



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Lee Price, MMC
City Clerk

**SUBJECT: PLASTIC CARRYOUT BAG
BAN AND REDUCTION IN
USE**

DATE: 02-24-09

RECOMMENDATION

As referred by the Transportation and Environment Committee of February 2, 2009, and outlined in the attached memo previously submitted to the Transportation and Environment Committee, to accept the following recommendations:

- (a) Adopt a resolution of support for the efforts of the Santa Clara County Cities Association in promoting a regional approach to reducing the use and impacts of disposable, single-use carryout paper and plastic bags; and
- (b) Direct staff to continue supporting the Santa Clara County Recycling and Waste Reduction Commission for a regional approach to single-use carryout bag usage and to provide feedback to the commission on the County's draft model ordinance language; and
- (c) Direct staff and the City Attorney to return to the Transportation and Environment Committee in April 2009 with option to reduce single-use carryout bags for Council consideration including implementation, cost and stakeholder outreach plans; and
- (d) Continue to support legislation that would implement a state-wide program that would significantly reduce the use of single use carryout bags and that would remove any restriction on the City's ability to establish fees on plastic carryout bags or other disposable packaging





Memorandum

TO: TRANSPORTATION AND
ENVIRONMENT COMMITTEE

FROM: John Stufflebean

**SUBJECT: REDUCTION OF SINGLE-USE
CARRYOUT BAGS**

DATE: 01-20-09

Approved

Date

1/20/09

RECOMMENDATIONS

Accept this report and recommend that the following be agendized for February 24, 2009, as a separate item for discussion with the full City Council, with the following recommendation and direction to staff:

- a) Adopt a resolution to support the efforts of the Santa Clara County Cities Association in promoting a regional approach to reducing the use and impacts of disposable, single-use carryout paper and plastic bags;
- b) Direct staff to continue supporting the Santa Clara County Recycling and Waste Reduction Commission for a regional approach to single-use carryout bag usage and to provide feedback to the commission on the County's draft model ordinance language;
- c) Direct staff and the City Attorney's Office to return to the Transportation & Environment Committee in April 2009 with an ordinance to reduce single-use carryout bags for Council consideration. The accompanying staff report will also include the implementation, cost, and stakeholder outreach plans; and
- d) Continue to support legislation that would implement a state-wide program that would significantly reduce the use of single use carryout bags and that would remove any restriction on the City's ability to establish fees on plastic carryout bags or other disposable packaging.

OUTCOME

Approval of these recommendations would move the City towards reducing the proliferation of plastic and paper single-use carryout bags, and increase the use of reusable shopping bags. Implementing these recommendations supports the enhanced water quality programs required by the stormwater permit, and will reduce litter in the City's streets, storm drains, and creeks, and reduce the cost of litter control and recycling programs. These measures will also conserve

energy and materials; reduce greenhouse gases and other air pollutants; and advance the City's Green Vision and Zero Waste goals. Implementing these recommendations will also enable the City to meet Action 5 of the Urban Environmental Accords of becoming a Global Sustainable City.

BACKGROUND

In January 2008, the Rules and Open Government Committee directed staff to add the prohibition of plastic carryout bags to the initiatives being evaluated under the Green Vision Goal #5: Divert 100% of Waste from Landfill. In February 2008, at the Green Vision Study Session, Council approved adding the evaluation of a prohibition on non-recyclable and non-compostable plastic carryout bags in San José to the Green Vision Implementation Plan. At the Study Session, Council also discussed reusable bags as an environmentally superior alternative to single-use bags and requested strategies from staff to reduce the use of both paper and plastic bags.

City staff has since conducted a series of meetings with local business and industry stakeholders. These stakeholders included representatives from PW Markets, the California Grocers Association, the Progressive Bag Affiliates (a division of the American Chemistry Council), Target, Longs, Safeway, and SaveMart. On May 20, 2008, staff presented to Council an analysis of plastic bag issues and options for reducing plastic bag usage. At that time, Council directed staff to:

- (a) Work with stakeholders on a plan to significantly reduce both plastic and paper carryout bag use in the City, which could include a ban on single-use plastic bags, a City fee on paper bags, and comprehensive efforts by industry and the City to increase the use of reusable bags; the plan would include a phased implementation beginning January 2009;
- (b) Promote City residents taking their plastic bags back to retail stores for recycling; discontinue plastic bags as an approved recyclable material in the City's residential Recycle Plus program customer outreach; and evaluate discontinuing polystyrene foam food packaging and other hard-to-recycle materials that are usually landfilled at the end of the recycling process;
- (c) Support legislation that would remove any restriction on the City's ability to establish fees on plastic carryout bags or other disposable packaging; and
- (d) Report back to the T& E Committee in September 2008 on the proposed work plan for implementing these recommendations on single-use carryout bags and hard-to-recycle foodservice packaging.

ANALYSIS

Since February 2008, the City, the Santa Clara County Recycling and Waste Reduction Commission (RWRC), and various Santa Clara County cities, have collaborated to develop model ordinance language for a regional approach to the issue of plastic bag usage. In June 2008, the Santa Clara County Cities Association (SCCCA) supported the RWRC's regional response to reducing single-use carryout bags.

The RWRC approach would provide a framework for a consistent program throughout Santa Clara County. This regional approach creates a level playing field for retail businesses; reduces potential customer confusion; allows cities to share implementation strategies; and creates opportunities for regional collaboration for messaging, media, and public education.

San Jose Stakeholder and Community Engagement

City staff have been contacting and meeting with stakeholders interested in and affected by the disposable bag issue. The following tactics have been used to inform and engage stakeholders and the community.

