



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: February 1, 2011

TO: Mayor and Councilmembers

FROM: Environmental Services, Finance Department

SUBJECT: Recommendation From Sustainability Committee For Single-Use Bag Ordinance

RECOMMENDATION:

That Council consider a recommendation from the Sustainability Committee to refer consideration of a Single-Use Bag Reduction Ordinance to the Ordinance Committee.

DISCUSSION:

The City Council, the Sustainability and Solid Waste Committees, and staff have discussed the environmental effects of single-use bags on several occasions over the past three years. Single-use plastic grocery bags are made primarily from natural gas and petroleum, nonrenewable resources. A relatively small part of the overall waste stream, these “urban tumbleweeds” pose a large flyaway litter problem. Millions of plastic bags find their way into the marine environment where they can kill wildlife and degrade water quality and seafood supplies.

While paper bags do not create the same impacts to the marine environment as plastic bags, the manufacture of paper bags is a resource and pollution-intensive process. Most paper bags are still made from virgin tree pulp, instead of post-consumer recycled content paper. Single-use bags made of compostable materials, such as corn starch, represent another option. However, especially in the absence of comprehensive composting programs, they also have drawbacks. There is a strong consensus among experts that the best alternative for the environment is a reusable bag. One reusable bag can eliminate thousands of single-use bags over its lifetime.

On various occasions over the last several years, the City Council and the Solid Waste and Sustainability Committees have discussed ways to lessen the impacts of single-use bags by encouraging the use of reusable bags. The City has implemented a voluntary single use bag reduction program, the “Where’s Your Bag?” Campaign, and has considered regulatory intervention. What follows is a discussion of:

- The voluntary “Where’s Your Bag Campaign”
- Prior Council consideration of regulatory intervention
- The recommendation for a Single Use Bag Ordinance
- Recent developments in other jurisdictions

Where’s Your Bag Campaign

In August 2009, the City kicked off a voluntary program called the “Where’s Your Bag?” Campaign. The campaign was developed through a collaborative effort that included local grocery stores, the California Grocers Association and local community organizations. The goal of the campaign is to encourage people to bring reusable bags whenever they shop. Participating grocery stores are provided with educational materials (information cards, buttons, windshield reminder stickers), staff training, parking lot signs, and tabling events at their stores where free reusable bags are given away. It is unclear, however, to what degree this has created a shift from single-use to reusable bags citywide.

Consideration of Regulatory Intervention

While some agencies have banned plastic bags, Council has, thus far, not pursued such a ban. Initially, one of the reasons was the staff time commitment involved in drafting, defending, and enforcing such a ban. After further analysis, it became clear that a ban on plastic bags would just shift consumers to paper bags, which may have even greater, albeit different, negative environmental implications than plastic bags. In addition, the plastics industry has successfully challenged several local jurisdictions’ attempts at banning plastic bags, arguing that California Environmental Quality Act (CEQA) required an Environmental Impact Report (EIR). An appeal of such a decision, Save the Plastic Bag Coalition vs. the City of Manhattan Beach, is still pending in the California Supreme Court.

More recently, discussion about expanding the City’s efforts to reduce the use of single-use bags - both paper and plastic - centered around a fee or a tax on consumers who choose to use such bags. On December 15, 2009, Council considered a recommendation from the Solid Waste Committee (which has now been absorbed by Sustainability Committee) to conduct a voter survey on a single-use paper and plastic bag tax to determine the level of public support and the amount of tax voters believe would be appropriate. Council directed staff to issue a request for proposals (RFP) and on March 30, 2010, staff returned to Council recommending a professional services agreement with a selected vendor. Council declined to proceed at that time, and asked that staff return in July 2010 for reconsideration of the survey.

In August 2010, Council again elected to postpone reconsideration of a voter survey regarding a possible single-use bag tax pending the outcome of AB 1998, a piece of state legislation that would have, among other things, banned single use plastic bags and imposed a charge for single use paper bags. It would potentially have eliminated the need for other types of local regulation.

On August 31, 2010, AB 1998 failed in the State Senate, in spite of support from Governor Schwarzenegger. Consequently, the City, along with other California cities and counties, resumed consideration of our options for local regulation. At its September 2010 meeting, the Sustainability Committee considered options including going forward with the survey on implementing a local single use bag tax, exploring a ban on plastic bags, implementing a single use bag tax, or implementing an ordinance to require participation in the "Where's Your Bag?" Campaign. The committee recommended that the voter survey about a possible tax not go forward.

Single Use Bag Ordinance

At its September 2010 meeting, the Sustainability Committee recommended that Council refer the development of a Single Use Bag Reduction Ordinance (a "Where's Your Bag?" ordinance) to the Ordinance Committee. The Sustainability Committee recommended that input of local stores and the California Grocers Association be considered in the development of the ordinance.

The ordinance would potentially make the signage, staff education, and public information components of the "Where's Your Bag Campaign" mandatory on stores meeting certain criteria. Santa Barbara Channelkeeper, a partner in the Where's Your Bag Campaign, also suggested that the ordinance contain reporting requirements that would allow the City to measure the effectiveness of the program and potentially set goals for bag reduction.

In crafting such an ordinance, the City would have to consider applicable state and federal laws which may preempt the City's ability to impose legal mandates on local businesses. For example, AB 2449 a 2006 state law which enacted Public Resources Code §§ 42250-42257 (known as the "At Store Recycling Program" law,) prohibits a local agency from imposing auditing or reporting requirements on stores covered by the AB 2449 statutes if those "reporting" or "audit" requirements are contrary to the AB 2449 statutes.

Given potential legal constraints on the City's ability to impose requirements on these businesses beyond those contained in AB 2449, it is possible that the options available to the City for inclusion in a Santa Barbara City ordinance may not be sufficient to effectuate real workable changes in consumer behavior. If directed by Council, staff will work through these questions and other constraints with the Ordinance Committee to possibly develop a proposed ordinance that has the greatest chance of decreasing the use of single-use bags in the City.

The City Council and, if appropriate, the Ordinance Committee, will also have to consider how such an ordinance will be enforced and staff resources which may be needed.

Recent Developments- Other Jurisdictions

The failure of AB 1998 has led some other local agencies to adopt, or consider adopting, local ordinances with provisions similar to AB 1998 over the last few months. Green Cities California has developed a model local ordinance version of AB 1998. Los Angeles County recently adopted such an ordinance in November 2010 banning plastic grocery bags and requiring grocers offering paper bags to sell them for 10 cents each. The ordinance applies to unincorporated areas of Los Angeles County, and, so it does not extend to the 88 cities within LA County. In December 2010, Long Beach became the first of these cities to follow suit with a similar ordinance. Also in December 2010, the City of San Jose passed a similar ordinance.

It is important to note that any imposition of “fees” on City residents will likely be subject to existing State laws, (such as Prop 218 approved by State voters in 1996) including the recently enacted Proposition 26. In many cases, such “fees” can be considered “taxes” and, thus, would require at least a majority of voter approval, depending on the use of the proceeds. For example, the American Chemistry Council is already threatening to challenge the L.A. County ordinance and similar ordinances on these legal grounds.

SUSTAINABILITY IMPACT:

A single-use bag reduction ordinance has the potential to reduce negative environmental impacts related to the manufacture and disposal of single-use bags by increasing consumer use of reusable bags.

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SUBMITTED BY: Robert Samario, Finance Director

APPROVED BY: City Administrator's Office