



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: April 19, 2011

TO: Ordinance Committee

FROM: Environmental Services Division, Finance Department

SUBJECT: Single-Use Bag Reduction

RECOMMENDATION: That the Ordinance Committee:

- A. Receive a report from staff regarding options for reducing the distribution of single-use bags within the City of Santa Barbara; and
- B. Provide staff with additional direction as to which option the Ordinance Committee wishes to pursue.

DISCUSSION:

On February 1, 2011, City Council referred to the Ordinance Committee consideration of all options for reducing the distribution of single-use bags throughout the City. Essentially, the options consist of the following:

1. Take no further action.
2. Recommend an ordinance effectively mandating that retail stores adopt the elements of the City's existing voluntary Where's Your Bag? Program.
3. Recommend a City ballot measure to decide whether a tax should be imposed on either or both single-use plastic and paper bags distributed by retailers within the City.
4. Recommend an ordinance to prohibit the distribution of single-use plastic bags by retailers.

Staff has prepared for the Ordinance Committee information regarding the factors that should be considered, including the potential impacts on the consumer, retailers and the City associated with each option. Please note that an in-depth discussion of previous Council actions, statewide legislation on this issue, and the environmental considerations of single-use bags was included in the February 1, 2011, Council Agenda Report and is therefore not included in this report.

Option 1: Take No Action At This Time

Under this approach, retailers could continue to distribute plastic and paper bags without restriction. Pursuant to previous Council direction, staff would continue to promote reusable bags through the voluntary “Where’s Your Bag?” Program.

Potential Impacts:

Consumer: Consumers would continue to receive plastic or paper bags. Retailers would continue to pass on the cost of single-use bags to consumers in the purchase price of goods at a cost of approximately \$.02 - \$.03 per bag¹.

City: The City would not incur any additional costs beyond those currently allocated to remove single use bags as a component of other litter and illegally dumped waste. While the cost to specifically remove plastic bags is unknown, the Creeks Division spent \$27,000 in Fiscal Year 2010 to clean up approximately 268 littered sites that contained plastic bags.

Retailer: No impact

Environment: According to the U.S. Environmental Protection Agency, marine species are often harmed when they accidentally ingest plastic bags, mistaking them for food². In addition, continued use of plastic bags would further deplete non-renewable resources used in their production.

Option 2: An Ordinance Which Mandates the Elements of the City’s Where’s Your Bag? Program

Under this approach, Council would adopt an ordinance requiring retailers to post a designated amount of in-store signage, as well as provide educational materials to customers, including brochures and window decals, to encourage their use of reusable bags when shopping. Retailers would also be responsible for providing training to new staff on the benefits of reusable bags and techniques for encouraging their use with customers. Additionally, retailers would be required to offer the sale of reusable bags for sale at the point-of-purchase and report to the City, on a quarterly basis, how many customers are using reusable bags. . Note that the City already administers the Where’s Your Bag? Program with large grocery stores and smaller markets on a voluntary basis.

¹ Staff communication with representatives of Tri-County Produce and Albertson’s Grocery Company

² S.B. Sheavly. 2007. “National Marine Debris Monitoring Program: Final Program Report, Data Analysis and Summary.”
Prepared for U.S. Environmental Protection Agency by Ocean Conservancy, Grant Number X83053401-02. 76 pp.

Potential Impacts:

Consumer: Consumers could continue to receive plastic or paper bags, but would be encouraged to bring their own reusable bags when shopping. Retailers would continue to pass on the cost of single-use bags to consumers in the purchase price of goods as described in Option One.

City: The City would incur additional costs to implement the ordinance, monitor reporting and take enforcement action against non-compliant retailers. In Fiscal Year 2011, the Environmental Services Division allocated approximately \$23,000 in staff time and \$15,000 on educational materials and community outreach on the voluntary Where's Your Bag? Program. An additional \$14,000 in private donations was used to offset the costs to produce educational materials and conduct public outreach.

Retailer: Retailers would incur added costs to train staff, supply education materials, install signage and track and report reusable bag usage to the City. The average cost to equip a store with educational materials under the Where's Your Bag? Program is approximately \$200.

Environment: Under the voluntary Where's Your Bag? Program, Environmental Services has distributed approximately 3,800 reusable bags to City residents. Any decrease in the impact to the environment would depend on how many consumers switch to reusable bags under this scenario. Tri-County Produce, a local retailer, has actively promoted reusable bags and has seen a 36% increase in the use of reusable bags by its customers since joining the program.

Other Considerations: Assembly Bill 2449, enacted by the State Legislature in 2007, requires grocery stores in California to take back and recycle plastic grocery bags. While the statute prohibits municipalities from auditing performance or requiring additional reporting regarding plastic bag use by the store, it is silent on whether these prohibitions also apply to reusable bags. It is therefore unclear whether an ordinance could be successfully challenged under this option. If a challenge were likely, Council could consider such an ordinance after January 1, 2013, when AB 2449 is scheduled to sunset.

Option 3: A City Voter Approved Tax on Paper and/or Plastic Bags

Under this approach, consumers could continue to receive plastic or paper bags, but a voter-approved tax on paper bags would be levied. Depending on whether the tax proceeds are earmarked or not, the measure would either require a simple majority vote or two-thirds voter approval. A special tax, in which the proceeds are earmarked for a specific purpose requires a two-thirds voter approval. A general tax, which would become part of the unrestricted revenues in the General Fund, requires only a simple majority.

