

ON PETITION

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**

**(AVISO AL DEMANDADO):**

CITY OF LONG BEACH, a municipal corporation; LONG BEACH DEVELOPMENT SERVICES, an agency of the City of Long Beach, and DOES 1-100, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

SAVE THE PLASTIC BAG COALITION, an unincorporated association

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

RECEIVED  
CITY CLERK  
JHG BEACH, CALIF

**CONFORMED COPY  
OF ORIGINAL FILED**  
Los Angeles Superior Court

15 PM 12: JUN 09 2011

John A. Clarke, Executive Officer/Clerk  
By SHAUNYA WESLEY, Deputy

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There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Los Angeles Superior Court Central Dist.  
111 North Hill Street, Los Angeles, CA 90012

CASE NUMBER:  
(Número del Caso): **BS182500**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Stephen L. Joseph, 350 Bay Street, Suite 300-328, San Francisco, CA 94133 Phone: (415) 577-6660

DATE: JUN 09 2011  
(Fecha) Clerk, by JOHN A. CLARKE Secretary, Shaunya Wesley, Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons Form POS-010).  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
  - as the person sued under the fictitious name of (specify):
  - on behalf of (specify): CITY OF LONG BEACH  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify): CCP 416.50 public entity
  - by personal delivery on (date): 6-15-11

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By SHAUNYA WESLEY, Deputy

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Stephen L. Joseph, 350 Bay Street, Suite 900-328, San Francisco, CA 94133 Phone: (415) 577-6660

DATE:

(Fecha)

JUN 09 2011

Clerk, by  
(Secretario)

Shaunya Wesley

, Deputy  
(Adjunto)

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3.  on behalf of (specify): LONG BEACH DEVELOPMENT SERVICES

- under:
- |  |   |
|--|---|
| <input type="checkbox"/> CCP 416.10 (corporation)                | <input type="checkbox"/> CCP 416.60 (minor)             |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 416.70 (conservatee)       |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |

4.  other (specify): CCP 416.50 public entity

4.  by personal delivery on (date):

6-15-11

[SEAL]

JUN 09 2011

John A. Clarke, Executive Officer/Clerk  
By SHAKYIA WESLEY Deputy

1 STEPHEN L. JOSEPH (SBN 189234)  
350 Bay Street, Suite 100-328  
2 San Francisco, CA 94133  
3 Telephone: (415) 577-6660  
4 Facsimile: (415) 869-5380  
5 E-mail: savetheplasticbag@earthlink.net  
6 Attorney for Petitioner  
7 SAVE THE PLASTIC BAG COALITION

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

BS132500

10 SAVE THE PLASTIC BAG COALITION, ) Case No.  
11 an unincorporated association, )  
12 ) VERIFIED PETITION FOR WRIT OF  
13 Petitioner, ) MANDATE UNDER THE CALIFORNIA  
14 ) ENVIRONMENTAL QUALITY ACT AND  
15 v. ) BASED ON STATE LAW PREEMPTION  
16 CITY OF LONG BEACH, a municipal )  
17 corporation; LONG BEACH DEVELOPMENT )  
18 SERVICES, an agency of the City of Long )  
19 Beach; and DOES 1-100, inclusive, )  
20 Respondents. )

21 Petitioner, SAVE THE PLASTIC BAG COALITION, alleges as follows:

22 PARTIES AND JURISDICTION

- 23 1. Petitioner SAVE THE PLASTIC BAG COALITION is an unincorporated  
24 association.  
25 2. Respondent CITY OF LONG BEACH (the "City") is a municipal corporation in  
26 the County of Los Angeles.  
27 3. Respondent LONG BEACH DEVELOPMENT SERVICES ("LBDS") is an  
28 agency of the City.  
4. This is an action seeking a writ of mandate to set aside, void, annul, repeal, and terminate implementation and enforcement of City of Long Beach Ordinance No. ORD-11-

1 0009 regulating the use of plastic and paper carryout bags and reusable bags (the "Ordinance").  
2 The Ordinance was adopted by the City Council on May 24, 2011. A true and correct copy of  
3 the Ordinance is attached hereto as Exhibit A.

4 5. The Ordinance provides that on and after August 1, 2011, "stores" (as defined in  
5 the Ordinance) may not provide plastic carryout bags ("plastic bags") to consumers and must  
6 charge at least 10 cents for paper carryout bags ("paper bags").

7 6. The Ordinance is a "project" subject to CEQA. (CEQA Guidelines  
8 §15378(a)(1).)

9 7. The City violated the California Environmental Quality Act ("CEQA").

10 8. The City is the lead agency for the project under CEQA.

11 9. In the alternative, LBDS is the lead agency for the project under CEQA.

12 10. LBDS administered the CEQA process on behalf of the City, prior to adoption of  
13 the Ordinance.

14 11. LBDS is responsible for implementation and enforcement of the Ordinance on  
15 behalf of the City.

16 12. Petitioner is ignorant of true names and capacities of DOES named herein as  
17 DOES 1-100, inclusive, and therefore sues said Respondents by such fictitious names.  
18 Petitioner will amend this Petition to allege their true names and capacities when ascertained.  
19 Petitioner is informed and believes and thereon alleges that each of these fictitiously named  
20 Respondents were, and continue to be, responsible in some manner for the acts or omissions  
21 herein alleged.

22 13. Petitioner is informed and believes that at all times relevant to the allegations  
23 herein, each Respondent, including the DOE Respondents, were the employees, agents, or  
24 partners of each of the other Respondents, and were at all times acting within the purpose and  
25 scope of their, agency or partnership, or at the direction of the other Respondents.

26 14. This Court has jurisdiction over the matters alleged in this Petition pursuant to  
27 Code Civ. Proc. §1085, and/or §1094.5, and Pub. Res. Code §21167.

28 15. Venue is proper in this Court under Code Civ. Proc. §394(a).

1 **STANDING**

2 16. Petitioner is a non-profit environmental campaign organization that was formed  
3 on June 3, 2008.

4 17. Petitioner was formed and exists for the purpose of responding to environmental  
5 misinformation about plastic bags and ensuring that the environmental impacts of banning  
6 plastic bags are made known to decision-makers and the public, in the public interest.

7 18. Environmental misinformation about plastic bags is a serious problem that  
8 impacts the decision-making process about whether to ban plastic bags.

9 19. As a result of such misinformation, plastic bags have become a matter of  
10 significant public concern.

11 20. Petitioner performs a crucial and indispensable role in ensuring that  
12 environmental truth is not compromised or lost when environmental initiatives are being  
13 considered by public agencies.

14 21. Petitioner's members include U.S. citizens and California companies involved in  
15 plastic bag manufacturing and distribution. Three such companies are Grand Packaging, Inc.  
16 doing business as "Command Packaging", Crown Poly, Inc., and Elkay Plastics Co., Inc. They  
17 were incorporated in California are in good standing. They have been members of Petitioner  
18 since 2008.

19 22. Chandler Hadraba is a U.S. citizen and resident of the State of California. He has  
20 been a member of Heal the Bay since August 2008. Heal the Bay is one of the leading  
21 organizations campaigning for the banning of plastic bags. He has been a member of Petitioner  
22 since September 2008. He became a member of Petitioner because he was concerned about the  
23 environmental misinformation being disseminated by anti-plastic bag activists, including Heal  
24 the Bay. He has no financial stake in the outcome of this litigation.

25 23. Petitioner and all of Petitioner's members are "persons" entitled to file an action  
26 under CEQA. "Person" includes any person, firm, association, organization, partnership,  
27 business, trust, corporation, limited liability company, company. (CEQA Guidelines §15376.)

28 24. Petitioner has demanded that California cities and counties complete and certify

1 EIRs before banning plastic bags.

2 25. Petitioner maintains a website at [www.savetheplasticbag.com](http://www.savetheplasticbag.com) to respond to  
3 environmental misinformation about plastic bags and to address the environmental impacts of  
4 plastic, paper, and reusable bags, for the benefit of decision-makers and the public.

5 26. According to CEQA Guidelines §15002, the “basic purposes of CEQA” include  
6 the following:

7 A. Inform governmental decision-makers and the public about the potential,  
8 significant environmental effects of proposed activities.

9 B. Identify the ways that environmental damage can be avoided or significantly  
10 reduced.

11 C. Prevent significant, avoidable damage to the environment by requiring changes  
12 in projects through the use of alternatives or mitigation measures when the  
13 governmental agency finds the changes to be feasible.

14 D. Disclose to the public the reasons why a governmental agency approved the  
15 project in the manner the agency chose if significant environmental effects are  
16 involved.

17 27. Petitioner seeks to promote and enforce the aforementioned informational  
18 purposes of CEQA in this action. Ascertaining the true facts about the significant environmental  
19 impacts of projects and informing and disclosing those true facts to decision-makers and the  
20 public are purposes that are within the zone of interests CEQA was intended to preserve and  
21 protect.

22 28. The question in this action is one of public right and the object of the action is to  
23 enforce a public duty in the public interest.

24 29. Petitioner is interested as a citizen in having the public laws including CEQA  
25 executed and the public duties and purposes in CEQA enforced.

26 30. Petitioner has a genuine and continuing interest in and concern for  
27 environmental matters including environmental truth and for compliance with the CEQA  
28 process.

1           31.     Petitioner has a commitment to the subject matter of the public right being  
2 asserted.