Research: In October 2008, an online survey process was created to advise San José retailers of the actions being considered by the City to reduce single-use carryout bag use, to promote reusable bags, and to ask San José retailers for their input regarding this issue. 5,124 retailers were identified using the Business Tax License database, and flyers and emails were sent to these retailers inviting them to participate in the survey.

In addition to asking for retailer demographics (zip code of location, type of business, size of retail space, number of employees), the survey asks retailers about current reusable bag usage (estimates of current usage and incentives provided such as 5 cent credit), and their willingness to support a ban on paper and plastic bags. The survey also asks retailers of their willingness to support a fee of up to 25 cents per paper and plastic bag. Of the 119 retailers who responded, 31% were likely to support a fee up to 25 cents, 43.6% were unlikely to support, and 25.2% had no response.

Presentations: Staff has visited, and will continue to visit neighborhood business associations to talk to retailers about the proposed bag action. Staff has attended the Festiv'All 2008 BusinessOwnerSpace.com Launch Event sponsored by the Hispanic Chamber of Commerce of Silicon Valley (HCCSV) to meet with retailers and discuss the survey.

Staff has scheduled two public meetings in January 2009 to solicit input from retailers and the public regarding the substantive impact of the regional plan for single-use bag reduction as described in the RWRC's model ordinance language. This input will be forwarded to RWRC for their February 25, 2009 meeting. The public will be notified of these meetings through newspapers advertisements, point-of-service postings

(community centers and libraries), the City's website, email list serve announcements, and neighborhood business associations and chambers of commerce.

Stakeholder meetings: Staff has conducted fifteen bi-weekly stakeholder meetings from May to December 2008. Representatives from neighboring cities and counties, grocery and retail industry, and plastic bag and paper bag industry representatives, along with City staff members comprise a list of 140 interested parties including The Sierra Club, Save The Bay, and local waste management staff. This group has also served to support the County's Source Reduction and Recycling (SRR) sub-committee.

The stakeholder group met to discuss options; evaluate best practices and experiences of other cities that have tried to reduce use of plastic bags; follow the progress of the State bag legislation; and develop policy options for reducing plastic and paper bag usage for San José and for a county-wide action. A core group of 15 to 20 members have attended these fifteen two-hour meetings.

One-on-one contacts: Focused contacts were made with California Restaurant Association, the California Retail Association and to the American Forestry and Paper Association. Representatives from PW Markets, the California Grocers Association, the Progressive Bag Affiliates (a division of the American Chemistry Council), Target, Longs, Safeway, and SaveMart have also been attending the stakeholder meetings.

Website: In October 2008, a website was launched to promote reusable bags and to serve as a portal to the online survey. The website provides email contact information for submitting questions and feedback on the proposed action to reduce single-use bags. Links are provided to single-use bag reduction documents.

Interdepartmental coordination between City staff: Office of Economic Development and Redevelopment Agency staff has provided contacts and support regarding retailer input regarding the City's actions. Councilmembers' staff have also forwarded information to retailer constituents in their districts.

Feedback on RWRC's Model Ordinance for Reducing Single-Use Carryout Bags

Fifteen San Jose stakeholder and SRR meetings resulted in policy and principles that make up the RWRC's draft model ordinance. The draft model ordinance was based on proposed State legislation (AB 2769 which was not passed in the 2008 legislative cycle) and was refined by the stakeholder group. Key components of the model ordinance include:

- The ordinance would reduce the use of disposable bags through fees.
- All types of single use carry out bags are covered (paper, plastic, and compostable plastic). A 25-cent fee will be charged per bag and is expected to result in customer behavior change and reusable bag use. Exemptions to the fee will be provided for customers participating in the

Special Supplemental Food Program for Women, Infants and Children (WIC) and food stamp transactions.

- Total bag fee per transaction would be capped at \$2.00 for an initial two year period.
- Retailers would be allowed to retain a portion of the fee for program administration and cost recovery purposes, 5 cents per regular bag and 10 cents for each bag meeting specified "green bag" criteria.
- All retail establishments would be included except restaurants and take out food establishments.

The RWRC has requested that cities provide feedback and input on this ordinance language and has set a goal for Santa Clara County cities to adopt some form of the ordinance by Earth Day 2009 (April 21, 2009) with an effective date of late 2009. Retailer stakeholders have requested at least a six month transition period following adoption is needed by stores to implement the ordinance.

Attachment 1 provides further details on the model ordinance, including alternatives and discussion that were considered by the stakeholder group. Attachment 1 also contains preliminary review by staff of administration and enforcement protocols which would be considered if this ordinance was to be adopted. Staff will return with recommendations for program administration, enforcement, and cost implications in April 2009.

Fee Approach

The use of plastic bags is responsible for significant negative environmental impacts and preferable alternatives are readily available and currently in use. Public education efforts by hundreds of cities, government agencies, and non-profit organizations have proven ineffective in reducing the use of single-use carryout bags or the frequency with which they are littered. The most effective means to reduce the use of plastic bags is limiting their distribution at the point of sale.

The stakeholder group concluded that fees would be effective in reducing plastic bag usage. A ban on plastic and paper was considered, but in response to grocers' concerns about being able to offer choices to consumers, the stakeholder group felt that the best option for reducing plastic bag usage which would result in consumer transition to reusable bags was to implement a fee system on both paper and plastic. Fees have been implemented in several countries, including Germany, Denmark and Belgium with success. Fees have been most successful in Ireland. This was confirmed by Ireland's Department of Environment, Heritage and Local Government, in a letter dated October 31, 2008. This letter states that plastic bag usage was reduced 94% within the first few weeks of implementing a fee on plastic bags. This contradicts recent claims by the American Chemistry Council (ACC) at the December 10, 2008 RWRC meeting that the fee in Ireland has been ineffective for reducing the impacts of plastic bag usage.