Generally speaking, staff would not recommend a tax on both plastic and paper bags, for both practical and legal reasons related to AB 2449. Instead, staff would recommend (within the context of this option) a tax on single-use paper bags only coupled with a ban on single-use plastic bags, as described below under option #4.

Potential Impacts:

Consumer: Assuming a tax of \$0.10 - \$0.25 per bag, consumers who choose to purchase plastic or paper bags at checkout would pay an estimated \$32-\$81 per year, assuming that consumers use 325 bags per year. However, consumers who switch to reusable bags would avoid this additional premium after an initial investment of \$8-\$24 to purchase reusable bags.

City: The City may choose to conduct a survey of voters about voter support for such a tax and the level of tax that voters would support before moving forward with this option. The cost of such a survey is estimated at \$25,000. The City could also incur additional costs to place such a question on the ballot and to assess any taxes approved by the voters. A tax on single-use bags would generate income for the City, the amount of which would depend upon the level of the tax and any increases in consumer use of reusable bags. The City would incur the cost to conduct the environmental review of such a ballot measure under CEQA.

Retailer: Retailers would incur the cost to program their cash receipting systems to both collect and track the taxes. They would have to prepare a form that would be provided by the City to accompany their remittance of taxes, similar to forms completed by hotels for remittance of transient occupancy taxes collected from customers via the hotel rates.

Environment: The financial premium placed on one or both types of single-use bags would likely persuade more consumers to use reusable bags than under the voluntary Where's Your Bag? Program, resulting in a reduction in the number of plastic bags in the environment.

Option 4: Recommend a City Ordinance to Prohibit the Distribution of Single-Use Bags and Impose a Fee on Single-Use Paper Bags

Under this approach, Council would adopt an ordinance prohibiting the distribution of plastic bags by retailers and placing a fee on paper bags. This approach contemplates that the City would seek voter approval for the fee on single-use paper bags at a range consistent with Option 3 previously discussed.

The cities of San Jose and Santa Monica and Los Angeles County, have adopted similar ordinances that apply a "fee" of \$0.10 to \$0.25 on paper bags. These agencies elected to have the retailers retain all revenue generated by the fee, purportedly to avoid the voter-approval requirement required under State law for new taxes. Based on the advice of the City's legal counsel, staff would not recommend following the approach used by these

agencies, but rather that the City put the question to a vote of the community. Moreover, with a voter approved fee, the City would have the flexibility to determine how the tax proceeds would be used, including allowing the retailers to retain a portion to cover the increased costs of providing paper bags. Some municipalities have also placed restrictions on how revenue from the fee can be used, such as for the production of educational materials.

Potential Impacts:

Consumer: Consumers who chose to pay the fee on paper bags at checkout would pay an estimated \$32-\$81 per year for single-use bags. However, those who switch to reusable bags would not pay an additional premium at checkout after an initial investment of \$8-\$24 to purchase reusable bags.

City: The City would incur significant costs to implement this option. In order to preempt legal challenges, many jurisdictions have opted to prepare an Environmental Impact Report (EIR) for their proposed ordinances at an estimated cost ranging from \$50,000 - \$100,000. Substantial staff resources would also be expended to develop, circulate, implement, monitor and enforce the ordinance. For example, the City of San Jose expended 4,000 staff hours in the preparation and adoption of its recent ordinance. If the City elected to keep all or part of the tax revenues generated from the fee, the City would realize additional revenues that are restricted to a specific purpose, or, if unrestricted, the revenues provide additional financial resources to the General Fund.

Retailer: Retailers would save \$.02-\$.03 on each plastic bag currently distributed at check out. Depending on the structure and allocation of the tax proceeds, retailer may be allowed to retain a portion or all of the taxes to defray the additional cost of the providing single-use paper bags. Council may have the option to choose whether to apply restrictions on the use of this revenue.

Environment: Banning plastic bags and imposing a fee on paper bags would likely yield the greatest reduction of plastic bags and therefore the greatest benefits to those environments impacted by plastic bags, such as local beaches and the marine environment. Because paper bags create their own impacts on the environment, in particular those associated with their production, this option may increase those impacts if it results in higher use of paper bags. The greatest benefit to the environment is achieved when this approach results in the shift from both plastic and paper bags to re-usable bags, which is the intended goal of all options. This option appears to have the greatest potential for achieving this end result.

Other Considerations: Imposition of a fee on paper bags could be construed as a tax and therefore be subject to voter approval.

Recent Developments

Since the February 1, 2011, Council meeting, the City of Calabasas adopted an ordinance banning plastic bags. Save the Plastic Bag Coalition (STPBC), a plastic industry group, has filed a lawsuit against the County of Marin challenging its ordinance to ban plastic bags and to impose a \$.05 fee on paper bags. This legal challenge is noteworthy as Marin County opted to invoke a categorical exemption under CEQA in lieu of preparing an environmental impact report.

STPBC also sued the Cities of Manhattan Beach and Oakland, claiming that the environmental impacts caused by an ordinance that effectively promotes the use of paper bags were not properly evaluated in an EIR. A decision in the Manhattan Beach case is pending a decision by the California Supreme Court while the City of Oakland lost the CEQA suit filed against it.

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APPROVED BY: City Administrator's Office