3           32.     Petitioner coalition consists of or represents individuals beneficially interested in  
4 this action who would find it difficult or impossible to seek vindication of their own rights. No  
5 citizen who did not have the financial support of business interests could reasonably be  
6 expected to incur the substantial cost of litigating against the City to enforce CEQA. This is due  
7 to the fact that the environmental damage caused by increased distribution of paper bags and  
8 reusable bags is general, widespread and universal rather than particularized to particular  
9 persons or locations. Further, much of the environmental damage is caused outside the City.

10          33.     Broad and long-term environmental effects are involved when plastic bags are  
11 banned. The environmental impacts include, but are not limited to, increased greenhouse gas  
12 emissions and increased air and water pollution.

13          34.     Prosecution of this action as a citizen's suit by Petitioner does not conflict with  
14 other competing legislative or public policies.

15          35.     Standing serves the important public policy in CEQA of disclosure of  
16 environmental impacts to decision makers and the public.

17          36.     There is an overriding public policy in this state "guaranteeing citizens the  
18 opportunity to ensure that no governmental body impairs or defeats the purpose of legislation  
19 establishing a public right." (*Green v. Obledo* (1981) 29 Cal.3d 126, 144.)

20          37.     Petitioner has standing as an association to bring this action, because (i)  
21 Petitioner's members would otherwise have standing to sue on their own behalf; (ii) the  
22 interests Petitioner seeks to protect in this lawsuit are germane to the organization's purpose;  
23 and (iii) neither the claims asserted herein, nor the relief requested, require the separate  
24 participation of Petitioner's members in this lawsuit.

25          38.     Grand Packaging, Inc. doing business as "Command Packaging" and Crown  
26 Poly, Inc. manufacture plastic carryout bags and plastic reusable bags. They market, sell, and  
27 distribute those bags in the City of Long Beach. Their businesses are impacted by the  
28 Ordinance. However, loss of sales, damage to competitive interests, and other commercial or

1 economic harm are not part of Petitioner's claims in this action. This action is being prosecuted  
2 solely and exclusively for the protection of the environment in the public interest, including the  
3 disclosure of environmental truth to decision-makers and the public.

4 39. Petitioner complied with Pub. Res. Code § 21177(a) and (b) by filing the  
5 Objections attached hereto as Exhibit A.

6 40. Based on the foregoing, Petitioner has standing.

7 **STATEMENT OF FACTS**

8 **The County EIR**

9 41. On or about November 16, 2010, the Los Angeles County (the "County") Board  
10 of Supervisors adopted an ordinance banning plastic bags, imposing a 10-cent fee on paper bags  
11 (the "County Ordinance").

12 42. The County Ordinance only applies to unincorporated parts of the County. It is  
13 intended to serve as a model ordinance for incorporated cities in the County.

14 43. Prior to or at the time of adopting the County Ordinance, the County Board of  
15 Supervisors certified an Environmental Impact Report (the "EIR") and adopted Findings of Fact  
16 and a Statement of Overriding Considerations based on the EIR.

17 44. The EIR, the Findings of Fact, and the Statement of Overriding Considerations  
18 are designed to support the County Ordinance and any ordinances adopted by incorporated  
19 cities in the County that are modeled on County Ordinance.

20 45. In the Findings of Fact, the County made a finding that a 10-cent fee on paper  
21 bags and promoting and distributing reusable bags would not be sufficient to prevent significant  
22 negative environmental impacts caused by greenhouse gas emissions ("GHG") resulting from a  
23 shift from plastic carryout bags to paper carryout bags. The Findings of Fact states:

24 Significant Impact. Indirect impacts resulting from the decomposition of  
25 paper carryout bags in landfills will be potentially cumulatively significant  
26 under the County's conservative worst-case analysis. (Emphasis added.)

27 Finding: The County Board of Supervisors finds that changes or alterations  
28 have been required in, or incorporated into, the recommended County



1 ordinance that avoid or substantially lessen its significant environmental  
2 effect as identified in the EIR. Specifically, incorporation of mitigation  
3 measure GHG-1, described below, will monitor, reduce use of, and  
4 encourage further recycling of paper carryout bags, and will indirectly  
5 offset end-of-life GHG emissions to the maximum extent feasible.  
6 However, despite mitigation, impacts from the decomposition of paper  
7 carryout bags in landfills will remain cumulatively significant under a  
8 conservative worst-case analysis.... (Emphasis added.)

9 46. In the Statement of Overriding Considerations, the County identified certain  
10 alleged benefits that “outweigh and override the adverse environmental effect identified in the  
11 EIR.”

12 **The GHG Threshold Of Significance Applied By The County**

13 47. In order to determine that environment effects may be significant, the County  
14 determined a GHG threshold of significance. The EIR states:

15 The State has not determined significance thresholds for evaluating  
16 potential impacts on GHG emissions under CEQA, beyond the  
17 general, qualitative questions contained in Appendix G of the State  
18 CEQA Guidelines. However, the County has analyzed the potential  
19 of the proposed ordinances to result in significant impacts related to  
20 GHG emissions based on the review of regulatory and professional  
21 publications, the guidance on analyzing GHG emissions under  
22 CEQA provided by the California Office of the Attorney General  
23 [footnote 41] and OPR [footnote 42], and the CARB [footnote 43].

24  
25 Footnote 41: California Department of Justice Office of the Attorney  
26 General. 21 May 2008. *The California Environmental Quality Act*  
27 *Addressing Global Warming Impacts at the Local Agency Level*.  
28 Sacramento, CA.

1            Footnote 42: California Governor's Office of Planning and  
2            Research. 19 June 2008. *CEQA and Climate Change: Addressing*  
3            *Climate Change through California Environmental Quality Act*  
4            *(CEQA) Review*. Technical Advisory. Sacramento, CA.

5            Footnote 43: California Air Resources Board. 24 October 2008.  
6            *Preliminary Draft Staff Proposal: Recommended Approaches for*  
7            *Setting Interim Significance Thresholds for Greenhouse Gases*  
8            *under the California Environmental Quality Act*. Available at:  
9            [http://www.opr.ca.gov/ceqa/pdfs/Prelim\\_Draft\\_Staff\\_Proposal\\_10-](http://www.opr.ca.gov/ceqa/pdfs/Prelim_Draft_Staff_Proposal_10-24-08.pdf)  
10           [24-08.pdf](http://www.opr.ca.gov/ceqa/pdfs/Prelim_Draft_Staff_Proposal_10-24-08.pdf)

11  
12            Significance Criteria

13            There are two significance criteria relevant to the consideration of  
14            the proposed ordinances:

- 15            • Inconsistency with laws and regulations in managing GHG  
16            emissions
- 17            • Inconsistency with the goal to reduce GHG emissions to 1990 levels  
18            (approximately 427 million metric tons or 9.6 metric tons of CO<sub>2</sub>e  
19            per capita) by 2020 as required by AB 32

20            48. Petitioner did not object to or challenge the GHG threshold of significance  
21            applied by the County.

22            Adoption of the County EIR by the City of Calabasas

23            49. On February 1, 2011, the City of Calabasas adopted the model County  
24            Ordinance and the County EIR, Findings of Fact and Statement of Overriding Considerations.

25            50. The City of Calabasas did not alter the County's threshold of significance.

26            51. Petitioner did not object to or challenge the City of Calabasas ordinance as the  
27            City of Calabasas adopted the County EIR, Findings of Fact and Statement of Overriding  
28            Considerations.

1           52.     At the present time, the City of Calabasas is the only incorporated city in the  
2 County to adopt the model ordinance, other than the City of Long Beach.

3  
4                           **The Long Beach Addendum To The EIR**

5           53.     In April 2011, the City distributed an “Addendum to the Ordinances to Ban  
6 Plastic Carryout Bags in Los Angeles County Final EIR” (the “Addendum”).

7           54.     In the Addendum, the City states:

8                 For this analysis, the City has determined to select its own GHG  
9                 significance threshold rather than relying on the County’s threshold  
10                as used in the County’s Final EIR. For this analysis, the City’s  
11                proposed Ordinance is evaluated based on a plan-based threshold of  
12                6.6 metric tons CO<sub>2</sub>e per service population (defined to include both  
13                residents and employees) per year. The City does not recommend  
14                adoption of that threshold for any other purpose at this time, but that  
15                numeric threshold is recommended for this analysis for the  
16                following reasons. First, the 6.6 metric tons CO<sub>2</sub>e per service  
17                population threshold was recently adopted by the Bay Area Air  
18                Quality Management District (BAAQMD) as a quantitative GHG  
19                emissions thresholds for plan-level projects (BAAQMD, “California  
20                Environmental Quality Act: Air Quality Guidelines” (June 2010).)  
21                Second, the BAAQMD derived that “efficiency” metric from  
22                statewide compliance with AB 32, and so that metric may be  
23                appropriately applied in regions other than the Bay Area. Finally,  
24                although SCAQMD has not yet acted on the proposal, staff of the  
25                SCAQMD are proposing the same efficiency metric for use in the  
26                South Coast region (SCAQMD, “Proposed Tier 4 Performance  
27                Standards, September 2010). Thus, the City finds that a 6.6 metric  
28                ton CO<sub>2</sub>e per service population per year threshold is appropriately

1 used in this analysis at this time.

2  
3 Therefore, the City's proposed Ordinance would have a significant  
4 impact related to GHG emissions if the GHG emissions would result  
5 in more than 6.6 metric tons of CO2e per service population  
6 (residents and employees) per year....