Plastic Bag Recycling

The City of San José has more experience than nearly any city in the nation with collecting and recycling plastic bags from residents. For fifteen years, the City has struggled with plastic bag recycling and ultimately decided to terminate promoting plastic bag recycling through the City's residential Recycle Plus program in May 2008. Despite extensive public education and outreach efforts, it has been a struggle to get most residents to separate plastic bags and film for recycling, and to process and market the material. City staff confirmed with GreenTeam and California Waste Solutions, residential Recycle Plus haulers, that large amounts of plastic bags and other commodities are currently being stockpiled because there are no buyers in this economy. The City's recycling facility operators report that since December 2008, the bales of recycled plastic bags have little or no value, and that they are paying \$180 per ton to have these bales taken away.

Even before the current market downturn, plastic bags increased labor and facility costs because they interfere with the machinery, leading to frequent system shutdowns and manual cleaning. In addition, due to their light weight, plastic bags become mixed in other recyclables, reducing the market value of those materials. Recently, a 1,400 pound bale of mixed paper was inspected by a recyclable commodities buyer, and was rejected because of excessive plastic contamination.

While the ACC promotes an increase in infrastructures for processing plastic bags from residential recycling programs as the solution to the plastic bag issue, this is not a definite or sustainable solution nor does it address the problem of litter in the streets or contamination of the waterways. The California Integrated Waste Management Board estimates that plastic bags are discarded in California at a rate of over 400 bags per second. A fee on plastic and paper bags has proven to be effective in decreasing the numbers of plastic bags being used.

Impacts on Creeks and Marine Wildlife

In September 2008, San José committed to work cooperatively with Save The Bay to implement the Cities Keep It Clean Program Actions to improve water quality in our creeks, rivers, and the San Francisco Bay. San Jose is a lead agency in this effort, and Council has directed staff to continue developing strategies to protect the Bay from trash, including specifically, to require local retail stores to dramatically decrease the use of plastic grocery bags by requiring or encouraging reusable bags through ban or fee programs.

Single-use carryout bags, and specifically plastic bags, are part of a persistent litter problem that is of growing concern for the health of waterways locally and worldwide. "Marine debris," or ocean pollution, has been shown to have dramatic impacts to wildlife and habitat, and plastics comprise more than 60% of such debris. Land-based sources, such as storm runoff from urbanized areas, are the dominant contributor. The 2007 International Coastal Cleanup (ICC) report produced by the Ocean Conservancy found that bags were the fourth most common debris item collected worldwide during the coastal cleanup event behind cigarettes; food wrappers and containers; and caps and lids.

The California Ocean Protection Council (OPC) recently finalized its Implementation Strategy for the OPC Resolution to Reduce and Prevent Ocean Litter. The strategy cites as a priority

action the elimination of packaging wastes that contribute to litter; the priority action features single use carryout bags. In the Bay Area, the Regional Water Quality Control Board (Regional Board) has identified litter as a pollutant impairing many local creek systems, including the Guadalupe River and Coyote Creek. Local environmental groups dedicated to Bay and creek protection place litter as a top priority for local pollution prevention efforts. Significantly reducing single-use bag usage is important to water quality and watershed health.

Current litter abatement efforts are diverse, costly, and insufficient to address the problem. The Municipal Regional Permit for stormwater, to be issued by the Regional Board this year, will include aggressive requirements for local agencies to enhance efforts to address the impacts of trash and litter on creeks. Such efforts will include public education, increased enforcement, increased maintenance activities, and the capital investment in structural controls that capture trash prior to discharge to creek systems. Staff estimates that implementation of an expanded litter control program to protect creeks, as contemplated in the impending permit, will cost San José \$2 to \$4 million annually.

State Legislation

Proposed California State legislation was advanced in 2008 to address the issue of plastic bags with AB 2769 (as amended August 27, 2008). This bill received consensus support from a range of stakeholders including environmentalists and the California Grocers Association, but failed to pass the assembly.

In December 2008, new State legislation was introduced to reduce plastic bag usage in AB 68 (Brownley) and AB 87 (Davis). These bills generally follow the language of AB 2769, and will keep this issue active at the State level. If State legislation passes, and if cities adopt ordinances based on the RWRC's model ordinance language, then San José and Santa Clara County may have systems already in place to respond to State mandates.

In 2004, the Governor Schwarzenegger announced the California Action Plan and the creation of the OPC to guide ocean policy and coastal protection. In November 2008, the OPC finalized the Implementation Strategy for the OPC Resolution to Reduce and Prevent Ocean Litter. A priority action listed in the strategy is to "prohibit single-use products that pose significant ocean litter impacts where a feasible less damaging alternative is available." The Implementation Strategy goes on to recommend a fee on paper and plastic bags as an incentive for reusable bags.

Local and International Initiatives on Single-use Bag Reduction

Since May 2008, the number of initiatives introduced to reduce plastic bags usage has increased dramatically. Efforts to reduce plastic bag usage are underway throughout California, and across the United States especially in eastern and western coastal states where plastic bags become part of the marine pollution problem. International actions to address single-use carryout plastic bags have been announced in China, India, Europe, Africa and Australia. There is widespread agreement that plastic bag usage creates a litter nuisance, and that reusable bags are the preferred alternative. In some cases, the ordinances call for voluntary reduction of use by shop owners. Ireland has been the most successful with a bag fee program because it has been applied to the whole country.

