



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: April 10, 2012

TO: Ordinance Committee

FROM: Finance Department, Environmental Services Division
City Attorney's Office

SUBJECT: Proposed Single-Use Bag Ordinance

RECOMMENDATION:

That the Ordinance Committee review a draft Single-Use Bag Ordinance and provide direction to staff.

DISCUSSION:

On July 12, 2011, the City Council directed staff to: (1) work with the Ordinance Committee to develop an ordinance making elements of the voluntary Where's Your Bag? Program mandatory; and, (2) to place a ballot initiative to assess a fee on plastic bags, paper bags, or both on the next regularly scheduled election. On March 13, 2012, Council reconsidered its previous July 12, 2011 direction and, instead, requested staff and the Ordinance Committee to develop a possible City ordinance to ban single-use plastic bags and to require stores to charge a fee on single-use paper bags. Pursuant to Council direction, the proposed ordinance would also incorporate the following elements:

- The ordinance would apply to supermarkets, pharmacies, retail stores and convenience stores of a certain size or sales volume as determined appropriate;
- Stores would not be required to use the revenue collected from the fee on paper bags for any specific use other than to promote the use of reusable bags and to educate the public on the environmental concerns inherent in the use of single use bags;
- The ordinance would possibly take effect in phases, with supermarkets and large stores having to comply first followed by smaller stores;
- The ordinance would not apply to restaurants or other businesses which sell prepared food;

- The ordinance would exempt product or produce bags (for meat, vegetables, and bulk food items), newspaper bags, medications bags and dry cleaning bags; and
- The ordinance would exempt clients of the Women, Infants and Children (WIC) Program and other food assistance programs.

Environmental Review

As with many similar single-use bag ordinances adopted recently by various cities and counties in California, the proposed single-use bag ordinance would first be subject to appropriate environmental review under CEQA. In order to possibly avoid any valid CEQA-related challenge to the adoption of a City single-use bag ordinance, the preparation of an EIR is recommended by City staff as the most prudent approach to reviewing the potential environmental impacts from such an ordinance.

At the March 13 meeting, Council also directed staff to work with the Beach Erosion Authority for Clean Oceans (BEACON), a joint powers authority comprising several jurisdictions in Santa Barbara and Ventura Counties, in the preparation of a possible Central Coast model single-use bag ordinance and for possible contract assistance for the California Environmental Quality Act (CEQA) environmental review of the draft ordinance. The goal would be to possibly develop both a model single-use bag ordinance and a master environmental impact report (EIR) which could serve any BEACON member in the review and possible adoption of a local single-use bag ordinance program.

As requested by Council, Staff has initiated contact with BEACON staff to develop a possible memorandum of understanding to contract for the preparation of an EIR reviewing a draft model ordinance. The agreement would propose a cost-sharing of CEQA-related costs among the member BEACON agencies who wish to pursue a cooperative approach.

Draft Single-Use Bag Ordinance

The proposed draft single-use bag ordinance is modeled after one adopted by Los Angeles County for the unincorporated areas of the County in November of 2010. This ordinance is similar to ordinances adopted in recent years by several cities, such as San Jose, Long Beach, Santa Monica and other smaller municipalities in California. It would ban the use of plastic bags and require that a ten cent per bag charge be collected for paper bags by all retail food store, pharmacies, and convenience stores of a certain size and dollar sales volume – depending on the size and volume parameters ultimately placed in the ordinance by the Council. Further, as has been typical for the approach taken by other cities with similar ordinances, it would also phase-in the application of the ordinance. Smaller food and convenience stores would be allowed a greater period of time for ultimate compliance – again, in a manner to be determined appropriate by the Council in finalizing the ordinance.

The draft ordinance does not regulate bags used by restaurants, fast food establishments, or other retailers which sell no food items, such as department and clothing stores. It also does not prevent stores from providing free bags, whether reusable or paper, to those persons receiving assistance under the state "Women, Infants, and Children" ("WIC") Program or similar food assistance programs. Finally, as drafted, the ordinance requires the stores which collect the paper bag fee to use the net revenues from these fees to promote the use of reusable bags and to educate the public on the possible negative environmental impacts which result from the use of single-use bags.

ATTACHMENT: Staff "Ordinance Committee Draft Ordinance" Dated April 10, 2012.

PREPARED BY: Matt Fore, Environmental Services Manager

SUBMITTED BY: Robert Samario, Finance Director

APPROVED BY: City Administrator's Office

DRAFT

Ordinance No.

**AN ORDINANCE OF THE COUNCIL OF THE
CITY OF SANTA BARBARA AMENDING THE
MUNICIPAL CODE BY ADDING CHAPTER 9.150
PERTAINING TO SINGLE-USE CARRY OUT BAGS
AT CERTAIN RETAIL ESTABLISHMENTS IN
THE CITY.**

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS
FOLLOWS:

SECTION ONE: Title 9 of the Santa Barbara Municipal Code is amended by adding a new chapter, Chapter 9.150 (Single Use Carry Out Bags"), which reads as follows:

Section 9.150.010 Definitions.

