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# City Council Report

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City Council Meeting: January 25, 2011

Agenda Item: 7A

To: Mayor and City Council  
From: Dean Kubani, Director of the Office of Sustainability and the Environment  
Subject: Introduction and First Reading of an Ordinance Prohibiting Single-Use Plastic Carry Out Bags and Resolution Certifying Final Environmental Impact Report

## Recommended Action

Staff recommends that City Council:

- a) Adopt a resolution certifying the Final Environmental Impact Report (SCH #2010041004).
- b) Adopt a resolution to make necessary CEQA findings.
- c) Introduce for first reading the attached ordinance prohibiting the distribution of single-use plastic carry out bags and regulating the use of paper carry out bags in Santa Monica retail establishments.

## Executive Summary

This ordinance is intended to significantly reduce the environmental impacts related to single-use plastic and paper carry out bags, and to promote a major shift towards reusable bags. The ordinance prohibits all retail establishments in Santa Monica from providing light-weight, single-use plastic carry out bags to customers and prohibits the free distribution of paper carry out bags by grocery stores and pharmacies in the City. The ordinance requires that grocery stores and pharmacies that decide to make recycled paper carry out bags available pass through the cost of providing such bags to their customers at an amount not less than \$0.10. All of the revenue will be retained by the stores. This minimum cost pass-through is intended to provide a disincentive to customers from using single use paper bags and to incentivize the use of reusable bags. The ordinance provides a public health and safety exception for restaurants which allows them to provide plastic bags only for the transportation of hot prepared take-out food and liquids, and exemptions that protect low-income consumers and retailers against undue hardship. The cost for additional staff and supplies and expenses to initiate implementation of the ordinance through June 30, 2011 will be \$60,000. These costs will be covered by savings in the current year budget. Funds for implementation of the ordinance in subsequent years will be requested in future budget cycles.

## **Background**

On February 26, 2008 City Council directed staff to prepare an ordinance prohibiting retail stores from distributing single-use plastic bags and regulating the use of paper bags through the collection of a fee. Staff returned to Council on January 13, 2009 with a proposed ordinance which would prohibit the distribution of single-use plastic bags and would establish a fee for paper bags to provide a disincentive for their use. On the advice of the City Attorney, Council did not hold a first reading of the ordinance at that time but did hold a public hearing and directed staff to return for a first reading of the ordinance following completion of California Environmental Quality Act (CEQA) review. The CEQA review of a proposed ordinance that included a fee on paper bags was completed in 2010. Following the passage by California voters of Proposition 26 on November 2, 2010, which redefined some fees established by local governments as taxes, staff revised the proposed ordinance for City Council consideration and adoption in order to ensure conformity with Proposition 26 by eliminating any regulatory fee.

## **Discussion**

The intent of the ordinance is to significantly reduce the environmental impacts related to single-use plastic and paper carry out bags, and to promote a major shift towards reusable bags. The ordinance prohibits all retail establishments in Santa Monica from providing single-use plastic carry out bags to customers at the point of sale. Single-use plastic carry out bags are defined by the ordinance as bags made from petroleum or bio-based plastic that are less than 2.25 mils thick. The proposed ordinance defines a reusable bag as any bag with handles that is specifically designed and manufactured for multiple reuse and is either made of cloth or other washable fabric or is made of other durable material, including plastic, that is at least 2.25 mils thick.

The ordinance does not prohibit the distribution of plastic "product bags" such as those distributed within a grocery store for bagging produce or meat products. The ordinance provides an exception for restaurants and other food service providers, allowing them to provide single-use plastic bags to customers only for the transportation of hot prepared

take-out food and liquids. This exception is included as a public health safeguard based on input from restaurant owners who expressed concern that some hot and liquid foods could leak from take-out containers and potentially cause paper bags to weaken and fail.

The ordinance also prohibits the free distribution of paper carry out bags at all grocery stores (Includes supermarkets, convenience stores, mini-marts, and liquor stores) and pharmacies in Santa Monica. These types of stores are the largest current providers of single-use plastic bags in the City, distributing tens of millions of bags annually. If the City were to ban single-use plastic bags but not regulate paper carry out bags, it could be expected that these stores would switch to paper bags in equal numbers to the plastic bags they replaced. While paper bags are made from renewable resources and are not as problematic as plastic bags from a marine debris and litter perspective, the manufacture, transportation, and disposal of single-use paper bags has the potential to generate significant environmental impacts, and therefore increasing their use is not desirable.