Los Angeles City and County: In July 2008, the Los Angeles City Council voted to ban plastic bags effective 2010 if the State Legislature has not by that time passed a fee on bags. Los Angeles County adopted a program in January 2008 that requires retailers to meet specified plastic bag reduction and recycling benchmarks or face bans. LA County is currently working with its 88 cities to pass similar carry-out bag litter ordinances county-wide.

Malibu: In May 2008, Malibu adopted an ordinance to ban plastic bags.

Manhattan Beach: In August 2008, Manhattan Beach adopted an ordinance to ban plastic bags. Litigation is pending and this ordinance has not been implemented.

New York: In November 2008, the mayor proposed a fee of 6 cents for plastic bags. Earlier in 2008, the New York City Council passed a bill requiring retail chains and large stores to collect and recycling plastic retail bags.

Oakland: The City of Oakland is currently responding to a lawsuit filed against it by plastic bag manufacturers. Oakland continues to promote reusable bags.

Santa Monica: In Santa Monica, the City Council will vote on January 13, 2009 to adopt an ordinance to ban plastic single-use bags at all retail establishments, including restaurants and food establishments. The ordinance will further require a fee on paper carryout bags.

San Diego: In December 2008, San Diego's Natural Resources and Culture Committee voted to present an ordinance to the City Council. The proposed law would prohibit supermarkets and pharmacies from providing plastic carryout bags to customers, beginning July 1, 2009, to encourage the use of reusable shopping bags. Customers could also opt to pay a 25-cent per-bag fee for paper carryout bags.

Seattle: In July 2008, Mayor and City Council approved Green Fee ordinance to charge 20 cents per plastic and paper bag at grocery, drug and convenience stores. Ordinance would have gone into effect January 2009. However, sufficient signatures have been gathered by opponents for a referendum to place the issue on the ballot for a vote, most likely as part of the primary election in August 2009.

Promotion for Reusable Bags, 'Bring Your Own Bag' Campaign

In order to move away from single-use plastic and paper bags, staff and stakeholders have determined that consumers will need the financial disincentive of a 25 cent fee, coupled with the promotion of reusable bags, which are the environmentally superior alternative. The practice of bringing one's own shopping bag is widely accepted world-wide, except in the United States. The City of San José, working in partnership with San Francisco, Oakland, Marin, Palo Alto, Santa Clara County and other Bay Area jurisdictions, is supporting the Bay Area Recycling Outreach Coalition (BayROC) to create regional messaging to promote reusable bags, with a "Bring Your Own Bag" campaign.

In order to ensure that the ordinance successfully drives behavior change, it has been recognized by stakeholders, and other jurisdictions that have implemented similar initiatives, that a comprehensive public education campaign needs to be put into action as the program takes effect. Staff will develop a comprehensive outreach campaign with particular attention on families and seniors who may feel challenged by the 25 cent fee being proposed and which incorporates a reusable bag give-away component to minimize the financial burden the ordinance may place on households. The solution is simple - the fee can be avoided by residents if they bring their own bag. This comprehensive education campaign will also include a component to educate all affected retail establishments and provide these businesses with tools they can use to educate their customers.

Next Steps for Reducing Single-use Carryout Bags

In addition to specific comments provided by the Council during discussion of this report, staff is recommending that the following feedback be provided to the RWRC:

- San José supports the a regional approach to reducing proliferation of single-use carryout bags;
- San José will consider adoption of an ordinance in April 2009;
- Staff projects that any fee or other bag reduction action could be implemented in late 2009;
- Staff will continue to develop the implementation plan for reducing proliferation of single-use carryout bags, and bring forward recommendations and fiscal implications for Council consideration in April 2009; and
- San José will also continue to support state legislation in the upcoming legislative cycle that reduces the use of single-use carryout bags.

EVALUATION AND FOLLOW UP

Staff recommends returning to Transportation and Environment Committee in April 2009 with ordinance language and follow-up evaluation, and recommended actions for Council consideration. Updates on plastic bag reduction will also be provided regularly as part of the Green Vision Progress Report process.

POLICY ALTERNATIVES

Alternatives to the model countywide ordinance will be evaluated in the next report to Council.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Stakeholder engagement will also continue as San José provides feedback to RWRC. Public meetings are currently planned for January 28 and January 29, 2009, to solicit input from retailers and the public. Comments will be gathered and forwarded to RWRC. Also, the bi-weekly stakeholders group will continue.

COORDINATION

This memorandum has been coordinated with the Office of Economic Development, the Finance Department, The Office of Intergovernmental Relations, the City Manager's Budget Office, and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

These recommendations are in alignment with the Council approved Green Vision, and the Zero Waste and Urban Environmental Accords goals. This project is also consistent with the budget strategy principle of focusing on protecting our vital core services.

COST SUMMARY/IMPLICATIONS

There are no costs associated with this report at this time. Staff will return to the Transportation and Environment Committee with cost implications associated with the proposed ordinance in April 2009.

BUDGET REFERENCE

Not applicable.

TRANSPORTATION AND ENVIRONMENT COMMITTEE

01-20-09

Subject: **Reduction of Single-use Carryout Bags**

Page 11

CEQA

Not a project.



JOHN STUFFLEBEAN
Director, Environmental Services

For questions, please contact Jo Zientek, Deputy Director, Integrated Waste Management Division, at 408-535-8557.