The following definitions apply to this Chapter:

- A. Customer.** Any person purchasing goods from a store.
- B. Operator.** The person in control of, or having the responsibility for, the operation of a store, which may include, but is not limited to, the owner of the store.
- C. Person.** Any natural person, firm, corporation, partnership, or other organization or group however organized.
- D. Plastic carryout bag.** Any bag made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or other plant sources, which is provided to a customer at the point of sale. "Plastic carryout bag" includes compostable and biodegradable bags but does not include reusable bags, produce bags, or product bags.
- E. Postconsumer recycled material.** A material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. "Postconsumer recycled material" does not include materials and by-products

generated from, and commonly reused within, an original manufacturing and fabrication process.

F. Produce bag or product bag. Any bag without handles used exclusively to carry produce, meats, or other food items from a display case within a store to the point of sale inside a store or to prevent such food items from coming into direct contact with other purchased items.

G. Recyclable. Material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

H. Recyclable paper carryout bag. A paper bag that meets all of the following requirements: (1) contains no old growth fiber, (2) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) post-consumer recycled material; (3) is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; (4) is accepted for recycling in curbside programs in the City; (5) has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the percentage of postconsumer recycled material used; and (6) displays the word "Recyclable" in a highly visible manner on the outside of the bag.

I. Reusable bag. A bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: 1. has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; 2. has a minimum volume of 15 liters; 3. is machine washable or is made from a material that can be cleaned or disinfected; 4. does not contain lead, cadmium, or any other heavy metal in toxic amounts; 5. has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and 6. if made of plastic, is a minimum of at least 2.25 mils thick.

J. Store. Any of the following retail establishments located and operating within the City:

1. A full-line, self-service retail store with gross annual sales of _____ million dollars (\$_,000,000), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;

2. A store of at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or

3. A drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other retail entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.

Section 9.150.020 Plastic carryout bags prohibited.

A. No store shall provide to any customer with a plastic carryout bag.

B. The prohibition on providing plastic carryout bags applies only to bags provided by a store for the purpose of carrying away goods from the point of sale within the store and does not apply to produce bags or product bags supplied by a store.

Section 9.150.030 Permitted bags.

All stores shall provide or make available to a customer only recyclable paper carryout bags or reusable bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this Chapter. Nothing in this Chapter prohibits customers from using bags of any type which the customer may bring to the store themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the store.

Section 9.150.040 Regulation of recyclable paper carryout bags.

A. Any store that provides a recyclable paper carryout bag to a customer must charge the customer ten cents (\$0.10) for each bag provided, except as otherwise allowed by this Chapter.

B. No store shall rebate or otherwise reimburse a customer any portion of the ten cent (\$0.10) charge required in Subsection A, except as otherwise allowed by this Chapter.

C. All stores must indicate on the customer receipt the number of recyclable paper carryout bags provided and the total amount charged the customer for such bags.

D. All charges collected by a store under this Chapter may be retained by the store and used only for one or more of the following purposes: 1. the costs associated with complying with the requirements of this Chapter; 2. the actual costs of providing recyclable paper carryout bags; 3. the costs of providing low or no cost reusable bags to customers of the store; or 4. the costs associated with a store's educational materials or education campaign encouraging the use of reusable bags, if any.

E. All stores shall report to the City Finance Director, on a (*annual, quarterly, monthly*) basis, the total number of recyclable paper carryout bags provided, the total amount of monies collected for providing recyclable paper carryout bags, and a summary of any efforts a store has undertaken to promote the use of reusable bags by customers in the prior quarter. Such reporting must be done on a form prescribed by the Finance Director, and must be signed by a responsible agent or officer of the store confirming that the information provided on the form is accurate and complete. Such reports shall be filed no later than ninety (90) days after the end of each year.

Section 9.150.050 Use of reusable bags.

A. All stores must provide reusable bags to customers, either for sale or at no charge.

B. Stores are strongly encouraged to educate their staff to promote the use of reusable bags and to post signs and other informational materials encouraging customers to use reusable bags.

Section 9.150.060 Exempt customers.

All stores must provide at the point of sale, free of charge, either reusable bags or recyclable paper carryout bags or both, at the store's option, to any customer participating either in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code or in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the state Welfare and Institutions Code.

Section 9.150.070 Enforcement and violation--penalty.

The City Finance Director (or his designee) shall have the primary responsibility for enforcement of this Chapter. The Director is authorized to promulgate Departmental regulations to assist stores in understanding and in complying with this Chapter and to take any and all other actions reasonable and necessary to enforce and interpret this Chapter.

Section 9.150.080 Operative date.

This Chapter shall become operative on _____, for stores defined in Subsections J(1) and J(2) of Section 9.150.010. For stores defined in Subsection J(3) of Section 9.150.010, this Chapter shall become operative on _____ .