7  
8 For greenhouse gas emissions, utilizing a threshold of 6.6 metric  
9 tons CO2e per capita per year, the City's proposed Ordinance was  
10 determined to have a less than significant impact since emissions  
11 related to manufacturing, transportation and disposal of carryout  
12 bags would result in less than 1 metric ton CO2e per capita per year.  
13 This determination would result in a reduced impact related to GHG  
14 emissions compared to the County's Final EIR, which determined  
15 that emissions related to the disposal of paper carryout bags would  
16 result in significant and unavoidable impacts. Based on the City's  
17 determination that none of the impacts of the proposed Ordinance,  
18 including those related to GHG emissions, would be significant, no  
19 new significant environmental effects beyond those already  
20 analyzed in the County's Final EIR would occur.

21 **Petitioner's Objections to the Addendum**

22 55. The City invited public comments on the Addendum for submission by April 29,  
23 2011.

24 56. On April 28, 2011, Petitioner submitted written comments on and objections to  
25 the Addendum (the "Objections"). Petitioner objected to the (proposed) Ordinance in part based  
26 on its objections to the GHG threshold of significance in the Addendum. A true and correct  
27 copy of the Objections is attached hereto as Exhibit B and incorporated herein by reference.  
28 Said objections are reasserted herein.

1 57. In said written comments, Petitioner urged the City to adopt the same approach  
2 as the City of Calabasas and accept the EIR without changing the GHG threshold of  
3 significance. The City declined.

4 58. As a result of the City's alteration of the GHG threshold of significance, the City  
5 Council did not adopt a Statement of Overriding Considerations.

6 **FIRST CAUSE OF ACTION**  
7 **AGAINST BOTH RESPONDENTS**  
8 **(VIOLATION OF CEQA – WRIT OF MANDATE)**

9 59. Petitioner realleges and incorporates herein each and every allegation made  
10 above.

11 60. The GHG threshold of significance in the Addendum is inappropriate and  
12 inapplicable and violates CEQA for the following reasons:

- 13 A. The BAAQMD CEQA Guidelines (June 2010) (“BAAQMD Guidelines”) apply  
14 only to “land development construction and operation activities.”
- 15 B. The regulation of carryout bags is not a land-use project.
- 16 C. Even as to land-use projects, the BAAQMD project-level threshold of  
17 significance for GHGs is not 6.6 metric tons of CO<sub>2</sub>e per service population.
- 18 D. Far greater allowances must be made for buildings and other land-based uses  
19 than for carryout bags, because economic development would otherwise be  
20 stymied.
- 21 E. A measurement based on an annual per capita approach fails to take into account  
22 the cumulative and aggregate impacts of replacing billions of plastic bags with  
23 paper bags for the all of the years that the Ordinance will remain in effect. An  
24 EIR must take into account cumulative impacts. (CEQA Guidelines §15130,  
25 §15355.)
- 26 F. CEQA Guidelines §15065(a)(3) which is entitled “Mandatory Findings of  
27 Significance” states that a lead agency shall find that a project may have a  
28 significant effect on the environment when “the project has the potential to  
achieve short-term environmental goals to the disadvantage of long-term

1 environmental goals.” Accordingly, the County adopted a goal-oriented  
2 approach to determining the threshold of significance for this project based on  
3 the following two County goals for the project: (i) sustainability (as it relates to  
4 the County’s energy and environmental goals); and (ii) landfill disposal  
5 reduction. The City failed to adopt this mandatory goal-oriented approach.

6 G. There was no public review process regarding adoption of the GHG threshold of  
7 significance in the Addendum. (CEQA Guidelines §15064.4(b)(3).)

8 H. The Addendum contradicts the EIR and the County’s Statement of Overriding  
9 Considerations.

10 61. In effect, the City “moved the goalposts” to avoid having to admit that the  
11 Ordinance would have a significant negative impact on the environment.

12 62. As a result of its tampering with the applicable threshold, the City did not adopt  
13 a Statement of Overriding Considerations.

14 63. The Council and the public were misinformed by the Addendum in that they  
15 were told that the Ordinance would have no significant effects on the environment, which is  
16 untrue as established by the County EIR.

17 64. Informing decision-makers and the public about the environmental impacts of a  
18 project and whether those impacts are significant is a core purpose and requirement of CEQA.  
19 (CEQA Guidelines §15002.)

20 65. Based on the foregoing and the Objections, the Ordinance is invalid, void, or  
21 voidable. This action is timely filed within 30 days of the filing of any Notice of Exemption or  
22 within 180 days from the date of the City’s decision to carry out or approve the project. (Pub.  
23 Res. Code §21167.)

24 **SECOND CAUSE OF ACTION**  
25 **AGAINST BOTH RESPONDENTS**  
26 **(STATE LAW PREEMPTION – WRIT OF MANDATE)**

27 66. Petitioner realleges and incorporates herein each and every allegation made  
28 above.

67. In 2006, the Legislature enacted AB 2449. (Pub. Res. Code §§42250-57.)

1           68.    The Legislature declared its intent in AB 2449 as follows:

2                    It is the intent of the Legislature, in enacting Chapter 5.1  
3                    (commencing with section 42250) Part 3 of Division 30 of the  
4                    Public Resources Code, to encourage the use of reusable bags by  
5                    consumers and retailers and to reduce the consumption of single-use  
6                    bags.

7           69.    The Governor’s signing statement is part of the legislative history. The signing  
8 statement includes the following language:

9                    I am signing Assembly Bill 2449 that implements a statewide plastic  
10                    bag recycling program. While this bill may not go as far as some  
11                    local environmental groups and cities may have hoped, this program  
12                    will make progress to reduce plastics in our environment. This  
13                    measure requires every retail establishment that provides its  
14                    customers plastic bags to have an in store plastic bag recycling  
15                    program, a public awareness program promoting bag recycling, post  
16                    recycling requirements, record keeping and penalties. Because this  
17                    is a statewide program the bill precludes locals from implementing  
18                    more stringent local requirements. The bill sunsets in six years and  
19                    this will allow locals time to develop additional programs or the  
20                    legislature to consider a more far reaching solution.

21           70.    AB 2449 sunsets and expires on January 1, 2013 (Pub. Res. Code §42257), one  
22 year after the Ordinance takes effect on August 1, 2011.

23           71.    AB 2449 only applies to “stores.” (Pub. Res. Code §42251.) A “store” is defined  
24 as a supermarket or large retail store “that provides plastic carryout bags to its customers.”  
25 (Pub. Res. Code §42250(e).) If plastic bags are banned by local ordinances, then stores in those  
26 localities will not be subject to AB 2449 and the statewide statutory scheme of AB 2449 would  
27 be defeated.

28           72.    Under AB 2449, stores that provide plastic bags to customers must install plastic

1 bag collection bins “for the purpose of collecting and recycling plastic carryout bags.” (Pub.  
2 Res. Code §42252(b).) Any member of the public may use those bins to deposit any discarded  
3 plastic carryout bags. If stores in the City are prohibited from handing out plastic bags, then all  
4 such stores would be permitted to remove their plastic bag recycling bins. Such bins are used to  
5 collect and recycle all types of plastic bags, including bags that are not prohibited under the  
6 Ordinance, including but not limited to retail bags, produce bags, newspaper bags, and dry  
7 cleaning bags. The statewide statutory scheme of AB 2449 would be defeated. There would be  
8 no way to recycle such bags as they are not accepted in curbside recycling programs in the City.

9       73. AB 2449 states that “[t]he operator of the store shall make reusable bags  
10 available to customers within the store, which may be purchased and used in lieu of using a  
11 plastic carryout bag or paper bag.” (Pub. Res. Code §42252(e).) If plastic bags are banned by  
12 local ordinances, such stores will not be subject to the state law requirement to make reusable  
13 bags available to customers in lieu of paper bags. Therefore, the declared legislative intent of  
14 AB 2449 “to encourage the use of reusable bags by consumers and retailers and to reduce the  
15 consumption of single-use bags,” including paper bags, would be defeated. Although a city or  
16 county ordinance banning plastic bags may require such stores to make reusable bags available  
17 in lieu of paper bags, there is no guarantee that a city or county will include such a requirement  
18 in an ordinance.

19       74. Based on the foregoing, if cities and counties may enact plastic bag bans that  
20 take effect before AB 2449 sunsets on January 1, 2013, the comprehensive and integrated  
21 statewide plastics reduction, recycling, and reusable bag scheme of AB 2449 would be  
22 defeated, which would have a negative impact on the environment.

23       75. The definition of “stores” in the Ordinance includes retail establishments that are  
24 defined as “stores” in AB 2449.

25       76. It is the intent of the Legislature in enacting AB 2449 that it precludes and  
26 preempts local plastic bag ban ordinances that take effect prior to January 1, 2013.

27       77. Based on the foregoing, the Ordinance is void and invalid.

28       78. Petitioner timely asserted this ground for invalidity in its Objections attached



1 hereto as Exhibit B and incorporated herein by reference.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Petitioner prays for all of the following:

4 A. A judgment that the Ordinance is void and invalid as the City violated CEQA.

5 B. A judgment that the Ordinance is void and invalid as it is preempted by AB 2449.

6 C. A peremptory writ of mandate directing the City to set aside, void, annul, and  
7 terminate the Ordinance for failure to comply with CEQA, in accordance with Pub.  
8 Res. Code §21168.9, and because the Ordinance is preempted by AB 2449.

9 D. A preliminary injunction prohibiting the City from implementing and enforcing the  
10 Ordinance during the pendency of this action.