Attachment: Draft RWRC Model Ordinance Language, and City Administration Discussion

Attachment
RWRC Draft Model Ordinance Language,
and City Administration Discussion

On December 10, 2008, the RWRC sent the following Draft Model Ordinance Language to the Mayors, City Managers and City Attorneys of Santa Clara County, requesting feedback on the feasibility of implementing the draft ordinance in the jurisdictions from a legal and administrative perspective. The accompanying correspondence to this draft model ordinance language included the following:

“Your comments will be used to develop a final ordinance that will be provided for consideration by policy makers...

“We are specifically seeking feedback on aspects of the ordinance that address outreach, education, enforcement, litter abatement, administration, and level of CEQA review required. A commensurate fee can be determined after a program has been developed...

“The RWRC will review and discuss the comments at the February 25th meeting prior to consideration of a formal recommendation on the ordinance. Each city would then need to act independently for the proposed ordinance to be adopted, though a uniform approach between jurisdictions will provide consistency for consumers and businesses...”

The model ordinance language on the following pages is based on the most recent version of the State legislation, AB 2769 (Levine), which was making its way through the legislative process until September 2008. General consensus had been reached by environmentalists and grocers on many key components of this legislation. By accepting the RWRC model ordinance, *if another bill is introduced in 2009*, then San José and Santa Clara County Cities may have a comparable ordinance already in place.

A discussion of alternatives which were considered by stakeholders follows the model ordinance language, along with additional stakeholder information and San José survey details. Finally, notes from preliminary discussions for possible administration and implementation in San José are given.

December 2, 2008

From: TAC Source Reduction and Recycling Subcommittee

To: RWRC

**Re: MODEL COUNTYWIDE ORDINANCE FOR JURISDICTIONS IN
SANTA CLARA COUNTY RELATING TO REGULATION OF SINGLE-
USE CARRYOUT BAGS**

References are made in the body of the ordinance for jurisdiction-specific information: [jurisdiction-specific header here; remainder to be formatted and renumbered as needed].

SECTION 1. Findings:

- (a) Single-use carryout bags provided by stores impose hidden costs on consumers, local governments, the state, taxpayers, and the environment.
- (b) Requiring stores to end the subsidy of single-use carryout bags and charge their full economic and environmental costs will provide consumers with an appropriate market signal to make informed decisions regarding carryout bag reduction and reuse options.
- (c) Requiring stores to charge and remit a customer-based fee for the distribution of single-use carryout bags will help the state and local governments to offset the environmental and social costs of single-use carryout bags.
- (d) The amount and nature of the customer-based fee have a fair and reasonable relationship to the environmental, public health, and societal burdens imposed by the use of single-use carryout bags, and there is a sufficient nexus between the fees imposed and the use of those fees to support programs to prevent the litter of single-use carryout bags, cleaning up the litter caused by single-use carryout bags, and encouraging the reduction of the use of single-use carryout bags.
- (e) [other findings related to the Problem Statement as approved by the Commission at their 10/22/08 meeting, all as determined to be useful by County Counsel or City Attorneys]

SECTION 2. Division X of Title Y of the [jurisdiction's county or municipal] Code is amended by adding a new Chapter Z to be numbered and entitled and to read as follows:

CHAPTER Z. SINGLE-USE CARRYOUT BAGS

1. Definitions. For purposes of this chapter, the following definitions shall apply:

(a) Bag Pollution Cleanup Fee

"Bag Pollution Cleanup Fee" means the fee imposed pursuant to Section 2.

(b) Commission

"Commission" means the Recycling and Waste Reduction Commission of Santa Clara County.

(c) Fund

"Fund" means the Bag Pollution Cleanup Fund, established pursuant to subdivision (a) of Section 5.

(d) Green carryout bag

(1) "Green carryout bag" means a single-use carryout bag that is provided by a store to a customer at the point of sale and meets all of the following requirements:

- (A) Is composed of at least 40 percent post-consumer recycled content material.
- (B) Is accepted in 80% of curbside recycling programs in Santa Clara County.
- (C) Is capable of composting within 180 days, as determined by the Commission [or the City/Town/County Manager/Administrator/Director of Finance].

(2) "Green carryout bag" does not include a reusable bag, as defined in this section.

(e) Reusable bag

"Reusable bag" means either of the following:

(1) A bag made of cloth or other machine washable fabric that has handles.

(2) A durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse..

(f) Single-use carryout bag

"Single-use carryout bag" means a single-use carryout bag that is provided by a store to a customer at the point of sale and that is not a reusable bag, as defined in this section. For the purposes of this chapter, "single-use carryout bag" does not include plastic or paper bags that are used by customers or the store to protect or contain meat, fresh produce, food prepared or packaged at the establishment, or other goods that must be protected from moisture, damage, or contamination, and that are placed in a single-use carryout bag at the point of sale.

(g) [Administrator]

"[Administrator]" means the [designated official] of [jurisdiction].

(h) Store

"Store" means a retail establishment that provides single-use carryout bags (including green carryout bags) to its customers as a result of the sale of a product. The following are excluded from the definition of "store": restaurants, take-out food establishments, or any other businesses that receive 90% or more of their revenue from the sale of food prepared or packaged at the establishment.

2. Bag Pollution Cleanup Fee

(a) (1) Except as provided in Section 3, on and after October 1, 2009, a store shall not provide a single-use carryout bag, including a green carryout bag, to a customer at the point of sale, unless the store charges and collects from the customer the Bag Pollution Cleanup Fee of twenty-five cents (\$0.25) per bag.

(2) Before January 1, 2014, the total amount charged to a customer pursuant to paragraph (1) shall not exceed two dollars (\$2.00) per transaction and on and after January 1, 2014, this restriction shall not apply.

