

County of Santa Clara

Recycling and Waste Reduction Commission
Integrated Waste Management Division

1553 Berger Drive, Building #1
San Jose, California 95112
(408) 282-3180 FAX (408) 282-3188
www.ReduceWaste.org



STAFF REPORT

DATE: December 10, 2008

TO: Recycling and Waste Reduction Commission

FROM: Skip Lacaze, Chair
Source Reduction and Recycling Subcommittee to the Technical Advisory Committee

SUBJECT: Single Use Disposable Carry-out Bag Ordinance

RECOMMENDED ACTION

Approve model ordinance language regarding fee for single use carryout bags in unincorporated Santa Clara County in retail establishments and forward a favorable recommendation to the Board of Supervisors, Santa Clara County Cities Association and Mayors and City Managers within Santa Clara County.

FISCAL IMPLICATIONS

Costs associated with implementation and enforcement of this ordinance will be mitigated by the fees collected on the per bag fee.

HISTORY

In April 2008, the Recycling and Waste Reduction Commission (RWRC) was given a presentation on Single Use Carry out Bags. At their August 27 meeting, the RWRC directed the Technical Advisory Committee (TAC) to the RWRC to prepare a recommendation and draft policy on Single-Use Bag/Container Reduction options and report back to RWRC. The Source Reduction Recycling Subcommittee of the TAC met several times between August and December while the City of San Jose held concurrent stakeholder meetings. These meetings resulted in a menu of options for the RWRC to consider. At the October 22 meeting, the RWRC came to consensus on the points in the attached model ordinance.

REASONS FOR RECOMMENDATION

Single-use carryout bags are a source of litter impacting the County of Santa Clara and the wider environment. According to the Santa Clara Valley Urban Runoff Pollution Prevention Program, 60 percent of the litter found in Bay Area creeks is plastic. While paper has been noted in land-based litter studies such as San Francisco's recent report of 2007, "biodegradable" material, which would include paper, only comprises 12% of the litter found in Bay Area creeks. Litter collection for beaches, state highways, cities and counties costs the state \$303.2 million each

Commissioners: Jamie McLeod, Chair; Ronit Bryant, Kansen Chu, Peter Drekmeier, Steve Glickman, Patrick Kwok, Cat Tucker, Kris Wang, Ken Yeager

year; plastic bags represent approximately 1% of the total litter at an approximate cost of \$3 million for plastic bags alone.

The collective problem of plastics in the marine environment affects the world beyond Santa Clara County. Santa Clara County land-based debris, including litter (mostly bags, packaging and single-use disposable products) is conveyed through storm drains to local creeks, into San Francisco Bay and into the Pacific Ocean, endangering marine and wildlife.

The environmental impacts and issues include the use of fossil fuels (petroleum and natural gas) *equivalent* to more than 12 million barrels of oil to produce plastic bags, the related pollution and energy consumption due to resource extraction, manufacture and transportation, the billions of bags that end up as litter each year and the fact that plastic breaks into toxic bits that foul soil, waterways and the food web.

The Commission came to unanimous agreement that staff should proceed with a draft ordinance that has the following elements:

- A. All types of carry out bags at check outs should be included in the ordinance (paper, plastic and compostable plastic)
- B. The ordinance would reduce the use of disposable bags primarily through fees rather than bans
- C. The RWRC was willing to go either of two ways depending on feedback from the County and City attorneys. The two acceptable options were "bag ban/with opt out fee" charged to the retailers; or levy fee on consumers. It is recommended that fees be levied on consumers rather than stores to conform with AB 2449.
- D. All retailers would be included with a few exceptions (very small retailers and possibly restaurant carry out bags).
- 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).
- F. Enforcement in unincorporated Santa Clara County will be carried out by the County's Weights and Measures Division when they make their regularly scheduled visits to retailers to do scanner checks; jurisdictions may be choose alternative methods of enforcement.
- 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 "header" bags used for greeting cards).
- 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.
- I. There will not be a Sunset provision, but there will be a re-evaluation after three years.