11 E. Costs of this action.

12 F. For other such further relief as the Court may deem just and proper.

13  
14 DATED: June 8, 2011

**STEPHEN L. JOSEPH**

15  
16  
17 

18 \_\_\_\_\_  
19 Attorney for Petitioner  
20 SAVE THE PLASTIC BAG COALITION

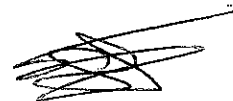
VERIFICATION

I, Stephen L. Joseph, declare:

1. I am an attorney at law duly admitted and licensed to practice in the State of California.
2. I am the attorney of record for Petitioner, SAVE THE PLASTIC BAG COALITION, in the above-entitled matter.
3. Petitioner was formed by me on June 3, 2008.
4. At all times since June 3, 2008, I have been sole Counsel, sole administrator, and sole manager of Petitioner. In those capacities, I have been involved in and have been aware of all actions taken by Petitioner since that time.
5. I am authorized by Petitioner to make this verification for and on its behalf.
6. I have read the VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND BASED ON STATE LAW PREEMPTION and know the contents thereof.
7. I know all of the facts alleged therein of my own personal knowledge and hereby declare them to be true.
8. If called upon as a witness to this proceeding, I would and could competently testify thereto under oath.

I declare under penalty of perjury under the laws of the State of California that I have read the forgoing, that the foregoing is true and correct, and that I would be competent to so testify.

Executed on June 8, 2011 at San Francisco, California.



---

STEPHEN L. JOSEPH

# **EXHIBIT A**

# **Ordinance**

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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ORDINANCE NO. ORD-11-0009

AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF LONG BEACH AMENDING THE LONG BEACH  
MUNICIPAL CODE BY ADDING CHAPTER 8.62 RELATING  
TO REGULATING THE USE OF PLASTIC CARRYOUT  
BAGS AND RECYCLABLE PAPER CARRYOUT BAGS  
AND PROMOTING THE USE OF REUSABLE BAGS

The City Council of the City of Long Beach ordains as follows:

Section 1. Chapter 8.62 is added to the Long Beach Municipal Code to  
read as follows:

Chapter 8.62

PLASTIC CARRYOUT BAGS

8.62.010 Definitions.

A. "Customer" means any person or persons, purchasing goods  
from a store.

B. "Farmer's Market" has the meaning provided in Subsection  
3.80.180.G of the Long Beach Municipal Code.

C. "Operator" means the person in control of, or having the  
responsibility for, the operation of a store, which may include, but is not  
limited to, the owner of the store.

D. "Person" means any natural person, firm, corporation,  
partnership, or other organization or group however organized.

E. "Plastic carryout bag" means any bag made predominantly of  
plastic derived from either petroleum or a biologically-based source, such

1 as corn or other plant sources, which is provided to a customer at the point  
2 of sale. Plastic carryout bag includes compostable and biodegradable bags  
3 but does not include reusable bags, produce bags or product bags.

4 F. "Postconsumer recycled material" means a material that  
5 would otherwise be destined for solid waste disposal, having completed its  
6 intended end use and product life cycle. Postconsumer recycled material  
7 does not include materials and by-products generated from, and commonly  
8 reused within, an original manufacturing and fabrication process.

9 G. "Produce bag" or "product bag" means any bag without  
10 handles used exclusively to carry produce, meats, or other food items to the  
11 point of sale inside a store or to prevent such food items from coming into  
12 direct contact with other purchased items.

13 H. "Recyclable" means material that can be sorted, cleansed,  
14 and reconstituted using available recycling collection programs for the  
15 purpose of using the altered form in the manufacture of a new product.  
16 Recycling does not include burning, incinerating, converting, or otherwise  
17 thermally destroying solid waste.

18 I. "Recyclable paper carryout bag" means a paper bag that  
19 meets all of the following requirements: (1) contains no old growth fiber; (2)  
20 is one hundred percent (100%) recyclable overall and contains a minimum  
21 of forty percent (40%) postconsumer recycled material; (3) is capable of  
22 composting, consistent with the timeline and specifications of the American  
23 society of Testing and Materials (ASTM) Standard D6400; (4) is accepted  
24 for recycling in curbside programs in the City; (5) has printed on the bag the  
25 name of the manufacturer, the location where the bag was manufactured,  
26 and the percentage of postconsumer recycled material used; and (6)  
27 displays the word "Recyclable" in a highly visible manner on the outside of  
28 the bag.

1           J.     "Reusable bag" means a bag with handles that is specifically  
2 designed and manufactured for multiple reuse and meets all of the following  
3 requirements: (1) has a minimum lifetime of one hundred twenty-five (125)  
4 uses, which for purposes of this Section, means the capability of carrying a  
5 minimum of twenty-two (22) pounds one hundred twenty-five (125) times  
6 over a distance of at least one hundred seventy-five (175) feet; (2) has a  
7 minimum volume of fifteen (15) liters; (3) is machine washable or is made  
8 from a material that can be cleaned or disinfected; (4) does not contain  
9 lead, cadmium, or any other heavy metal in toxic amounts, as defined by  
10 applicable state and federal standards and regulations for packaging or  
11 reusable bags; (5) has printed on the bag, or on a tag that is permanently  
12 affixed to the bag, the name of the manufacturer, the location where the  
13 bag was manufactured, a statement that the bag does not contain lead,  
14 cadmium, or any other heavy metal in toxic amounts, and the percentage of  
15 postconsumer recycled material used, if any; and (6) if made of plastic, is a  
16 minimum of at least 2.25 mils thick.

17           K.     "Store" means any of the following retail establishments  
18 located within the City of Long Beach:

19                 1.     A full-line, self-service retail store with gross annual  
20 sales of two million dollars (\$2,000,000), or more, that sells a line of dry  
21 grocery, canned goods, or nonfood items and some perishable items;

22                 2.     A store of at least ten thousand (10,000) square feet of  
23 retail space that generates sales or use tax pursuant to the Bradley-Burns  
24 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section  
25 7200) of Division 2 of the Business and Professions Code) and that has a  
26 pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000)  
27 of Division 2 of the Business and Professions Code; or

28                 3.     A drug store, pharmacy, supermarket, grocery store,

1 convenience food store, food mart, or other entity engaged in the retail sale  
2 of a limited line of goods that includes milk, bread, soda, and snack foods,  
3 including those stores with a Type 20 or 21 license issued by the  
4 Department of Alcoholic Beverage Control.

5  
6 8.62.020 Plastic carryout bags prohibited.

7 A. No store shall provide to any customer a plastic carryout bag.

8 B. This prohibition applies to bags provided for the purpose of  
9 carrying away goods from the point of sale and does not apply to produce  
10 bags or product bags.

11 C. No person shall distribute a plastic carryout bag or any paper  
12 bag at the Long Beach Farmers' Markets, except produce bags or product  
13 bags.

14  
15 8.62.030 Permitted bags.

16 All stores shall provide or make available to a customer only  
17 recyclable paper carryout bags or reusable bags for the purpose of carrying  
18 away goods or other materials from the point of sale, subject to the terms of  
19 this Chapter. Nothing in this Chapter prohibits customers from using bags  
20 of any type that they bring to the store themselves or from carrying away  
21 goods that are not place in a bag, in lieu of using bags provided by the  
22 store.

23  
24 8.62.040 Regulation of recyclable paper carryout bags.

25 A. Any store that provides a recyclable paper carryout bag to a  
26 customer must charge the customer ten cents (\$0.10) for each bag  
27 provided, except as otherwise provided in this Chapter.

28 B. No store shall rebate or otherwise reimburse a customer any

1 portion of the ten cent (\$0.10) charge required in Subsection A, except as  
2 otherwise provided in this Chapter.

3 C. All stores must indicate on the customer receipt the number of  
4 recyclable paper carryout bags provided and the total amount charged for  
5 the bags.

6 D. All monies collected by a store under this Chapter will be  
7 retained by the store and may be used only for the following purposes:

- 8 1. Costs associated with complying with the requirements  
9 of this Chapter;  
10 2. Actual costs of providing recyclable paper carryout  
11 bags; or  
12 3. Costs associated with a store's educational materials  
13 or education campaign encouraging the use of reusable bags, if any.

14 E. All stores shall keep complete and accurate records or  
15 documents, for a minimum period of three years from the date of sale, of  
16 the total number of recyclable paper carryout bags provided, the total  
17 amount of monies collected for providing recyclable paper carryout bags,  
18 which record shall be available for inspection at no cost to the City during  
19 regular business hours by any City employee authorized to enforce this  
20 Section. Unless an alternative location or method of review is mutually  
21 agreed upon, the records or documents shall be available at the store's  
22 address. A responsible agent or officer of the store shall confirm that the  
23 information provided is accurate and complete.

24 F. The provision of false information, including incomplete  
25 records or documents, to the City shall be a violation of this Section, and  
26 such store shall be subject to the fines set forth in Section 8.62.080.

27  
28 8.62.050 Use of reusable bags.



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A. All stores must provide reusable bags to customers, either for sale or at no charge.

B. Each store is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging customers to use reusable bags.

C. Each store is strongly encouraged to provide to the City and to the public a summary of any efforts a store has undertaken to promote the use of reusable bags by customers.

8.62.060 Exempt customers.

All stores must provide at the point of sale, free of charge, either reusable bags or recyclable paper carryout bags or both, at the store's option, to any customer participating either in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code or in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code.

