

Judge OKs Marin's plastic bag ban

[By Nels Johnson](#)
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A move to block Marin's plastic bag ban was tossed out Tuesday when a Marin Superior Court judge rejected assertions the ban violated environmental rules.

Judge Lynn Duryee, embracing the ban as a reasonable decision by local government, said the legislation did not require officials to prepare an environmental impact report.

Stephen Joseph, representing Save the Plastic Bag Coalition, vowed to take the case to the state Court of Appeal, saying outlawing plastic required a study of environmental impacts.

"The court finds the county acted reasonably in enacting the ordinance," Judge Duryee declared. "The court finds the county acted appropriately."

Marin supervisors in January — in a move championed by the late Supervisor Charles McGlashan — unanimously approved a measure that, effective in January 2012, will ban plastic bags at checkout stands at retail markets in the county's unincorporated areas. The ban does not apply to bags used to package produce. It imposes a 5-cent fee on paper bags.

Fairfax already bans plastic bags. San Rafael is considering an ordinance modeled on the county's.

Joseph, saying environmental study was needed, asserted Duryee's decision "flies in the face" of a California Supreme Court ruling in a Manhattan Beach case in which the justices ruled that all plastic bag bans are not exempt from environmental law. Though the court ruled that Manhattan Beach's plastic ban did not require

environmental review, Joseph said it also ruled environmental review is required "for cities and counties larger than Manhattan Beach (population 35,000) or where there are cumulative impacts as a result of a series of bans.

"For this reason, cities and counties are strongly cautioned not to assume that the Marin decision is reliable guidance. ... If necessary, we will litigate against cities and counties to enforce the ruling of the Supreme Court," Joseph said in a statement issued after the judge first indicated she would toss out the suit several weeks ago.

"We will obviously appeal the Marin court's decision."

Duryee backed County Counsel David Zaltsman, who asserted that the ban-and-fee program was "categorically exempt" from the California Environmental Quality Act because the ordinance protected the environment.

The judge issued a tentative decision Sept. 15, then went on vacation, taking time to bicycle through the vineyards of Napa County. The judge said she was appalled at what she saw on the roadside — plastic bags scattered everywhere, littering ditches and caught in trees, along with a lot of single-use coffee cups. "My eye was drawn like a magnet to every plastic bag on the highway," she said. "It was obvious to me that it was a blight on the environment."

The situation, she added, "reminds me of the famous Bob Dylan quote: You don't need to be a weatherman to know which way the wind blows."

Zaltsman and Joseph vowed to fight on in higher court. "It's on to the Court of Appeal," Zaltsman said outside Duryee's courtroom as a smiling Joseph stood nearby.

McGlashan's widow, Carol Misseldine, and environmental activists who rallied to support the bag ban, including Green Cities California, Green Sangha and Californians Against Waste, were cheered by the court action, saying it could prompt other jurisdictions to ban plastic bags.

"We are thrilled that the judge agreed with the county that its bag ordinance is categorically exempt from CEQA review," said Misseldine, head of Green Cities California, noting it was six months to the day since McGlashan died.

"It is a really poignant day," she observed. "Charles would be elated with this ruling."

Andy Peri of Green Sangha also applauded the ruling. "Because Marin County's ordinance bans plastic bags and requires a fee on paper bags, the use of both will decrease," Peri said. "This is a great day."

A press release issued by bag ban boosters indicated support from Marin County Supervisor Kate Sears, who replaced McGlashan on the board. "We need to aggressively move from single-use bags, whether plastic or paper, towards durable products, and this ordinance helps Marin County do that," she said.

And Supervisor Susan Adams, who joined McGlashan to co-author the bag ordinance, noted that bringing a re-usable shopping bag to the market is "such a small behavior change" but represents "a critically important step toward our zero waste goal. "