



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 newspaper 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

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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