(b) The amount charged pursuant to paragraph (1) of subdivision (a) shall be separately stated on the receipt provided to the customer at the time of sale, and shall be identified as the Bag Pollution Cleanup Fee.

(c) (1) A store charging a fee pursuant to subdivision (a) may retain a portion of the fee, as specified in paragraph (2), in an amount necessary to reimburse the store's costs associated with complying with this chapter, in accordance with Section 4.5. The store shall remit the remainder of the fee to the [jurisdiction].

(2) A store may retain not more than five cents (\$0.05) of the fee for each single-use carryout bag that is not a green carryout bag. For a single-use carryout bag that is a green carryout bag, a store may retain not more than ten cents (\$0.10) of the fee for each bag.

(d) Any other transaction fee charged by a store in relation to providing a single-use carryout bag shall be identified separately from the Bag Pollution Cleanup Fee.

3. Exemption of WIC and Food Stamp transactions

Before January 1, 2014, the fee imposed pursuant to Section 2 shall not be charged to either of the following for any transaction that is not combined with other purchases:

- (a) A customer participating in the Special Supplemental Food Program for Women, Infants, and Children (Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code).
- (b) A customer participating in the State Department of Social Services Food Stamp Program.

4. Remittance of fee

A store that collects the Bag Pollution Cleanup Fee pursuant to Section 2 shall calculate the amount of money collected and, after deducting the amount specified in subdivision (c) of Section 2, shall, in accordance with Section 6, remit the remainder to the [jurisdiction] for deposit into the fund.

5. Store use of retained portion of fee

A store charging a fee pursuant to Section 2 shall use the amount of the fee retained pursuant to subdivision (c) of Section 2 for all of the following:

- (a) Reimbursement of the store's costs associated with the collection and remittance of the fee pursuant to Sections 2 and 4.
- (b) The development of in-store educational materials encouraging the use of reusable bags for distribution to customers.
- (c) The development and implementation of an educational campaign encouraging the use of reusable bags, including, but not limited to, public service announcements.
- (d) Reimbursement of the store's costs associated with providing reusable bags to customers participating in programs described in subdivisions (a) and (b) of Section 3.
- (e) Reimbursement of the store's costs associated with providing reusable bags as donations to community organizations, nonprofit organizations, and other similar entities.
- (f) Reimbursement of the store's costs associated with customers' choice to use green carryout bags.

6. Bag Pollution Cleanup Fund

(a) The Bag Pollution Cleanup Fund is hereby established. All fees collected pursuant to this chapter shall be deposited in the fund.

(b) The moneys in the fund shall be expended, upon appropriation in the manner and in the order of priority as follows:

- (1) to reimburse the [jurisdiction]'s costs of implementing Sections 7 through 10.
- (2) for purposes of programs that encourage and support recycling of single-use carryout bags and single-use carryout bag pollution prevention, cleanup, abatement, and outreach programs.

7. Administration of Single Use Carryout Bag Fee

(a) The [Administrator] shall administer and collect the Bag Pollution Cleanup Fee

(b) The [Administrator] may adopt rules and regulations to carry out this article, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

(c) The Bag Pollution Cleanup Fee shall be due and payable quarterly on or before the 25th day of the month following each calendar quarter. Payments shall be accompanied by a form, as prescribed by the [Administrator], including, but not limited to, electronic media.

(d) The [Administrator] may require the payment of the fee for other than quarterly periods.

8. Administration and enforcement

Except as otherwise provided by this chapter, the [Administrator] or designee shall administer and enforce this chapter.

9. Enforcement

Enforcement of this chapter shall be by the County of Santa Clara Weights and Measures Division [and/or by jurisdiction's agencies to be named] in the following manner:

(a) The Division of Weights and Measures will conduct an initial inspection of each store during the first year this chapter is operative. The inspection shall consist of a survey in which the store manager will demonstrate compliance with this chapter.

(b) Noncompliance will result in a Notice of Violation and a re-inspection shall occur within 90 days. If the store is in compliance upon first re-inspection, the Notice of Violation will remain in effect for a period of no less than one (1) year and re-inspection may occur within 12 months.

(c) Failure to comply after second re-inspection will result in a fine no less than \$100 for the first offense and a re-inspection shall occur within 90 days. Notice of Violation will remain in effect for a period of no less than two (2) years.

(d) A second offense shall result in a fine no less than \$500; violations thereafter will result in a maximum of \$1,000 per violation.

10. Records

Stores shall retain their records for a minimum of three years from the date on which any fee or report based on such records is submitted as provided in Sections 4, 5, or 7. Records shall be available to County of Santa Clara Department of Agriculture Commissioner, Integrated Waste Management Program Manager, Weights and Measures Program Manager and/or their designees [and/or by jurisdiction's agencies to be named].

11. Operative Date

This chapter shall become operative on October 1, 2009.

[jurisdiction-specific approval format]

Stakeholder Discussion of Model Ordinance Alternatives

As directed by Council in May 2008, staff continued to work with stakeholders on a plan to significantly reduce both plastic and paper carryout bags. The stakeholders who had been meeting from February to April 2008 (California Grocers Association, PW Market, Safeway, Target, American Chemistry Council), resumed meeting with the addition of some smaller local grocers. In June 2008, after the Santa Clara County Cities Association agreed to support a collaborative regional approach, and RWRC gave the task to TAC and SRR to develop model ordinance language, representatives from various cities joined the stakeholder group. Other interested parties (e.g. Sierra Club, Save The Bay, haulers and landfill staff), also asked to be included in the stakeholder process and have been on the listserve for this group and/or have attended the bi-weekly meetings.