8.62.070 Operative date.

This Chapter shall become operative on August 1, 2011, for stores defined in Subsections K.1. and K.2. of Section 8.62.010. For stores defined in Subsection K.3. of Section 8.62.010, this Chapter shall become operative on January 1, 2012. For Farmers' Markets as defined in Subsection B of Section 8.62.010, this Chapter shall become operative on January 1, 2012.

///  
///

1 8.62.080 Enforcement and violation – penalty.

2 A. The City Manager has primary responsibility for enforcement  
3 of this Chapter. The City Manager or designee is authorized to promulgate  
4 regulations and to take any and all other actions reasonable and necessary  
5 to enforce this Chapter, including, but not limited to, investigating violations,  
6 issuing fines and entering the premises of any store during business hours.  
7 If the City Manager or designee determines that a violation of this Chapter  
8 has occurred, he/she will issue a written warning notice to the operator of a  
9 store that a violation has occurred and the potential penalties that will apply  
10 for future violations.

11 B. Any store that violates or fails to comply with any of the  
12 requirements of this Chapter after a written warning notice has been issued  
13 for that violation shall be guilty of an infraction.

14 C. If a store has subsequent violations of this Chapter that are  
15 similar in kind to the violation addressed in a written warning notice, the  
16 following penalties will be imposed and shall be payable by the operator of  
17 the store:

18 1. A fine not exceeding one hundred dollars (\$100) for the  
19 first violation after the written warning notice is given;

20 2. A fine not exceeding two hundred dollars (\$200) for the  
21 second violation after the written warning notice is given; or

22 3. A fine not exceeding five hundred dollars (\$500) for the  
23 third and any subsequent violations after the written warning notice is given.

24 D. A fine shall be imposed for each day a violation occurs or is  
25 allowed to continue.

26 E. All fines collected pursuant to this Chapter shall be used to  
27 assist with the implementation and enforcement of the requirements of this  
28 Chapter.

1 F. Any store operator who receives a written warning notice or  
2 fine may request an administrative review of the accuracy of the  
3 determination or the propriety of any fine issued, by filing a written notice of  
4 appeal with the City Manager no later than thirty (30) days after receipt of a  
5 written warning notice or fine, as applicable. The notice of appeal must  
6 include all facts supporting the appeal and any statements and evidence,  
7 including copies of all written documentation and a list of any witnesses that  
8 the appellant wishes to be considered in connection with the appeal. The  
9 appeal will be heard by a hearing officer designated by the City Manager.  
10 The hearing officer will conduct a hearing concerning the appeal within  
11 forty-five (45) days from the date that the notice of appeal is filed, or on a  
12 later date if agreed upon by the appellant and the City, and will give the  
13 appellant ten (10) days prior written notice of the date of the hearing. The  
14 hearing officer may sustain, rescind, or modify the written warning notice or  
15 fine, as applicable, by written decision. The hearing officer will have the  
16 power to waive any portion of the fine in a manner consistent with the  
17 decision. The decision of the hearing officer is final and effective on the  
18 date of service of the written decision, is not subject to further administrative  
19 review, and constitutes the final administrative decision.  
20

21 8.62.090 Severability.

22 If any section, subsection, sentence, clause, or phrase of this  
23 ordinance is for any reason held to be invalid by a decision of any court of  
24 competent jurisdiction, that decision will not affect the validity of the  
25 remaining portions of the ordinance.  
26

27 8.62.100 No conflict with federal or state law.

28 Nothing in this ordinance is intended to create any requirement,

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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power or duty that is in conflict with any federal or state law.

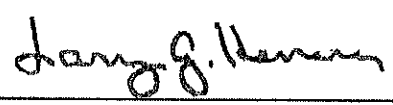
Section 2. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of May 24, 2011, by the following vote:

Ayes: Councilmembers: Garcia, Lowenthal, DeLong, Johnson,  
Neal.

Noes: Councilmembers: O'Donnell, Schipske, Gabelich.

Absent: Councilmembers: Andrews.



City Clerk

Approved: 6/3/11  
(Date)

  
Mayor

# **EXHIBIT B**

# **Objections**

## SAVE THE PLASTIC BAG COALITION

350 Bay Street, Suite 100-328

San Francisco, CA 94133

Phone: (415) 577-6660

Fax: (415) 869-5380

E-mail: [savetheplasticbag@earthlink.net](mailto:savetheplasticbag@earthlink.net)

Website: [www.savetheplasticbag.com](http://www.savetheplasticbag.com)

April 27, 2011

Long Beach Development Services  
Jill Griffiths, Planning Officer  
333 W. Ocean Boulevard, 5<sup>th</sup> Floor  
Long Beach, CA 90802

VIA E-MAIL

[Jill.Griffiths@longbeach.gov](mailto:Jill.Griffiths@longbeach.gov)

### OBJECTIONS TO PROPOSED ORDINANCE TO BAN PLASTIC BAGS

#### INTRODUCTION

Pursuant to Pub. Res. Code §21177(b), Save the Plastic Bag Coalition (“STPB”) hereby objects to the approval of the project/ordinance to ban plastic carryout bags based on (i) the CEQA objections herein; and (ii) preemption by AB 2449.

Exhibits are submitted herewith via e-mail for inclusion in the administrative record in support of these objections.

#### CEQA OBJECTIONS

The numbered title headings herein are part of the objections.

1. STPB OBJECTS TO THE USE OF AN INAPPROPRIATE, INAPPLICABLE, AND IRRELEVANT GHG THRESHOLD OF SIGNIFICANCE IN THE ADDENDUM TO THE COUNTY EIR

At page 9 of the Addendum, the City states as follows:

For this analysis, the City has determined to select its own GHG significance threshold rather than relying on the County’s threshold as used in the County’s Final EIR. For this analysis, the City’s proposed Ordinance is evaluated based on a plan-based threshold of 6.6 metric tons CO<sub>2</sub>e per service population (defined to include both residents and employees) per year. The City does not recommend adoption of that threshold for any other purpose at this time, but that numeric threshold is recommended for this analysis for the following reasons. First, the 6.6 metric tons CO<sub>2</sub>e per service population threshold was recently adopted by the Bay Area Air Quality Management District (BAAQMD) as a quantitative GHG emissions thresholds for plan-level projects (BAAQMD, “California Environmental Quality Act: Air Quality

Guidelines” (June 2010).) Second, the BAAQMD derived that “efficiency” metric from statewide compliance with AB 32, and so that metric may be appropriately applied in regions other than the Bay Area. Finally, although SCAQMD has not yet acted on the proposal, staff of the SCAQMD are proposing the same efficiency metric for use in the South Coast region (SCAQMD, “Proposed Tier 4 Performance Standards, September 2010). Thus, the City finds that a 6.6 metric ton CO<sub>2</sub>e per service population per year threshold is appropriately used in this analysis at this time. Therefore, the City’s proposed Ordinance would have a significant impact related to GHG emissions if the GHG emissions would result in more than 6.6 metric tons of CO<sub>2</sub>e per service population (residents and employees) per year.

STPB objects to the application of the proposed threshold. The BAAQMD CEQA Guidelines (June 2010) (“BAAQMD Guidelines”) apply only to land-use driven emission sectors. (Exh. LB5.) The BAAQMD Guidelines state at page 1-1 as follows:

Land development plans and projects have the potential to generate harmful air pollutants that degrade air quality and increase local exposure. The Guidelines contain instructions on how to evaluate, measure, and mitigate air quality impacts generated from land development construction and operation activities.

(Emphasis added.) According to the BBAQMD Guidelines at page D-14:

Land use-driven emission sectors include Transportation (On-Road Passenger Vehicles; On- Road Heavy Duty), Electric Power (Electricity; Cogeneration), Commercial and Residential (Residential Fuel Use; Commercial Fuel Use) and Recycling and Waste (Domestic Waste Water Treatment).

(See also Table 3-1 at pages 3-1 to 3-2 of the BAAQMD Guidelines which lists only land-use projects.)

Further, even as to land-use projects, the BAAQMD project-level threshold of significance for GHGs is *not* 6.6 metric tons of CO<sub>2</sub>e per service population. (See BAAQMD Guidelines at page 2-4.)

The SCAQMD recognizes that the BAAQMD thresholds are applicable to land-use projects only. In the minutes of the stakeholder meeting on the SCAQMD proposed thresholds of significance, the Deputy Executive Officer of SCAQMD’s Planning Rule Development and Area Sources Division stated:

To derive the project level efficiency threshold of 4.6, it appears that BAAQMD took the 2020 statewide GHG reduction target for land use only....

(Exh. LB6, page 2.)

Obviously, the regulation of carryout bags is not a land-use project. Far greater allowances must be made for buildings and other land-based uses, because economic development would otherwise be stymied. STPB strongly objects to the use of land-use thresholds for determining the significance of GHG emissions from carryout bag life cycles.

The County made the following finding in its EIR:

The EIR determined that the recommended County ordinance (analyzed as Alternative 5), based on the County's assumption of a conservative number of plastic bags used in its analysis and a conservative scenario of 50 percent conversion to paper carryout bags, when applying the threshold "generate greenhouse gas emissions, either directly or indirectly that may have a significant effect on the environment," that GHG emissions due to the end of life of paper carryout bags in landfills would be cumulatively considerable.

(County EIR at I-18, Exh LB1.)

CEQA Guidelines §15065(a)(3) states that a lead agency *shall* find that a project may have a significant effect on the environment when "the project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals." In the context of the regulation of carryout bags, that is the appropriate and applicable threshold of significance. Accordingly, the County adopted a goal-oriented approach to determining the threshold of significance for this project based on the following two County objectives for the project:

- Sustainability (as it relates to the County's energy and environmental goals)
- Landfill disposal reduction.