The ordinance does allow grocery stores and pharmacies to distribute "recycled" paper carry out bags but only if the stores pass-through the cost of those bags to their customers in an amount not less than \$0.10. A recycled paper carry out bag is defined by the ordinance as any standard grocery-sized, single-use paper bag that is made from 100% recycled materials with a minimum of 40% post-consumer recycled content, and any smaller paper bag that is 100% recycled with a minimum of 20% post-consumer recycled content. This recycled content requirement is included in the ordinance in order to minimize the environmental impacts from any paper bags that are distributed.

The ordinance sets a minimum level for the cost pass-through at \$0.10 per bag. This amount is based on an analysis completed by the City which determined that a cost pass-through of \$0.10 per recycled paper bag would cover the reasonable cost to a store of providing the paper bags to its customers. A copy of this analysis is included

with this report as Attachment 5 and as an Appendix to the Final EIR. All proceeds from the sale of recycled paper carry out bags would be retained by the store. No portion of the cost pass-through would be received by the City.

The minimum cost pass-through for recycled paper carry out bags is an essential element of the proposed ordinance as it will provide a disincentive to customers from requesting paper bags when shopping at the regulated stores, and is intended to promote a major shift toward the use of reusable bags by consumers. This type of disincentive has been effective in other jurisdictions as set forth in Attachment 5. The minimum cost pass-through will not apply to other types of retail stores, because those other stores (including department stores, clothing stores, and stores that sell durable goods) do not typically distribute single-use plastic carry out bags to customers in large volumes, and so any paper bags distributed by those stores would not likely be in response to the plastic bag ban.

As noted above, Proposition 26 redefined any levy, charge or exaction as a tax, unless expressly within certain exceptions. The purpose of Proposition 26, as described in its findings and declaration of purpose, is to limit the Legislature and local governments from adopting "new taxes as 'fees' in order to extract even more revenue from California taxpayers." Moreover, the paragraph in the initiative which discusses the burden of proving when a levy, charge, or other exaction is not a tax refers to the amounts raised in the context of funding a governmental activity. In the case of Santa Monica's proposed ordinance, the minimum \$0.10 paper bag cost pass-through is neither a tax nor a regulatory fee impacted by Proposition 26 because it does not result in revenue to the state or local government to pay for the cost of public programs or projects necessary to regulate the activity of a business or person. Rather, like the sale of any other product, the retail establishment retains the revenue from the sale without any requirement that the retailer pay for governmental activity.

The ordinance prohibits distribution of all single-use carry out bags (plastic, bio-plastic, and paper) at the Santa Monica Farmers Markets, but allows market vendors to distribute plastic product bags for produce and small paper bags for mushrooms to customers free of charge. Stores will be required to provide a customer participating in the California Special Supplemental Food Program for Women, Infants, and Children and a customer participating in the Supplemental Food Program with a reusable bag or a recycled paper bag at no cost at the point of sale. Stores will be required to report to the City's Office of Sustainability and the Environment the number of paper bags distributed and the amount of money they collect from the cost pass-through for the bags on a semi-annual basis. These reports will allow the City to track store compliance with the ordinance and the effectiveness of ordinance at reducing the use of single use bags. Staff will periodically present these results to City Council and to the community as they become available.

In addition to the public health and safety exception for restaurants and other food service providers, the ordinance allows for a one year renewable hardship exemption if it can be demonstrated that compliance with the ordinance would cause undue economic hardship to the retail business. An undue hardship would include any situation where there are no reasonable alternatives to single-use plastic carryout bags or situations where compliance with the requirements of the ordinance would deprive a person of a legally protected right. The decision to provide an exemption will be made by the City Manager or his/her designee and will be based on review of an exemption application that includes documentation showing the factual support for the claimed exemption.

The Office of Sustainability and the Environment (OSE) will have primary responsibility for enforcement of the ordinance. Enforcement will be primarily conducted on a complaint basis and will be carried out by OSE inspectors as necessary. Inspectors will have the power to issue notices of violations to retail establishments that fail to comply with any of the requirements of the ordinance. For the first violation, a written warning

notice will be issued. For any subsequent violation, an administrative citation shall be issued pursuant to Santa Monica Municipal Code Chapter 1.09, with the fines to be graduated for repeat violations in amounts set forth by City Council resolution. Each violation of the ordinance shall be considered a separate offense.

