



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: April 23, 2013

TO: Ordinance Committee

FROM: Environmental Services Division, Finance Department

SUBJECT: Single-Use Bag Ordinance

RECOMMENDATION: That the Ordinance Committee:

- A. Receive a report from staff regarding the status of the Environmental Impact Report (EIR) prepared by BEACON for the model draft Single-Use Bag Ordinance; and
- B. Provide direction to staff and the City Attorney regarding any revisions to the draft City Single-Use Bag Ordinance prior to its introduction by the City Council.

DISCUSSION:

At its May 22, 2012 meeting, Council declared the draft Single-Use Bag Ordinance as a "project" for the purposes of environmental review and for its use as the model ordinance to be considered for possible adoption by other jurisdictions in Santa Barbara and Ventura Counties. The intent of the ordinance is to reduce the environmental impacts related to the use of single-use carryout bags and to promote a shift toward the use of reusable bags. To this end, the draft ordinance would:

- Prohibit stores that sell food and pharmacies from providing plastic carryout bags (not including product or produce bags). Stores could only provide recyclable paper carryout bags or reusable bags.
- Assess a 10-cent charge on recyclable paper bags provided by such stores at the point-of-sale. Stores would be permitted to retain all paper bag charges and use the funds to offset costs to (1) comply with the ordinance; (2) provide recyclable paper bags; (3) provide low or no cost reusable bags to customers who are exempt; and/or, (4) produce and distribute educational materials encouraging the use of reusable bags.
- Require these stores to indicate number of recyclable paper carryout bags and total amount charged on the customer receipt and to report this information, including any educational efforts to promote reusable bags, annually to the City.

- Require these stores to provide, free of charge, either reusable bags or recyclable paper bags or both to customers participating in the California Special Supplemental Food Program for Women, Infants, and Children or in the Supplemental Food Program.

The stores regulated by this ordinance are categorized as follows:

- Tier 1 stores: Have at least 10,000 square feet of retail space and sell a line of dry grocery, canned good, or non-food items or have a licensed pharmacy. Stores within this category would be required to comply within six months of the ordinance effective date.
- Tier 2 stores: Comprising drug stores, pharmacies, supermarkets, grocery stores, convenience food stores, including those that have a liquor license, food marts, or other similar retail store that sell a limited line of grocery items which typically includes, but is not limited to, milk, bread, soda, and snack foods. Stores within the Tier 2 category are required to be in compliance within one year of the ordinance effective date.

Environmental Review

Since the May 22, 2012 Council meeting, the Beach Erosion Authority for Clean Oceans and Nourishment (BEACON), a joint powers authority comprising several jurisdictions in Santa Barbara and Ventura Counties, developed and circulated a draft environmental impact report (EIR) on the model ordinance. The "Study Area" for the ordinance included all jurisdictions located within Santa Barbara and Ventura Counties (except the Cities of Ojai and Carpinteria, which have already adopted single-use bag ordinances).

Besides the project, the draft EIR also evaluated several alternatives including: (1) No project; (2) A ban on single-use plastic bags at all retail establishments except restaurants; (3) a Mandatory charge of \$0.25 for paper bags; (4) A ban on both single-use plastic and paper carryout bags; and, (5) a Mandatory charge of \$0.10 for plastic and paper carryout bags. It is important to note that the draft EIR found that the project would result in impacts that were "beneficial" to the environment or that were "less than significant" to the environment and would not require mitigation.

The public comment period on the draft EIR began on February 12, 2013 and ended on March 28, 2013. Comments submitted by stakeholders on the draft EIR included: 1) Distribution of free reusable bags, other than for a short term promotion, will result in a proliferation of reusable bags; 2) Washing reusable bags will result in increased water consumption; and, 3) implementation of the ordinance should include a consumer education component regarding air and water emissions produced during paper bag production and recycling.

Next Steps

On April 19, 2013, the BEACON board is expected to certify the Final EIR on the model ordinance. Prior to bringing the model ordinance to the full City Council for further action, staff will complete the environmental review process pursuant to CEQA and City policies and procedures. Staff will then bring the Final EIR (along with a possible addendum) to Council to make requisite findings pursuant to CEQA. Therefore, staff recommends that the Ordinance Committee review the draft ordinance that served as the project for the BEACON EIR to 1. confirm that staff should use this version of ordinance to complete the City's environmental review process; or, 2. provide staff with direction regarding changes to the draft ordinance.

Legal Developments

On March 11, 2013, the California Second District Court of Appeal in Los Angeles upheld the Los Angeles Superior Court's ruling that the Los Angeles County ordinance prohibiting retail stores from providing plastic carryout bags and requiring them to charge customers 10 cents for each paper carryout bag was not a tax under the either Proposition 218 or Proposition 26 because the charge is payable and retained exclusively by the retail store and is not remitted to the county.

ATTACHMENT: Chapter 9.150 – Proposed Model City Ordinance, Single-Use Bag Ordinance

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
SANTA BARBARA MUNICIPAL CODE BY ADDING
CHAPTER 9.150 PERTANING TO THE USE OF
SINGLE-USE CARRY OUT BAGS AT CERTAIN
RETAIL FOOD AND GROCERY STORE
ESTABLISHMENTS WITHIN THE CITY.

THE 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, natural gas, 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 (of any size) 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 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 which sells a line of dry grocery or canned goods, or non-food items together with some perishable food items or a store that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or

2. A drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other similar retail store or entity engaged in the retail sale of a limited line of grocery items or goods which typically includes, but is not limited to, milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 liquor license issued by the state Department of Alcoholic Beverage Control.