(County Findings of Fact and Statement of Overriding Considerations at page I-3; Exh. LB1.)

**Further, a measurement based on an annual per capita approach fails to take into account the cumulative and aggregate impacts of replacing billions of plastic bags with paper bags for the all of the years that the ordinance remains in effect. That is a massive amount of additional CO2e. STPB objects on this ground too.**

The City of Long Beach must accept the County GHG threshold of significance as no other threshold could be valid for this project.



**2. STPB OBJECTS TO THE ASSUMPTION IN THE ADDENDUM TO THE EIR THAT REUSABLE BAGS WILL BE USED 125 TIMES**

In addition to increasing the use of paper bags, by banning the use of plastic carryout bags the proposed Ordinance would be expected to result in increased use of reusable bags which may also increase emissions. However, as described in the County's Final EIR, because reusable bags must be designed to have a minimum lifespan of at least 125 uses, air quality impacts due to the life cycle of a reusable bag would be expected to be lower than those of a plastic or paper carryout bag when considered on a per-bag basis. Thus, consistent with the findings of the County's Final EIR, any conversion from the use of plastic carryout bags to reusable bags would reasonably be expected to result in an environmental benefit.

Just because a reusable bag can be used 125 times does not mean that it will be used 125 times. Therefore, STPB objects to this invalid assumption in the Addendum.

**3. STPB OBJECTS TO ANY DEVIATION FROM THE DEFINITION OF REUSABLE BAGS IN THE COUNTY ORDINANCE**

The Addendum states at page 2 as follows:

With respect to reusable bags, the Ordinance would require that the reusable bag be designed for a minimum lifetime of 125 uses, be machine washable, and not contain lead, cadmium, or any other heavy metal in toxic amounts, among other criteria....

Plastic bags that are a minimum of 2.25 mils thick and are used by many stores are considered to be reusable bags, per the definition in the ordinance.

The above language is ambiguous in that it is not clear whether the City is proposing to require that all reusable bags be machine washable. The County ordinance states that reusable bags must be "machine washable or... made from a material that can be cleaned or disinfected." (Exh. LB3.)

If the County is planning to require that reusable bags be machine washable, then polyethylene reusable bags would fall outside the definition. If that is what the City is proposing, STPB objects and demands that corresponding changes to the EIR be made.

The County determined in the EIR that reusable bags made from polyethylene must be used at least three times before delivering environmental benefits compared to plastic carryout bags. (County EIR at 4-49 to 50, 12-52 to 53.) This is far better than the 104 times that polypropylene or cotton reusable bags must be used to deliver environmental benefits. (Table at

EIR at 12-21 and repeated in text throughout EIR.) Excluding polyethylene reusable bags from the definition by requiring that reusable bags be machine washable would result in significant negative environmental impacts that must be disclosed in an EIR.

**4. STPB HEREBY REASSERTS ALL OF ITS OBJECTIONS TO THE COUNTY EIR**

STPB made the decision not to challenge the County's Final EIR. However, the City of Long Beach is proposing to change the EIR as it applies to Long Beach. Therefore, STPB hereby reasserts all of its objections to the County EIR and reserves the right to litigate all such objections against the City of Long Beach. All such objections to the County EIR are contained in Exhibit LB2 that is submitted herewith. Said objections are incorporated herein by reference as objections to the City's proposed ordinance, as if fully stated herein.

**OBJECTION TO PROPOSED ORDINANCE BASED ON PREEMPTION**

In 2006, the Legislature enacted AB 2449. (Pub. Res. Code §§42250-57.) The Legislature declared its intent in AB 2449 as follows:

It is the intent of the Legislature, in enacting Chapter 5.1 (commencing with section 42250) Part 3 of Division 30 of the Public Resources Code, to encourage the use of reusable bags by consumers and retailers and to reduce the consumption of single-use bags.

The Governor's signing statement is part of the legislative history. The signing statement includes the following language:

I am signing Assembly Bill 2449 that implements a statewide plastic bag recycling program.

While this bill may not go as far as some local environmental groups and cities may have hoped, this program will make progress to reduce plastics in our environment. This measure requires every retail establishment that provides its customers plastic bags to have an in store plastic bag recycling program, a public awareness program promoting bag recycling, post recycling requirements, record keeping and penalties.

Because this is a statewide program the bill precludes locals from implementing more stringent local requirements. The bill sunsets in six years and this will allow locals time to develop additional programs or the legislature to consider a more far reaching solution.

(Exh. LB8.)

AB 2449 sunsets and expires on January 1, 2013 (Pub. Res. Code §42257), one year after the Ordinance takes effect on January 1, 2012.

AB 2449 only applies to “stores.” (Pub. Res. Code §42251.) A “store” is defined as a supermarket or large retail store “that provides plastic carryout bags to its customers.” (Pub. Res. Code §42250(e).) If plastic bags are banned by local ordinances, then stores in those localities will not be subject to AB 2449 and the statewide statutory scheme of AB 2449 would be defeated.

The definition of “stores” in the City’s proposed ordinance includes retail establishments that are defined as “stores” in AB 2449.

Under AB 2449, stores that provide plastic bags to customers must install plastic bag collection bins “for the purpose of collecting and recycling plastic carryout bags.” Pub. Res. Code §42252(b). Any member of the public may use those bins to deposit any discarded plastic carryout bags. If stores in the City are prohibited from handing out plastic bags, then all such stores would be permitted to remove their plastic bag recycling bins. Such bins are used to collect and recycle all types of plastic bags, including bags that would not be prohibited under the proposed ordinance, including but not limited to retail bags, produce bags, newspaper bags, and dry cleaning bags. The statewide statutory scheme of AB 2449 would be defeated. There would be no way to recycle such bags as they are not accepted in curbside recycling programs in the City.

AB 2449 states that “[t]he operator of the store shall make reusable bags available to customers within the store, which may be purchased and used in lieu of using a plastic carryout bag or paper bag.” (Pub. Res. Code §42252(e).) If plastic bags are banned by local ordinances, such stores will not be subject to the state law requirement to make reusable bags available to customers in lieu of paper bags. Therefore, the declared legislative intent of AB 2449 “to encourage the use of reusable bags by consumers and retailers and to reduce the consumption of single-use bags,” including paper bags, would be defeated. Although an ordinance banning plastic bags may require such stores to make reusable bags available in lieu of paper bags, there is no guarantee that a city or county will include such a requirement in an ordinance.

Based on the foregoing, if cities and counties may enact plastic bag bans that take effect before AB 2449 sunsets on January 1, 2013, the comprehensive and integrated statewide plastics reduction, recycling, and reusable bag scheme of AB 2449 would be defeated.

It is the intent of the Legislature in enacting AB 2449 that it precludes and preempts local plastic bag ban ordinances that take effect prior to January 1, 2013. Therefore, the City’s proposed ordinance will be invalid if it takes effect prior to January 1, 2013.

#### **NOTICE OF INTENT TO LITIGATE**

STPB hereby notifies the City of Long Beach that STPB *will* file a petition for writ of mandate in the Los Angeles County Superior Court or other appropriate court to enforce CEQA in the public interest, based on the points and objections herein, if the proposed ordinance or a similar ordinance is adopted.

STPB further notifies the City of Long Beach that STPB *will* file a complaint in the Los Angeles County Superior Court or other appropriate court to invalidate the proposed ordinance if it adopted, based on preemption.

**PROPOSED SOLUTION**

STPB proposes that the City of Long Beach adopt the Los Angeles County Findings of Fact and Statement of Overriding Considerations, without amendment. The appropriate model is the City of Calabasas ordinance. (Exh. LB7).

**ADMINISTRATIVE RECORD**

STPB is submitting herewith, by e-mail, copies of documents cited herein or which otherwise support the objections herein. STPB requests that all such documents be made part of the administrative record.

**REQUEST FOR NOTICES**

I request that you send me by e-mail and regular mail any future public notices regarding the proposed ordinance and any public hearings, including but not limited to any and all CEQA documents.

**CONTACT PERSON**

I am the designated contact person for the Save The Plastic Bag Coalition.

**RESERVATION OF RIGHTS**

No rights or duties are waived by any statement or omission herein. All rights are reserved. Strict compliance with all the applicable provisions of CEQA is hereby demanded.

Dated: April 27, 2011



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STEPHEN L. JOSEPH  
Counsel, Save The Plastic Bag Coalition

CONFIRMED COPY OF ORIGINAL FILED Los Angeles Superior Court

JUN 09 2011

John A. Clarke, Executive Officer/Clerk By SHAUNYA WESLEY, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address, telephone number, and address): Stephen L. Joseph (SBN 189234) 350 Bay Street Suite 100-328 San Francisco, CA 94133 TELEPHONE NO.: (415) 577-6660 FAX NO.: (415) 869-5380 ATTORNEY FOR (Name): Save The Plastic Bag Coalition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District

CASE NAME: Save The Plastic Bag Coalition v. City of Long Beach, et al

CIVIL CASE COVER SHEET [X] Unlimited (Amount demanded exceeds \$25,000) [ ] Limited (Amount demanded is \$25,000 or less) Complex Case Designation [ ] Counter [ ] Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: BS182500

JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

- 1. Check one box below for the case type that best describes this case: Auto Tort, Contract, Provisionally Complex Civil Litigation, Other PI/PD/WD, Real Property, Enforcement of Judgment, Non-PI/PD/WD, Unlawful Detainer, Miscellaneous Civil Complaint, Employment, Judicial Review, Miscellaneous Civil Petition

- 2. This case [ ] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management: a. Large number of separately represented parties, b. Extensive motion practice, c. Substantial amount of documentary evidence, d. Large number of witnesses, e. Coordination with related actions, f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. [ ] monetary b. [X] nonmonetary; declaratory or injunctive relief c. [ ] punitive

4. Number of causes of action (specify): Two

5. This case [ ] is [X] is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 9, 2011 Stephen L. Joseph

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.