A statewide bill (AB 1998 - Brownley) addressing single-use bags similar to Santa Monica's proposed ordinance, was voted down in the State Senate on August 31, 2010. AB 1998 would have banned the distribution of single-use plastic bags in all supermarkets and large retail stores throughout California beginning in January 2012. The bill would have also required stores to charge customers for paper bags in an amount equal to the average cost for those bags (and no less than \$0.05 per bag). If this legislation had become statewide law it would have pre-empted local regulation of single-use bags. In the absence of this statewide legislation, currently many local jurisdictions in California, including the Cities of San Francisco, San Jose, Berkeley, Long Beach and Palo Alto and the County of Los Angeles, have adopted or are considering local ordinances banning single use plastic carry out bags and regulating paper bags. An analysis of AB 1998 is attached to this report as Attachment 6.

This ordinance will become effective thirty days after Council adoption, however enforcement will be delayed by approximately six months to begin on September 1, 2011. During the interim, OSE staff will conduct workshops and other outreach activities to provide information and assistance to retailers affected by the ordinance. OSE staff will also conduct a public outreach and information campaign to inform the public about the ordinance and encourage people to bring their own bags to stores. One component of the outreach campaign will include the distribution of locally made reusable bags to Santa Monica residents at various festivals and events. Staff recommends that this outreach effort continue for a minimum of two years following adoption of the ordinance in order to ensure that the ordinance achieves the intended result of a major shift toward the use of reusable bags in the city.

### Environmental Analysis

Provided as Attachment 3, an Environmental Impact Report was prepared for this project in accordance with the California Environmental Quality Act (CEQA) and was circulated for a 45-day public review period ending on July 22, 2010. As noted above, the proposed ordinance was revised following the passage of Proposition 26 in November 2010. Since the revised ordinance would not alter the overall number of paper bags or reusable bags as compared to the ordinance analyzed in the Draft EIR, the revised ordinance does not create new significant impacts or substantially increase the severity of previously analyzed project impacts. All environmental impacts would be the same as described in the Draft EIR and analysis of the revised ordinance has not resulted in any significant new information requiring recirculation of the Final EIR prior to certification, consistent with CEQA guideline 15088.5.

The EIR included analysis of air quality (Final EIR, Section 4.1), biological resources (Final EIR, Section 4.2), greenhouse gas emissions (Final EIR, Section 4.3), hydrology/water quality (Final EIR, Section 4.4), transportation/traffic (Final EIR, Section 4.5), and long term impacts (Final EIR, Section 5). The Final EIR concluded that the project would not result in any significant environmental impacts in any of these potential impact areas. A summary of this analysis is located in Table ES-1 of the Final EIR, pp. ES-3-5.

Four comment letters were received during the public review period from Save the Plastic Bag Coalition, American Chemistry Council, Symphony Environmental Technologies Plc, and Heal the Bay. The first three commenters, Save the Plastic Bag Coalition, American Chemistry Council, and Symphony Environmental Technologies Plc, questioned the adequacy of the EIR in a number of respects including, but not limited to:

- the amount of plastic bag litter
- alternatives to addressing this litter and the cost thereof
- the extent of the environmental impact of paper bags

- the type of reusable bags analyzed and assumptions about the use of reusable bags
- the economic impact of the proposed ordinance
- the range of alternatives studied, including the use of oxo-biodegradable bags
- the hygiene of reusable bags
- impacts on the recycling infrastructure
- impacts to landfills from paper and reusable bags
- the analysis of cumulative impacts

Heal the Bay's comments addressed:

- plastic bag litter, recycling amounts, and its impact on marine life and water quality
- paper bag environmental impacts
- the preferred alternative
- an alternative definition for reusable bags
- the scope of retail businesses covered by ordinance

The Final EIR incorporates these four comment letters received during the public comment period and provides detailed written responses to each comment contained in the letters, Final EIR, pp. 8-1 through 8-74.

After the public comment period, additional and supplemental comment letters and materials were received. While these late submittals are not required to be incorporated into or responded to in the Final EIR (see CEQA Guideline, Section 15088(a)), they will be part of the administrative record and staff will be prepared to respond to these comments at the hearing on this proposed ordinance.

