



COUNCIL AGENDA: 05-18-10  
ITEM: 2.12

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Lee Price, MMC  
City Clerk

**SUBJECT:** SEE BELOW

**DATE:** 05-13-10

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**SUBJECT: AB 2138 (CHESBRO) – PLASTIC OCEAN POLLUTION REDUCTION,  
RECYCLING AND COMPOSTING ACT**

## RECOMMENDATION

As recommended by the Rules and Open Government Committee on May 12, 2010 and outlined in the attached memo previously submitted to the Rules and Open Government Committee, adopt a position of support for AB 2138 (Chesbro) – Plastic Ocean Pollution Reduction, Recycling and Composting Act.



# Memorandum

TO: RULES AND OPEN  
GOVERNMENT COMMITTEE

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 05-05-10

Approved

Date

5-7-10

SUBJECT: AB 2138 (CHESBRO) – PLASTIC OCEAN POLLUTION REDUCTION,  
RECYCLING AND COMPOSTING ACT

## RECOMMENDATION

1. It is recommended that City Council support California Assembly Bill 2138 (Chesbro).
2. The Committee provide a one-week turnaround for Mayor and City Council review.

## OUTCOME

Providing the Rules and Open Government Committee and the Mayor and City Council accept staff's recommendation, the City lobbyist could begin seeking support for AB 2138 (Chesbro).

AB 2138 supports Council direction to implement San Jose's Green Vision, Urban Environmental Accords, and Zero Waste goals.

Approving staff's participation in policy, program, and incentive development as part of AB 2138 implementation ensures that San José has the opportunity to provide leadership and address its interest related to food-packaging and single-use bag reduction.

## BACKGROUND

Food-related packaging and plastic carryout bags have been identified as consistent litter items in urban and marine environments. In response to this, and because recycling of food-packaging has not generally been successful, more than 40 cities and counties in California have banned polystyrene food-packaging. In November 2009, San José banned polystyrene use at large City events with over 1,000 attendees on public property. On April 22, 2010, Palo Alto's ban on polystyrene food-packaging went into effect.

Efforts to recycle food-packaging have not resulted in significant diversion rates as food-packaging materials, such as polystyrene, need to be free of food residue. Food-packaging has consistently been unusable for recycling purposes, in spite of instructions to residents that they clean it before attempting to recycle it. Oftentimes mixed in with food, polystyrene food-packaging contaminates other recycling materials, increasing labor costs at the recycling centers, and reducing the overall value of recycling commodities. After many years of public education and effort, San José is currently disposing of polystyrene and other food-contaminated food-packaging.

At its October 2009 meeting, the Santa Clara County Recycling and Waste Reduction Commission (RWRC) identified the reduction of polystyrene packaging as one of its top three priorities for 2010. The RWRC's Technical Advisory Committee and Source Reduction and Recycling sub-committee will develop a County-wide recommendation for RWRC review in 2010. Many cities in the County are collecting polystyrene for disposal, not for recycling.

Compostable food-packaging that would replace polystyrene food-packaging requires industrial scale composting facilities. In San José, plans are being developed to provide industrial scale composting for the commercial and single-family home residential sector as part of the City's Zero Waste Goal and Commercial Redesign process over the next three years; apartment and City facility waste is already composted in commercial scale facilities.

In San José in September 2009, staff was given direction to conduct the environmental impact report for an ordinance to ban plastic and paper carryout bags. Plastic bags used by restaurants and foodservice are exempted from the ban. AB 2138 would apply to plastic bags used by restaurants and foodservice.

### ANALYSIS

A fact sheet and analysis of AB 2138 is attached.

### 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

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Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

This legislative item does not meet any of the above criteria.

**COORDINATION**

This memorandum was coordinated with the City Attorney's Office, the Office of Economic Development, the City's Office of Intergovernmental Relations, and the City's Legislative Representative in Sacramento.

**POLICY ALIGNMENT**

The attached fact sheet and analysis is consistent with the Council-adopted 2010 Legislative Guiding Principles, and the City's Green Vision, Urban Environmental Accords, and ZeroWaste goals.

/s/

JOHN STUFFLEBEAN

Director, Environmental Services

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

Attachment: Fact Sheet and Analysis of AB 2138.

## AB 2138 (Chesbro)

### Product management: single-use recyclable packaging containers *Plastic Ocean Pollution Reduction, Recycling and Composting Act*

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*What's the issue the bill is trying to resolve?*

AB 2138 recognizes the negative impacts of single-use packaging on oceans and waterways. Polystyrene, plastic bags and other non-recycled packaging from food establishments are easily littered when food is eaten in-transit or away from home. Litter including food waste litter accumulates along highways and streets, and polystyrene and plastic bags are particularly aerodynamic and easily become marine litter. Communities throughout California are challenged to reduce persistent plastic marine litter as creeks and waterways consistently show high levels of trash.

AB 2138 would require that takeout food packaging be compostable or recyclable in communities where composting and recycling of food packaging materials exists for at least 75% of the jurisdiction's households, and the recovery rate for composting and recycling for food packaging is at least 25%.

Specifically, this bill:

- Prohibits, from July 1, 2011 to July 1, 2013, a food provider from distributing disposable food service packaging, including bags, to a consumer unless it is either compostable or recyclable, as defined.
- Prohibits, effective July 1, 2013, a food provider from distributing disposable food service packaging, including bags, to a consumer, unless the state determines the disposable food service packaging is recovered for composting or recycling at a rate of 25% or more.

*How would the passage of this bill affect San Jose?*

The proposed bill would effectively ban food providers from providing polystyrene foam or plastic bags in San Jose because neither polystyrene foam or plastic bags are accepted in the City's residential recycling programs. Moreover, the bill will most likely result in statewide bans of this material as it is almost certain that the statewide recycling rates for the material will not reach 25% by 2013.

This bill would eliminate the necessity for local regulation of the broad range of foodservice packaging by the City, although more stringent local provisions may still be necessary depending on the operational requirements of the City's recycling and composting programs.

With full implementation, this bill would significantly reduce the amount of plastic litter in San José, resulting in dramatic reductions in the amount of plastic litter and total litter

in our streams and stormwater system. The amount of plastic litter reaching San Francisco Bay and the Pacific Ocean from land-based sources would be greatly reduced.

Passage of the bill would assist the City to meet the trash reduction requirements of the Municipal Regional Stormwater permit.

*What is staff's Proposed Position?*

Staff recommends support of this bill.

*Who are the bill's supporters and opponents?*

Based on the April 27, 2010, analysis of the April 5 version of the bill prepared for the Assembly Committee on Appropriations (unless noted otherwise), supporters and opponents were as follows:

Support:

American Federation of State, County and Municipal Employees,  
AFL-CIO  
Californians Against Waste (as of May 4, 2010)  
City and County of San Francisco  
League of California Cities (Support in concept as of May 4, 2010)  
Planning and Conservation League  
Sierra Club California

Opposition:

American Chemistry Council  
Biodegradable Products Institute  
California Chamber of Commerce  
California Film Extruders and Converters Association  
California Grocers Association  
California Restaurant Association  
California Retailers Association  
4 plastic container-related firms

*What is the current status of the measure?*

This bill passed Assembly's Natural Resources Committee 6 – 3 on April 12, 2010. It was referred to the Committee on Appropriations with the author's amendments and placed in the suspense file.