SHORT TITLE:

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CASE NUMBER

**CIVIL CASE COVER SHEET ADDENDUM AND  
STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

**Item I.** Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL?  YES CLASS ACTION?  YES LIMITED CASE?  YES TIME ESTIMATED FOR TRIAL  HOURS/  DAYS

**Item II.** Indicate the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column B below which best describes the nature of this case.

**Step 3:** In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

1. Class actions must be filed in the Stanley Mosk Courthouse, central district.
2. May be filed in central (other county, or no bodily injury/property damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (See Step 2 Above)	C Applicable Reasons (See Step 3 Above)
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/ Property Damage/ Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2.
		<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 4.
		<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4.
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 4.	
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 4.	
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 3.	
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4.	

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CASE NUMBER

Non-Personal Injury/ Property  
Damage/ Wrongful Death Tort

Employment

Contract

Real Property

Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Action (only one)	C Applicable Reasons (See Tab 3 Above)
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation      Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

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CASE NUMBER

A Civil Case Cover Sheet Category A	B Type of Action (Check only one)	C Applicable Reason (See Step 2 Above)
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.
Writ of Mandate (02)	<input checked="" type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input checked="" type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.



SHORT TITLE:

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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.  <input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			ADDRESS:
CITY: Long Beach	STATE: CA	ZIP CODE: 90802	


Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: June 9, 2011

  
\_\_\_\_\_  
(SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>Stephen L. Joseph (SBN 198234)</b>  <b>350 Bay Street, Suite 100-328</b>  <b>San Francisco, CA 94133</b></p> <p>TELEPHONE NO.:(415) 577-6660      FAX NO. (Optional):(415) 869-5380  E-MAIL ADDRESS (Optional):savetheplasticbag@earthlink.net  ATTORNEY FOR (Name):Petitioner <b>SAVE THE PLASTIC BAG COALITION</b></p>	<p>FOR COURT USE ONLY</p> <p><b>CONFORMED COPY  OF ORIGINAL FILED</b>  <b>Los Angeles Superior Court</b></p> <p><b>JUN 09 2011</b></p> <p><b>John A. Clarke, Executive Officer/Clerk</b>  By , Deputy  <b>SHAUNYA WESLEY</b></p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles</b></p> <p>STREET ADDRESS: 111 North Hill Street  MAILING ADDRESS:  CITY AND ZIP CODE: Los Angeles, CA 90012  BRANCH NAME: Central District</p>	
<p>PLAINTIFF/PETITIONER: <b>SAVE THE PLASTIC BAG COALITION</b></p> <p>DEFENDANT/RESPONDENT: <b>CITY OF LONG BEACH, et al</b></p>	<p>CASE NUMBER:  <b>BS132500</b></p> <p>JUDICIAL OFFICER:</p>
<p><b>NOTICE OF RELATED CASE</b></p>	<p>DEPT.:</p>

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: **THERE ARE NO RELATED CASES**
- b. Case number:
- c. Court:  same as above  
 other state or federal court (name and address):
- d. Department:
- e. Case type:  limited civil  unlimited civil  probate  family law  other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?"  Yes  No
- h. Relationship of this case to the case referenced above (check all that apply):
  - involves the same parties and is based on the same or similar claims.
  - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
  - involves claims against, title to, possession of, or damages to the same property.
  - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
  - Additional explanation is attached in attachment 1h
- i. Status of case:
  - pending
  - dismissed  with  without prejudice
  - disposed of by judgment.
2. a. Title:
- b. Case number:
- c. Court:  same as above  
 other state or federal court (name and address):
- d. Department:

PLAINTIFF/PETITIONER: SAVE THE PLASTIC BAG COALITION	CASE NUMBER:
DEFENDANT/RESPONDENT: CITY OF LONG BEACH, et al	

2. (continued)

e. Case type:  limited civil  unlimited civil  probate  family law  other (specify):

f. Filing date:

g. Has this case been designated or determined as "complex?"  Yes  No

h. Relationship of this case to the case referenced above (check all that apply):

- involves the same parties and is based on the same or similar claims.
- arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- involves claims against, title to, possession of, or damages to the same property.
- is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- Additional explanation is attached in attachment 2h

i. Status of case:

- pending
- dismissed  with  without prejudice
- disposed of by judgment

3. a. Title:

b. Case number:

c. Court:  same as above  
 other state or federal court (name and address):

d. Department:

e. Case type:  limited civil  unlimited civil  probate  family law  other (specify):

f. Filing date:

g. Has this case been designated or determined as "complex?"  Yes  No

h. Relationship of this case to the case referenced above (check all that apply):

- involves the same parties and is based on the same or similar claims.
- arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- involves claims against, title to, possession of, or damages to the same property.
- is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- Additional explanation is attached in attachment 3h

i. Status of case:

- pending
- dismissed  with  without prejudice
- disposed of by judgment

4.  Additional related cases are described in Attachment 4. Number of pages attached: \_\_\_\_\_

Date: June 6, 2011

Stephen L. Joseph

(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)

(SIGNATURE OF PARTY OR ATTORNEY)

PLAINTIFF/PETITIONER: SAVE THE PLASTIC BAG COALITION DEFENDANT/RESPONDENT: CITY OF LONG BEACH, et al	CASE NUMBER:
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**PROOF OF SERVICE BY FIRST-CLASS MAIL  
NOTICE OF RELATED CASE**

**(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)**

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify): 350 Bay Street, Suite 100-328, San Francisco, CA 94133

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and (check one):

- a.  deposited the sealed envelope with the United States Postal Service.
- b.  placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Related Case* was mailed:

- a. on (date): June 6, 2011
- b. from (city and state): San Francisco, California

4. The envelope was addressed and mailed as follows:

- |  |   |
|--|---|
| a. Name of person served: City Clerk<br>City of Long Beach<br>Street address: 333 W. Ocean Blvd, Lobby Level<br>City: Long Beach<br>State and zip code: CA 90802                         | c. Name of person served: Jill Griffiths-Planning Office<br>Long Beach Development Services<br>Street address: 333 W. Ocean Blvd, 5th Floor<br>City: Long Beach<br>State and zip code: CA 90802 |
| b. Name of person served: Amy. J. Bodek, Director<br>Long Beach Development Services<br>Street address: 333 W. Ocean Blvd, 5th Floor<br>City: Long Beach<br>State and zip code: CA 90802 | d. Name of person served:<br>Street address:<br>City:<br>State and zip code:  |

Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: June 6, 2011

Simone H. Joseph  
(TYPE OR PRINT NAME OF DECLARANT)

  
(SIGNATURE OF DECLARANT)



1 **STEPHEN L. JOSEPH (SBN 189234)**  
2 350 Bay Street, Suite 100-328  
3 San Francisco, CA 94133  
4 Telephone: (415) 577-6660  
5 Facsimile: (415) 869-5380  
6 E-mail: savetheplasticbag@earthlink.net

7 Attorney for Petitioner  
8 **SAVE THE PLASTIC BAG COALITION**

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF MARIN**

12 **SAVE THE PLASTIC BAG COALITION,** )  
13 an unincorporated association, )

14 ) **Petitioner,** )

15 v. )

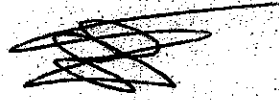
16 **CITY OF LONG BEACH, a municipal** )  
17 **corporation; LONG BEACH DEVELOPMENT** )  
18 **SERVICES, an agency of the City of Long** )  
19 **Beach; and DOES 1-100, inclusive,** )

20 **Respondents.** )  
21 )

22 This Proof of Prior Service of the attached Notice of Commencement of Action is filed  
23 by Petitioner **SAVE THE PLASTIC BAG COALITION**, pursuant to Pub. Res. Code §21167.5.

24 **DATED: June 9, 2011**

25 **STEPHEN L. JOSEPH**

26   
27 \_\_\_\_\_  
28 **Attorney for Petitioner**  
**SAVE THE PLASTIC BAG COALITION**

**CONFORMED COPY  
OF ORIGINAL FILED**  
Los Angeles Superior Court

**JUN 09 2011**

John A. Clarke, Executive Officer/Clerk  
By  Deputy  
**SHAUNA WEBLEY**

**BS182500**

Case No.