Section 9.150.020 Plastic carryout bags prohibited.

A. No store shall provide 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 subparagraph 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 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 who are exempted by section 9.150.060; 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 an annual (calendar year) 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 year. Such reporting must be done on a form prescribed by the City Finance Director, and must be signed by a responsible agent or officer of the store in order to confirm 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 following the year in which this chapter becomes effective.

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 violations - penalties.

A. Administrative Enforcement. 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.

B. Regulations on Free Reusable Bags. If determined to be appropriate and necessary, the City Finance Director may adopt regulations restricting or limiting the ability of those stores defined in subparagraphs J(1) and J(2) of section 9.150.010 to offer customers free reusable bags as a promotional item.

Section 9.150.080 Operative date.

For those stores defined in subparagraph (J)1) of section 9.150.010, this Chapter shall become operative One Hundred Eighty (180) days after the effective date of the City ordinance adopting this Chapter. For stores defined in subparagraph J(2) of Section 9.150.010, this Chapter shall become operative one year after the effective date of the City ordinance adopting this Chapter.

SECTION TWO: Within two years of the adoption date of this ordinance, the staff of the City Finance Department shall submit a written agenda report to the City Council describing, among other things, whether it appears to the Finance Department that this ordinance has reduced the number of plastic and paper bags used within the City by those stores regulated by this ordinance.



Single-Use Bag Ordinance

Ordinance Committee Meeting

April 23, 2013



OUTLINE OF PRESENTATION

- ◆ Review Elements of Model Ordinance
- ◆ Environmental Review
- ◆ Provide Direction to Staff Regarding Model Ordinance
- ◆ Legal Developments Since May 22, 2012 Council Meeting



ELEMENTS OF MODEL ORDINANCE

◆ Who Is Regulated?

- Tier 1: At least 10,000 square feet and sells a line of dry grocery or canned goods, or non-food items together with some perishable food items, or a store that has a licensed pharmacy.
- Tier 2: A drug store, pharmacy, supermarket, grocery store, convenience food store, food mart or other similar retail store that sells a limited line of grocery items or goods (e.g. milk, bread, soda), including those with a liquor license.



ELEMENTS OF MODEL ORDINANCE

- ◆ Bans single-use plastic bags & requires stores to charge a \$.10 fee on single-use paper bags.
- ◆ Allows stores to use revenue from the fee on paper bags to comply with the ordinance, to provide reusable bags and to encourage consumers to use reusable bags.
- ◆ Requires stores to report annually on the number of paper bags distributed, monies collected and any educational efforts undertaken by the store.



ELEMENTS OF MODEL ORDINANCE

- ◆ When Does the Ordinance Take Effect?
 - Tier 1 Stores - 6 months after ordinance effective date
 - Tier 2 Stores - 12 months after ordinance effective date



ELEMENTS OF MODEL ORDINANCE

◆ Exemptions:

- Exempt product or produce bags (for meat, vegetables and bulk food items)
- Exempt clients of the CA Special Supplemental Food Program for Women, Infants and Children (WIC) and the Supplemental Food Program



ELEMENTS OF MODEL ORDINANCE

- ◆ Bags **Not** Included in Ban:
 - plastic bags distributed by restaurants and prepared food providers
 - newspaper bags
 - medication bags
 - dry cleaning bags
 - garbage bags



OUTLINE OF PRESENTATION

- ◆ Review Elements of Model Ordinance
- ◆ **Environmental Review**
- ◆ Provide Direction to Staff Regarding Model Ordinance
- ◆ Legal Developments Since May 22, 2012 Council Meeting



ENVIRONMENTAL REVIEW

- ◆ BEACON developed and circulated a draft EIR on the model ordinance
 - 45-day public comment period
 - Public Meetings were held in Santa Barbara and Oxnard
- ◆ Substantial cost savings for City by collaborating with BEACON
- ◆ Included all geographic areas of Santa Barbara and Ventura Counties (except the Cities of Carpinteria and Ojai)



ENVIRONMENTAL REVIEW

◆ Alternatives Studied:

- No project
- Ban on single-use plastic bags at all retail stores
- Ban on single-use plastic bags at all retail stores; fee of \$0.25 on paper bags
- A ban on both single-use plastic bags and paper bags
- A fee of \$.10 on both single-use plastic bags and paper bags



ENVIRONMENTAL REVIEW

EIR Findings

- ◆ Draft EIR found that all potential impacts were either:
 - Beneficial to the environment; or,
 - Less than significant impact and would not require mitigation
- ◆ Environmentally Superior Option: A ban on both single-use plastic bags and paper bags



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DIRECTION TO STAFF

- ◆ Confirm that the existing draft of the model ordinance should be brought to Council for consideration; or,
- ◆ Provide staff with direction regarding changes to the model ordinance



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- ◆ Review Elements of Model Ordinance
- ◆ Environmental Review
- ◆ Provide Direction to Staff Regarding Model Ordinance
- ◆ Legal Developments Since May 22, 2012 Council Meeting



LEGAL DEVELOPMENTS

- ◆ March 11, 2013: California Appellate Court upheld district court's decision: Los Angeles Co. \$.10 fee on paper bags is not a tax since the charge is retained by the store and is not remitted to the County



DIRECTION TO STAFF

- ◆ Confirm that the existing draft of the model ordinance should be brought to Council for consideration; or,
- ◆ Provide staff with direction regarding changes to the model ordinance.