Fees collected by the jurisdiction from the retailer may be used for stepped up litter programs, public education/outreach and enforcement of the ordinance.

BACKGROUND

The Technical Advisory Committee (TAC) has discussed at length, several options for the specifics of a model ordinance. These include what types of bags would be covered, which

retailers, fee versus ban or a combination of both, enforcement, provisions for sunset/re-evaluation and performance standards.

The RWRC felt strongly that the model ordinance should be as robust and inclusive as possible, as does the California Grocer's Association. To that end, the following considerations were either included or excluded based on ease of implementation and replication.

A. All types of single-use, disposable carryout bags would be included in the ordinance—plastic, paper, 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)

B. The ordinance would reduce the use of disposable bags primarily through fees, rather than bans

1. Alternative: the ordinance would be based on bans of all types of disposable carryout bags, rather than fees (less flexible than a fee based system; 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

C. Single-use, disposable plastic carryout bags would be banned, but individual stores could opt out of the ban if they voluntarily charged a fee on such bags

1. Alternative: the fees would be levied on consumers (the generators of waste bags) rather than stores, which may avoid the local fee preemption in AB 2449
2. Alternative: the ordinance would be based on bans of disposable, carryout plastic bags at the stores where local fees have been preempted by AB 2449, and fees on all other bags, including plastic bags at other stores and paper bags at all stores

D. All retail establishments would be included, except that restaurants and take-out food establishments would be excluded initially, and retailers that were very small or subject to extreme circumstances would be able to apply for exemption

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, perhaps, restaurants (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)

E. The ordinance would become effective six months after enactment

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
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

F. Enforcement

1. No consensus on a uniform enforcement system; alternatives mentioned were
 - 1.1. Countywide enforcement, perhaps by Environmental Health
 - 1.2. enforcement remains a local option
2. Ban compared to fee systems
 - 2.1. a ban can be enforced on a complaint basis, but
 - 2.2. a fee system requires proactive enforcement
3. An ordinance could require store signage (windows, checkout areas) to notify the public that the store is covered by the ordinance or exempt, then enforcement could be on a complaint basis

G. Bag Size – what size bags should be addressed?

1. There should be no exception for carryout bags on the basis of size
 - 1.1. bags used for protection of unpackaged food, greeting cards, and other items, which are then placed in carryout bags, would be exempt
 - 1.2. small carryout bags issued at internal points of sale (e.g., pharmacy counters inside larger stores) would not be exempt
2. Used cardboard boxes and other types of carryout packaging would not be covered

H. Performance Standards

One or more of the following alternatives should be selected:

1. Alternative: litter surveys (number or percentage of disposable bags in street surveys; creek trash assessments, collected litter, etc.)
2. Alternative: store surveys of bag use (percentage of disposable and reusable bags)
3. Alternative: amount of disposable bags purchased or used by stores, by number or weight (AB 2449 reporting, expanded to other covered stores to the extent practicable)

I. Sunset/Re-evaluation Provision – when should our effectiveness be evaluated and changes considered?

1. There should be no sunset on local bag ordinances
2. The effectiveness of local ordinances should be evaluated after three years and modifications should be considered as appropriate

CONSEQUENCES OF NEGATIVE ACTION

If the model ordinance is not approved, unincorporated Santa Clara and cities within Santa Clara County will not have model language to assist them in formulating their own ordinances regarding single use carry out bags. Additionally, consumers will continue to receive single use carry out bags at the check stand which will continue to contribute to litter in the road and water ways, impacting wildlife, have a negative environmental impact and drain natural and financial resources in response to the demand and use of these bags.

STEPS FOLLOWING APPROVAL

Forward a favorable recommendation to the Board of Supervisors, the Santa Clara County Cities Association and Mayors and City Managers within Santa Clara County.