**PETITIONER'S PROOF OF PRIOR  
SERVICE OF NOTICES OF  
COMMENCEMENT OF ACTION**

[Pub. Res. Code §21167.5]

## SAVE THE PLASTIC BAG COALITION

350 Bay Street, Suite 100-328

San Francisco, CA 94133

Phone: (415) 577-6660

Fax: (415) 869-5380

E-mail: [savetheplasticbag@earthlink.net](mailto:savetheplasticbag@earthlink.net)

Website: [www.savetheplasticbag.com](http://www.savetheplasticbag.com)

June 5, 2011

City Clerk  
City of Long Beach  
333 W. Ocean Boulevard  
Lobby Level  
Long Beach, CA 90802

BY MAIL AND E-MAIL  
[cityclerk@longbeach.gov](mailto:cityclerk@longbeach.gov)

Amy J. Bodek, Director  
Long Beach Development Services  
City of Long Beach  
333 W. Ocean Boulevard, 5<sup>th</sup> Floor  
Long Beach, CA 90802

VIA MAIL

Jill Griffiths, Planning Officer  
Long Beach Development Services  
City of Long Beach  
333 W. Ocean Boulevard, 5<sup>th</sup> Floor  
Long Beach, CA 90802

VIA MAIL AND E-MAIL  
[Jill.Griffiths@longbeach.gov](mailto:Jill.Griffiths@longbeach.gov)

### **NOTICE OF COMMENCEMENT OF ACTION** **PURSUANT TO PUBLIC RESOURCES CODE §21167.5**

Pursuant to Public Resources Code §21167.5, Save The Plastic Bag Coalition ("STPB") hereby notifies the City of Long Beach and Long Beach Development Services of the commencement of an action.

The project that is the subject of the action is the ordinance amending the Municipal Code by adding chapter 8.62 relating to regulating the use of plastic carryout bags and recyclable paper carryout bags and promoting the use of reusable bags. The ordinance was adopted by the City Council on May 24, 2011.

The petitioner in the action is Save The Plastic Bag Coalition.

The party respondents in the action are as follows:

1. City of Long Beach
2. Long Beach Development Services
3. Does 1-100

City of Long Beach

June 5, 2011

Page 2

The action is being filed and commenced in the Los Angeles Superior Court – Central District.

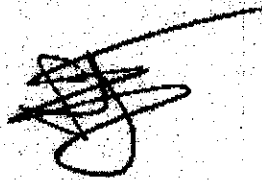
The nature of the action is a petition for writ of mandate under the California Environmental Quality Act (“CEQA”) and declaratory relief. The causes of action are as follows:

First Cause of Action: Application of inappropriate, inapplicable, and unlawful threshold of significance regarding Greenhouse Gas Emissions in the “Addendum to the Ordinances to Ban Plastic Carryout Bags in Los Angeles County Final EIR,” as stated in STPB’s objections to the Addendum sent to Long Beach Development Services on April 27, 2011. Also failure to adopt Statement of Overriding Considerations. These are violations of CEQA. Request for judgment that the ordinance is invalid and request for peremptory writ of mandate requiring repeal of the ordinance and similar and related relief.

Second Cause of Action: Request for declaratory judgment that the Ordinance is preempted by AB 2449 and therefore invalid. (Public Resources Code §§ 42250-42257.)

All objections and rights are reserved, including but not limited to STPB’s objections sent to Long Beach Development Services on April 27, 2011. No waivers of any kind are intended by this notice.

**SAVE THE PLASTIC BAG COALITION**



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By: **STEPHEN L. JOSEPH**, Counsel



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**PROOF OF SERVICE BY MAIL**

**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

I am over the age of 18 and not a party to the within action. My business address is 350 Bay Street, Suite 100-328, San Francisco, CA 94133.

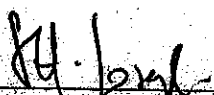
On June 6, 2011, I placed signed originals of the NOTICE OF COMMENCEMENT OF ACTION PURSUANT TO PUBLIC RESOURCES CODE §21167.5, true and correct copies of which are attached hereto, in sealed envelopes with postage fully prepaid in the United States Mail at San Francisco, California. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing stated herein. The names and addresses on the envelopes were as follows:

City Clerk  
City of Long Beach  
333 W. Ocean Boulevard  
Lobby Level  
Long Beach, CA 90802

Jill Griffiths, Planning Officer  
Long Beach Development Services  
City of Long Beach  
333 W. Ocean Boulevard, 5th Floor  
Long Beach, CA 90802

Amy J. Bodek, Director,  
Long Beach Development Services  
City of Long Beach  
333 W. Ocean Boulevard, 5th Floor  
Long Beach, CA 90802

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 6, 2011 at San Francisco, California.

  
\_\_\_\_\_  
SIMONE H. JOSEPH

1 **STEPHEN L. JOSEPH (SBN 189234)**  
2 350 Bay Street, Suite 100-328  
3 San Francisco, CA 94133  
4 Telephone: (415) 577-6660  
5 Facsimile: (415) 869-5380  
6 E-mail: savetheplasticbag@earthlink.net

7 Attorney for Petitioner  
8 **SAVE THE PLASTIC BAG COALITION**

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

12 **SAVE THE PLASTIC BAG COALITION,**  
13 an unincorporated association,  
14  
15 Petitioner,

16 v.

17 **CITY OF LONG BEACH, a municipal**  
18 **corporation; LONG BEACH DEVELOPMENT**  
19 **SERVICES, an agency of the City of Long**  
20 **Beach; and DOES 1-100, inclusive,,**  
21  
22 Respondents.

) Case No. BS 132500  
)  
)

) **PETITIONER'S PROOF OF SERVICE OF**  
) **VERIFIED PETITION FOR WRIT OF**  
) **MANDATE ON ATTORNEY GENERAL**

) [Pub. Res. Code §21167.7; Code Civ. Proc.  
) §388]

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Petitioner hereby certifies that it has complied with Pub. Res. Code §21167.7 and Code Civ. Proc. §388 by serving the Verified Petition For Writ of Mandate Under The California Environmental Quality Act And Based On State Law Preemption within 10 days after filing. A proof of service is attached hereto.

DATED: June 13, 2011

**STEPHEN L. JOSEPH**



\_\_\_\_\_  
Attorney for Petitioner  
**SAVE THE PLASTIC BAG COALITION**

LAW OFFICES  
*of*  
**STEPHEN L. JOSEPH**

350 BAY STREET  
SUITE 100-328  
SAN FRANCISCO, CA 94133

*Admitted in California and the District of Columbia*

TELEPHONE: (415) 577-6660  
FAX: (415) 869-5380  
E-MAIL: sljoseph.law@earthlink.net

June 13, 2011

Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814-2919

BY REGULAR MAIL

RE: Save The Plastic Bag Coalition vs. City of Long Beach, et al  
Los Angeles County Superior Court, Case No. BS 132500

Dear Attorney-General:

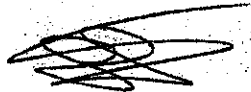
I represent Petitioner Save The Plastic Bag Coalition in the referenced case.

Pursuant to California Public Resources Code § 21167.7, I am hereby notifying you that Petitioner filed the following document in the Los Angeles County Superior Court – Central District on June 9, 2011:

VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE  
CALIFORNIA ENVIRONMENTAL QUALITY ACT AND BASED ON STATE  
LAW PREEMPTION

A copy of the above-entitled document is enclosed.

Sincerely,



Stephen-L. Joseph

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**PROOF OF SERVICE BY MAIL ON ATTORNEY GENERAL**

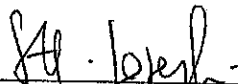
**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

I am over the age of 18 and not a party to the within action. My business address is 350 Bay Street, Suite 100-328, San Francisco, CA 94133.

On June 13, 2011, I placed a copy of the VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND BASED ON STATE LAW PREEMPTION and the letter attached herewith in a sealed envelope with postage fully prepaid in the United States Mail at San Francisco, California. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing stated herein. The name and address on the envelope was as follows:

Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814-2919

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 13, 2011 at San Francisco, California.

  
\_\_\_\_\_  
SIMONE H. JOSEPH

JUN 09 2011

John A. Clarke, Executive Officer/Clerk  
By SHAUNNA WESLEY Deputy

1 **STEPHEN L. JOSEPH (SBN 189234)**  
2 350 Bay Street, Suite 100-328  
3 San Francisco, CA 94133  
4 Telephone: (415) 577-6660  
5 Facsimile: (415) 869-5380  
6 E-mail: savetheplasticbag@earthlink.net

7 Attorney for Petitioner  
8 **SAVE THE PLASTIC BAG COALITION**

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF MARIN

12 **BS 182500**

13 **SAVE THE PLASTIC BAG COALITION,**  
14 an unincorporated association,

15 Petitioner,

16 v.

17 **CITY OF LONG BEACH, a municipal**  
18 **corporation; LONG BEACH DEVELOPMENT**  
19 **SERVICES, an agency of the City of Long**  
20 **Beach; and DOES 1-100, inclusive,**

21 Respondents.

) Case No.

) **PETITIONER'S REQUEST THAT PUBLIC**  
22 **AGENCY PREPARE RECORD OF**  
23 **PROCEEDINGS**

) [Pub. Res. Code §21167.6(a), Local Rule  
24 9.24(b)]

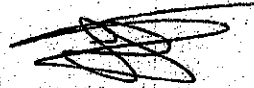
25 Pursuant to Pub. Res. Code §21167.6(a), Petitioner hereby requests that public agency  
26 Respondents **CITY OF LONG BEACH** and **LONG BEACH DEVELOPMENT SERVICES**  
27 prepare the record of proceedings relating to the subject of this action or proceeding. The record  
28 includes, but is not limited to, the following:

1. The Los Angeles County ordinance banning certain plastic carryout bags and requiring a fee to be charged for certain paper bags, adopted by the Board of Supervisors on November 16, 2010 (the "County Ordinance").
2. The Los Angeles County Environmental Impact Report, Findings of Facts, and Statement of Overriding Considerations regarding the County Ordinance.

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DATED: June 9, 2011

**STEPHEN L. JOSEPH**



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Attorney for Petitioner  
**SAVE THE PLASTIC BAG COALITION**