TO: Honorable Mayor and City Council Members

FROM: Kristen M. Crane, Management Services Director
Via Scott W. Huth, City Manager
Prepared by Scott Gerdes, City Manager Intern

DATE: May 16, 2016

SUBJECT: Second Reading and Adoption of an Ordinance Adding Chapter 11.36 to the Del Mar Municipal Code (DMMC) to Prohibit the Use of Single-Use Plastic Carry-Out Bags

REQUESTED ACTION/RECOMMENDATION:

Staff recommends that the City Council adopt the following ordinance:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR ADDING CHAPTER 11.36 TO THE MUNICIPAL CODE PROHIBITING THE USE OF SINGLE-USE PLASTIC CARRY-OUT BAGS.

DISCUSSION/ANALYSIS:

On May 2, 2016, the City Council conducted a public hearing and reintroduced the proposed ordinance adding Chapter 11.36 to the Municipal Code prohibiting the use of single-use plastic carry-out bags.

If Council adopts the ordinance at this Council meeting, the ordinance will become effective six (6) months after adoption for retail establishments except for restaurants, food vendors, farmer’s markets, and catering food trucks on December 14, 2016 and twelve (12) months after adoption for restaurants, food vendors, catering food trucks, and farmer’s markets on June 15, 2017.

FISCAL IMPACT:

There is minimal fiscal impact associated with this action. Development of the ordinance recommended by the Sustainability Advisory Board required staff time and legal review by the City Attorney. Based on City Council direction, implementation of the ordinance will require staff time, as well as ongoing education for the business community and any necessary enforcement. There will be an incidental cost for public education outreach efforts, including the rights to access to the “Bag It” movie and staff time to organize an event to host a public viewing of the film, and the cost to purchase a supply of reusable bags. These costs can be accommodated using Solid Waste-
Recycling funds, within the City’s current operating budget. The estimated cost for purchasing the rights to access the “Bag It” film and reusable bags is estimated to not exceed $2,000.

ENVIRONMENTAL IMPACT:

Neither this report, nor a future ordinance banning single use plastic bags, are considered a project pursuant to CEQA requirements.

PRIOR CITY COUNCIL REVIEW:

On December 7, 2015 the City Council directed staff to develop an ordinance.
On February 16, 2016 the City Council approved the introduced ordinance.
On May 2, 2016 the City Council approved the reintroduced ordinance.

ATTACHMENTS:

Attachment A – Proposed ordinance, DMMC Chapter 11.36 for second reading and adoption
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
DEL MAR, CALIFORNIA ADDING CHAPTER 11.36 TO THE DEL
MAR MUNICIPAL CODE TO PROHIBIT THE USE OF SINGLE-
USE PLASTIC CARRY-OUT BAGS

WHEREAS, about nineteen billion (19,000,000,000) single use bags are used annually in California but less than 5% are recycled; and

WHEREAS, it is the City’s desire whenever possible to conserve resources, reduce the amount of greenhouse gas emissions, waste, beach litter, and marine pollution and to protect the public health and welfare including wildlife, all of which increase the quality of life for Del Mar’s residents and visitors; and

WHEREAS, various businesses within the City distribute single-use, disposable carry-out bags to their customers; and

WHEREAS, numerous studies have documented the prevalence of single use plastic carry out bags littering the environment, blocking storm drains, fouling beaches and the ocean environment; and

WHEREAS, the City’s taxpayers must bear the brunt of the clean-up costs; and

WHEREAS, plastic bags are a significant source of marine debris and are hazardous to marine animals and birds which often confuse single-use plastic carry-out bags for a source of food. The ingestion of these bags can result in reduced nutrient absorption and death to birds and marine animals; and

WHEREAS, single use paper bags are made from renewable resources and are much less environmentally problematic than single use plastic bags, yet they do require environmental resources to manufacture, transport, and recycle and/or dispose of; and

WHEREAS, from an overall environmental and economic perspective, the best alternative to single-use plastic carryout bags and paper carry-out bags is a shift to reusable bags; and

WHEREAS, this ordinance permits stores to implement incentives to generate a shift in consumer behavior towards the use of reusable bags and significantly reducing single-use bag consumption; and

WHEREAS, studies document that banning plastic bags and placing a mandatory charge on paper bags will dramatically reduce the use of both types of bags; and
ORDINANCE NO. ____

WHEREAS, there are alternatives to single-use carry-out bags; and

WHEREAS, the City Council of the City of Del Mar conducted a noticed public hearing regarding the initial proposed ordinance at their regularly scheduled meeting on February 16, 2016 and an additional public hearing to re-introduce the revised ordinance at their regularly scheduled meeting on May 2, 2016. The public hearing was advertised pursuant to applicable law and testimony was invited and received; and

WHEREAS, the proposed ordinance is exempt from review under the California Environmental Quality Act (CEQA) based upon the common sense exemption under 14 CCR 15061 (b)(3) and the reasoning in the California Supreme Court case Save the Plastic Bag Coalition v. City of Manhattan Beach, 52 Cal. 4th 155 (2011); and

WHEREAS, the proposed ordinance does not preempt compliance with the California Retail Food Code or any other state of federal law; and

WHEREAS, the City Council desires to add Chapter 11.36 to the Del Mar Municipal Code (“DMMC”), entitled “Single-Use Plastic Carry-Out Bag Use Reduction” to provide for restrictions on the use of plastic bags within the City.