From May to December 2008, the core group which attended bi-weekly meetings discussed various plans which would reduce both plastic and paper carryout bags, as well as evaluated what other cities are doing and considered best practices. The State legislation (AB 2769) was introduced during this period. The final product of this group was the model ordinance, but many additional issues were discussed and are presented below. Additionally, San José staff from ESD and Finance have been meeting to discuss general administration and implementation possibilities.

At the August 27, 2008 RWRC meeting, there was unanimous agreement that the draft model ordinance should have the elements listed below.

A. All types of carry out bags at check outs should be included in the ordinance, paper, plastic and compostable plastic.

1. Alternative: only plastic bags would be included. There is almost unanimous consensus that this alternative is environmentally inferior due to resource consumption and disposal considerations.

The inclusion of all types of single use carry out bags will provide the maximum impetus for consumers to bring and utilize their own reusable bags. Excluding any one particular type of bag from the ordinance would be a less desirable option. All bags involve some level of resource consumption and disposal consideration and all bags have varying degrees of negative environmental impacts. Making one type of bag free while banning or charging a fee on another type of bag would compel the consumer to choose the available bag that had no fee attached to it.

Compostable plastic bags are included in the ordinance because at this time, facilities do not have systems in place to differentiate between compostable and non-compostable plastic bags. Most plastic bags are non-compostable, so that outside of backyard composting, compostable plastic bags go to the landfills and are not composted.

B. The ordinance would reduce the use of single use carry out bags primarily through fees charged to the consumer on a per bag basis rather than an all out ban on paper, plastic or both.

1. Alternative: the ordinance would be based on bans of all types of disposable carryout bags, rather than fees. This would be less flexible than a fee based system, and does not provide revenue to offset costs of litter control or enforcement of bans.
2. Alternative: the ordinance would be based on bans of disposable, carryout plastic bags, and fees on paper bags.

It is recommended that fees be levied on consumers rather than retailers in order to conform to AB 2449. San José is undertaking a cost study to determine the appropriate amount of the fee in order to recoup costs for which the fee is being collected. Exemptions would be given for Food Stamp recipients and those enrolled in Women, Infants and Children (WIC) Programs.

The use of fees would provide an incentive to consumers to use reusable bags and provide revenue to offset costs of enforcement, education and litter control. An outright ban on all bags was not recommended because it is less flexible than a fee based system and it would not leave the consumer with an option for unexpected shopping trips or in the event that they forgot to bring their own reusable bags. Banning plastic bags, but imposing a fee on paper bags, was not recommended because it would be confusing to the public and would not foster the desired behavioral change. Both types of bags have significant, though different, environmental impacts. Fees collected by the jurisdiction from the retailer may be used for augmenting litter programs, public education/outreach and enforcement of the ordinance and will be at the discretion of the jurisdiction.

C. Retailers would be allowed to retain a portion of the fee for cost recovery purposes, 5 cents for plastic and 10 cents for paper, based on ordinance definitions and standards.

Various costs will be incurred by retailers for educational and training costs related to reusable bags, and the collection and remittance of the fee. In response to grocery and retailer stakeholder input, at the State and local level, consensus was reached regarding retention of a portion of the fee by retailers. In Seattle, smaller retailers with gross sales below a particular level were going to be allowed to retain the whole fee, and would not have been required to remit any portion.

D. All retailers would be included except restaurants and take out food establishments.

1. Alternative: the ordinances would apply only to the large grocers and pharmacies currently covered by AB 2449.
2. Alternative: the ordinance would apply to a larger fraction of retail establishments than AB 2449, but would exclude the majority of small establishments, at least initially. This alternative might be seen as necessary by some jurisdictions if a fee-based system is chosen, due to difficulties of administering a near-universal program.

3. Alternative: the ordinance would apply to all retail except a few specified establishments, such as restaurants and non-profits. This alternative is seen by the California Grocers Association and some others as superior from a public information and enforcement perspective, especially for a ban-based system.

To apply the ordinance only to the large grocers and pharmacies currently covered by AB 2449 presents an economic disadvantage to the AB 2449 covered retailers. Doing so also sends the wrong message to consumers that all bags and retailers are *not* created equal. Another alternative considered was to apply the ordinance to a larger percentage of retail establishments than those covered by AB 2449, but exclude the majority of small establishments, at least initially. This was abandoned because both the California Grocer's Association and the County Commissioners felt the "broader is better" approach is more equitable to retailers and less confusing to the consumer. A retail establishment or non-profit organization wishing to apply for an exemption must do so with the local jurisdiction/enforcement agency by providing documentation of extreme hardship.

E. All jurisdictions will have some form of the ordinance to their City Councils by the week of April 20, 2009 (Earth Week) with a specific effective date to be determined by each jurisdiction (possibly Oct. 1, 2009).

1. Alternative: the local ordinances would become effective on some specified date or after a different duration.
2. Alternative: the local ordinance might only become effective if a Statewide fee or ban is not in effect by January 1, 2010 or some other date, the resolution passed by City of Los Angeles.
3. Alternative: the local fee would not be effective on all or some stores until the existing preemption of local fees is eliminated or expires.

The local ordinances would become effective on some specified date or after a different time period. One alternative considered was that the local ordinance might become effective only if a statewide fee or ban is not in effect by January 1, 2010 or some other date, or that the local fee would not be effective on all or some stores until the existing preemption of fees provided by AB 2449 is eliminated or expires. However, in order for this effort to have an extensive countywide impact, it is imperative that all jurisdictions adopt a fairly uniform ordinance and implement it in a similar time frame. Bags ending up in the roadways and creeks do not respect jurisdictional boundaries. Additionally local governments cannot rely on a statewide fee or ban in the foreseeable future and must take action now. Should future statewide legislation be implemented, it *may* supersede the need for a local ordinance.

