in the Petition are barred by the equitable doctrine of
5 waiver.

6 7. The causes of action, if any, in the Petition are barred by the equitable doctrine of
7 laches.

8 8. The causes of action, if any, in the Petition are barred by the equitable doctrine of
9 unclean hands.

10 9. The causes of action, if any, in the Petition, are barred by Petitioner's failure to
11 exhaust available administrative remedies.

12 10. The causes of action, if any, in the Petition are moot.

13 11. The causes of action, if any, in the Petition are not ripe.

14 12. Any and all acts or omissions of the City were the result of the City's exercise of
15 discretion. Thus, the City is not liable.

16 13. The City has no duty to perform the actions which Petitioner seeks to mandate. The
17 City proceeded in the manner required by law and has not taken any action which is arbitrary or
18 capricious, unsupported by substantial evidence or otherwise unlawful.

19 14. The City presently has insufficient knowledge or information on which to form a
20 belief as to whether they may have additional, as yet unstated affirmative defenses. The City
21 reserves herein the right to assert additional defenses in the event the City discovers other defenses
22 would be appropriate and/or applicable.

23 **PRAYER FOR RELIEF**

24 Wherefore, the City prays for relief as follows:

25 1. Petitioner take nothing.

26 2. The Court enter judgment of dismissal or judgment in favor of the City.

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- 3. The Court award the City costs and attorney's fees.
- 4. For other such relief as the Court deems just and proper.

Dated: November 27, 2007

JOHN A. RUSSO, City Attorney
 BARBARA J. PARKER, Assistant City Attorney
 MARK WALD, Deputy City Attorney
 KEVIN D. SIEGEL, Deputy City Attorney

By: Kevin D Siegel
 KEVIN D. SIEGEL
 Attorneys for Respondents and Defendants
 CITY OF OAKLAND et al.

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PROOF OF SERVICE

Coalition to Support Plastic Bag Recycling v. City of Oakland, et al.
Alameda County Superior Case No. RG07339097

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank Ogawa Plaza, 6th Floor, Oakland, California 94612. On the below date I served the within document(s):

ANSWER

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00

p.m.

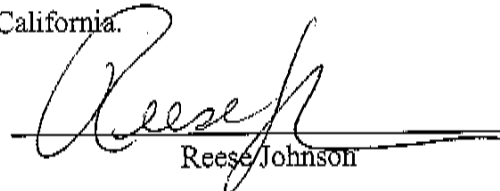
by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.

by causing personal delivery by Kevin D. Siegel of the document(s) listed above to the person(s) at the address(es) set forth below.

by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on 11-27-07 2007 California.


Reese Johnson