NOW, THEREFORE, the City Council of the City of Del Mar hereby ordains as follows:

SECTION ONE:

Section 11.36.010 of the Del Mar Municipal Code is hereby added as follows:

11.36.010 Purpose and Intent. The purpose of this ordinance is to protect the health, safety and general welfare of City of Del Mar residents and visitors; to conserve natural resources, to reduce beach litter and marine pollution, and to protect local wildlife.

SECTION TWO:

Section 11.36.020 of the Del Mar Municipal Code is hereby added as follows:

11.36.020 Definitions. The following definitions shall be applicable when the following words or phrases are used hereafter in this ordinance, whether or not these words or phrases are capitalized:

Bag Cost Pass-Through: means the cost which must be collected by retailers from their customers when providing a recycled paper bag or reusable bag.
Food Vendor: means any person or establishment in the City of Del Mar, that provides prepared food for public consumption on or off its premises and includes, without limitation, any store, shop, sales outlet, restaurant, grocery store, delicatessen, or catering truck or vehicle.

Garment Bag: means a bag designed to transport and protect suits, dresses, coats, or like without crushing or wrinkling.

Grocery Store: means any retail establishment that sells groceries, fresh, packaged, canned, dry, prepared or frozen food or beverage products and similar items, and includes without limitation, supermarkets, convenience stores, liquor stores and gasoline stations.

Non-Profit Vendor: means a recognized tax exempt organization which provides goods as part of its services.

Pharmacy: means any retail store, where prescriptions, medications, controlled or over the counter drugs, personal care products or health supplement goods or vitamins are sold, but excluding any licensed pharmacy located within a hospital.

Product Bag: means any bag, provided to a customer for use at a retail establishment or the Farmers Market to assist in the collection or transport of products such as liquid-based take-out foods, produce, bulk items, meat, fish or poultry to protect a purchased item from causing damage or contamination.

Recyclable Paper Bag: means a paper bag that meets all of the following requirements: (1) contains no old growth fiber; (2) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) post-consumer recycled material; (3) is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; and (4) is accepted for recycling in curbside programs in the City; and (5) has printed on the bag the name of the manufacturer, the location where the bag was manufactured, and the percentage of post-consumer recycled material used; and (6) displays the word "Recyclable" in a highly visible manner on the outside of the bag.

Restaurant: means any person or establishment doing business within the City of Del Mar that provides prepared food or beverages for consumption on or off its premises such as a
restaurant, café, bakery, grocery or convenience store food counter or delicatessen, or catering truck vehicle.

Retail Establishment: means any person, including any corporation, partnership, business, facility, vendor, organization or individual that sells or provides merchandise, goods, services, or materials, including, without limitation, clothing, food, or personal items of any kind, directly to a customer; retail establishment includes, without limitation, any grocery store, department store, hardware store, pharmacy, liquor store, restaurant, catering truck, convenience store, and any other retail store or vendor.

Reusable Bag: means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) is machine washable or is made from a material that can be cleaned or disinfected; (2) is manufactured in compliance with state, federal, and local laws; and (3) if made of plastic, is a minimum of at least 2.25 mils thick.

Single-Use Plastic Carry-Out Bag: means any bag that is less than 2.25 mils thick and is made predominately of plastic derived from petroleum or from bio-based sources, such as corn or other plant sources.

Vendor: means any store, shop, restaurant, sales outlet or other commercial establishment located within or doing business within the City of Del Mar, which provides perishable or nonperishable goods.

SECTION THREE:

Section 11.36.030 of the Del Mar Municipal Code is hereby added as follows:

11.36.030 Prohibitions

A. No Retail Establishment in the City shall provide a Single-Use Plastic Carry-Out Bag to a customer unless otherwise permitted pursuant to DMMC Section 11.36.050.

B. No Retail Establishment in the City shall provide any type of bag to a customer at the point of sale except a Reusable Bag or a Recycled Paper Bag unless otherwise permitted pursuant to DMMC Section 11.36.050.
C. No person shall distribute a Single-Use Plastic Carry-Out Bag at any City Facility, City-managed concession, City sponsored event, or City permitted event unless otherwise permitted pursuant to DMMC Section 11.36.050.

D. No person shall distribute a Single-Use Plastic Carry-Out Bag at any Farmers Market within the City of Del Mar unless otherwise permitted pursuant to DMMC Section 11.36.050.