F. Enforcement in unincorporated Santa Clara County will be carried out by the County's Weights and Measures Division (WMD) when they make their regularly scheduled visits to retailers to do scanner checks; jurisdictions could decide to also use the WMD, or would be free to consider alternative methods of enforcement. County staff will provide a sample MOU which could be used by jurisdictions.

1. Alternatives: Environmental Health enforcement could be considered a local option

2. Alternatives: With ban compared to fee systems, then:
 - a. Ban can be enforced on a complaint basis, but
 - b. A fee system requires proactive enforcement.

Each jurisdiction may choose to enforce the ordinance as appropriate and may include City code enforcement, County Department of Environmental Health, or others to be determined. The language in any ordinance will require retail establishments to post signage (windows, checkout areas) notifying the public that the establishment is covered by the ordinance or is exempt. Enforcement may then be conducted on a complaint basis. This is an area where consistency between jurisdictions would be particularly beneficial for universal enforcement throughout the County.

G. All bags, regardless of size will be included. Due to health and safety standards, sub-bags used for produce and meat would be exempt, as would smaller "header" bags such as those used for greeting cards, and other small items.

Including all bags of all sizes regardless of purpose was considered. Sub-bags used for produce and meat, slim "header" bags used for greeting cards to protect against moisture and/or damage or the larger, slim bags used to protect print shop jobs would not have been exempt. However health and safety standards recommend a protective bag for meat and produce in order to prevent cross contamination and common sense dictates protecting easily damaged items from harm.

H. Performance Standards are built in to the ordinance to measure success that may include litter surveys, store surveys and/or the amount or weight of disposable bags purchased.

Waste audits, litter surveys and or comparing the weight of the bags purchased by a retailer at the initial implementation of the ordinance versus the weight purchased two or three years after implementation should give a good measure for gauging behavioral change in consumers. Additionally, firms which specialize in public opinion and awareness information gathering to gauge behavioral changes through surveys might also be useful relative to the ordinance. At the very least, the ordinance should be evaluated within three years of implementation.

G. Outreach to stakeholders and the public will continue during the months preceding implementation in the form of community presentations, meetings, signage, print and other mass media. Public outreach and materials will be developed in the languages used by the Registrar of Voters and include English, Spanish, Vietnamese, Tagalog and Chinese.

Outreach may be developed and funded by individual jurisdictions, the Countywide Public Education subcommittee of the Technical Advisory Committee and/or regional efforts. This is another area where consistency between jurisdictions would be particularly beneficial. San José, Santa Clara County and other major cities in the Bay Area are currently collaborating with BayROC to develop a regional media messaging campaign to promote reusable bags.

Administration and Implementation

City staff have been evaluating various issues generally related to the administration and enforcement of an ordinance to reduce single-use carryout bags. Policies developed for fee administration and enforcement would be subject to legal review prior to implementation. ESD staff have coordinated with the Finance Department to analyze potential reporting and auditing functions as they may be similar to other programs currently being administered within the City.

Key administrative issues being explored include, but are not limited to: the application process; payment, collection and processing of fees; compliance, auditing and enforcement monitoring. As the specific details of this program become solidified, staff will report further developments regarding research and progress towards formalizing an administrative and enforcement policy, as well as any issue resolution. Key program components and relevant information are further described below.

Application process to identify and catalog all retailers to be covered by the ordinance: The City currently has some demographic information about potential participants which would need to be refined and confirmed by the business owners, so that notification for participation and payment schedules could be sent to them. Protocols would need to be developed to accommodate changes in business ownership, and provide for a systematic way to maintain the database of retailers.

Payment, collection and processing of fees: The City's Finance Department has a structure in place for receiving and posting payments and assessing late fees. The bag fee program could be incorporated into the current structure, but further analysis is required to determine specifics related to such things as the optimal frequency of payments, and impacts on City resources with respect to the processing and posting of transactions related to this program.

Compliance monitoring to review report submittals and fee remittance: Internal review of reports and fee remittances would be essential for ensuring accuracy of payments received and would provide oversight for the remitting retailers. It is anticipated that this function would occur within the existing Finance organizational structure.

Auditing of retailers' records: Store visits and thorough systematic reviews of records for the purpose of verifying correctness and accuracy would need to be done with some relative frequency. Currently in other City programs, there can be random sampling of accounts that are audited, as well as a for-cause audit which may be done if reported data or remittances do not fall within the expected range.

Enforcement to monitor compliance: It is anticipated that the first phase of a bag fee program would focus on education regarding best management practices with respect to retailers' implementation of this program. Brochures, placards and signage could be developed and distributed to assist stores during an initial transition period.

A number of options to achieve enforcement are under consideration. Currently City watershed field inspectors routinely visit restaurants and food service establishments to oversee compliance related to waste water discharge. Analysis will need to be done to determine if an expansion of their duties could be made to include enforcement of this program. Concurrently, the County is planning to utilize their Weights and Measures Division to do enforcement of this program in unincorporated areas. Since Weights and Measures has jurisdiction at all retail stores to measure scale accuracy and scanned prices, it is thought that this group may be a good option to enforce this program countywide, which would have the benefit of supporting a consistent enforcement approach.. Enforcement services could be implemented through an MOU the County and City, though specifics such as cost have not yet been established.