E. Nothing in this Chapter shall prohibit the provision of bags, including plastic carry-out bags, as may be necessary to comply with the California Retail Food Code or any other state or federal law.

SECTION FOUR:

Section 11.36.040 of the Del Mar Municipal Code is hereby added as follows:

11.36.040 Incentives for use of reusable bags

A. Affected retail establishments are strongly encouraged to provide incentives for the use of reusable bags through passing through the cost of recyclable paper bags and/or reusable bags, through credits or rebates for customers that use reusable bags, and/or through education. Such incentives may include one or more of the following:

1. An affected Retail Establishment may provide a Recyclable Paper Bag or a Reusable Bag to a customer if it collects a Bag Cost Pass-through from the customer for each Recyclable Paper Bag or Reusable Bag provided. The Bag Cost Pass-Through for Recyclable Paper Bags and Reusable Bags shall be at least $0.10 cents each.

2. Rebate. An affected retail establishment may rebate or otherwise reimburse a customer for use of a reusable bag brought with them to the point of sale prior to the transaction instead of needing a new Reusable Bag or Recyclable Paper Bag.

3. Education. Each retail establishment is strongly encouraged to educate its staff to promote reusable bags and to
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post signs encouraging customers to use reusable bags or to choose to not receive a bag at all.

section five:

Section 11.36.050 of the Del Mar Municipal Code is hereby added as follows:

11.36.050 Exemptions

Notwithstanding the requirements contained in DMMC 11.36.030:

A. A retail establishment shall provide a customer participating 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 California Health and Safety Code and a customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code, with a reusable bag or a recycled paper bag at no cost at the point of sale.

B. The City Manager, or his or her designee, may exempt an affected retail establishment, vendor or non-profit vendor from the requirements of this chapter for a period of up to one additional year after the operative date of this ordinance, upon sufficient showing by the applicant that the provisions of this Chapter would cause undue hardship. The phrase undue hardship includes:

1. Situations where there are no acceptable alternatives to plastic carry-out bags for reasons which are unique to the retail establishment, vendor, or non-profit vendor;

2. Situations where compliance with the requirements of this code would deprive a person of a legally protected right.

C. The provision of Product Bags as defined in this Chapter and Garment Bags by dry cleaners are not prohibited.

D. The provision of single-use bags for the collection and disposal of pet waste is not prohibited.
SECTION SIX:

Section 11.36.060 of the Del Mar Municipal Code is hereby added as follows:

11.36.060 Remedies

A. The City Manager, or his or her designee, is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this Chapter, including, but not limited to, inspecting any retail establishment's premises to verify compliance.

B. The City Manager, or his or her designee, may require a business to disclose the manufacturer they are purchasing their Reusable Bags from and to provide the specifications describing the materials from which the bag is made and/or the thickness of plastic of the bag (if applicable) to verify the bag meets the Reusable Bag definition requirements.

C. The City Manager, or his or her designee, may allow businesses to request an extension to deplete their current inventory of single-use plastic carry out bags.

D. Any person violating this section shall be guilty of an infraction, which shall be punishable by a fine not exceeding $100.00 for the first offense, $200 for the second offense within one year, and $500 for each additional violation within one year; or a misdemeanor, which shall be punishable by a fine not exceeding $1,000.00, or by imprisonment in the county jail for a period not exceeding six months or by both such fine and imprisonment.

E. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

F. Administrative enforcement of this ordinance shall proceed pursuant to Del Mar Municipal Code Chapter 1.08.

G. Each violation of this chapter shall be considered a separate offense.
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H. The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in this chapter shall preclude any person from pursuing any other remedies provided by law.

I. Notwithstanding any other provision of this chapter, this chapter may be enforced through any remedy as provided for in this section upon its effective date.

SECTION SEVEN:

Section 11.36.070 of the Del Mar Municipal Code is hereby added as follows:

Section 7. Chapter 11.36 of the Del Mar Municipal Code shall become effective and operative as to: 1) retail stores including grocery stores, pharmacies, city facilities, non-profit vendors, and all other retail establishments except for restaurants, food vendors, farmer’s markets, and catering food trucks six (6) months after its adoption by the City Council, 2) restaurants, food vendors, catering food trucks, and farmer’s markets (12) months after its adoption by the City Council.

SECTION EIGHT:

Section 11.36.080 of the Del Mar Municipal Code is hereby added as follows:

Section 8. Within fifteen (15) days after its adoption, the City Clerk of the City of Del Mar shall cause this ordinance to be published pursuant to the provisions of Government Code Section 36933.
ORDINANCE NO. ____

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the ___ day of __________, 2016.

SHERRYL PARKS, Mayor
City of Del Mar

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. ____ , which has been published pursuant to law, and adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the ____ day of ________, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

__________________________________________
Ashley Jones
Administrative Services Director
City of Del Mar