In its comments, Heal the Bay recommended that the City modify its definition of reusable bag in the ordinance to avoid creating a loophole that would allow slightly thicker and heavier plastic bags from being distributed in lieu of more durable woven

polypropylene bags. Staff agrees with this recommendation and requests Council to consider adoption of the following revised definition of reusable bag in proposed Section 5.45.010(i):

*"Reusable Bag means any bag with handles that is made of cloth or durable washable fabric that is specifically designed and manufactured for multiple reuse, meaning 125 or more uses, with a carrying capacity of 22 or more pounds, and is machine washable."*

This definition change would not require revision of the Environmental Impact Report because the potential environmental impacts using this new definition would be less than the potential impacts analyzed in the EIR.

The EIR studied three alternatives. Alternative 1, the No Project Alternative, assumes that the ordinance is not adopted. The existing retail stores would continue to provide single-use plastic bags and would continue to provide single-use paper bags free of charge to the customers. Alternative 2, Ban on Single-Use Plastic Bags, No Cost Pass-Through Requirement for Single-Use Paper Bags would prohibit all retail establishments (except restaurants) from providing single-use plastic carryout bags but would not require stores to pass-through the cost of the bags to the customer. Alternative 3, Ban Both Single-Use Plastic and Paper Bags, would prohibit all retail establishments (except restaurants) from providing single-use plastic and paper carryout bags.

The City Council is not required to make findings rejecting the alternatives described above, and detailed in the Final EIR, since all of the project's impacts will be less than significant. However, none of the project alternatives are clearly superior to the proposed project on either environmental or policy grounds. The No Project alternative fails to meet the stated objectives of the project and results in continued significant impacts to the marine environment and water quality as a result of single-use plastic bag litter and pollution. Alternative 2 which would ban single-use plastic bags without requiring the cost of single-use paper bags to be passed through to the customer would

likely result in a significant increase in the use of single-use paper bags, which would likely result in adverse environmental impacts, as noted above. While Alternative 3, the Ban on Both Single-use Plastic and Paper Bags Alternative, would be the environmentally superior alternative, in the short term it would force retail customers to use reusable bags without option and would be potentially problematic for the stores if customers did not have reusable bags with them and were not provided an option.

#### Policy Alternatives

In addition to the recommended action, the City Council could

1. modify the ordinance to substitute the definition of reusable bag, as noted above;
2. consider other modifications to the ordinance;
3. not adopt the ordinance.

Adoption of the first alternative is recommended by staff and would have the effect of closing a potential loophole in the current ordinance that could allow the distribution of slightly thicker plastic bags, rather than more durable reusable bags, in Santa Monica stores. The impact of the second alternative would depend on the modifications that Council made and could either expand or reduce the scope of the ordinance provisions, penalties and to whom the ordinance applies. Staff would have to assess whether further environmental review was required for any of these modifications. Pursuing the third alternative would avoid additional costs to the City for outreach and implementation, and would avoid potential additional costs to Santa Monica retail establishments; however, it would not support the Council's goal of reducing the environmental impacts related to single-use carry out bags in Santa Monica.

### **Financial Impacts & Budget Actions**

The financial impacts from adoption of the recommended ordinance will include additional costs to City operations to:

- 1) conduct workshops and other outreach activities to provide information and assistance to retailers affected by the ordinance
- 2) conduct an ongoing public outreach and information campaign to inform the public about the ordinance and encourage people to bring their own bags to stores
- 3) provide ongoing enforcement of the ordinance
- 4) tracking and reporting paper bag sales and cost pass-through revenues reported by the stores and evaluation of store compliance and program effectiveness

Completion of this additional work will require the addition of a 0.5 FTE Administrative Analyst through the remainder of the fiscal year, as well as funding for supplies and expenses, which include the purchase of locally produced reusable bags for distribution to residents, development and production of advertising materials, and other outreach activities at an additional cost of \$60,000 to initiate implementation of the ordinance through June 30, 2011. The OSE has identified savings in their current budget to fund these activities.

As noted above, the previous version of the proposed ordinance, developed prior to the November 2, 2010 passage of Proposition 26 by California voters, included a fee on paper bags. Part of the revenue generated by that fee would have completely covered the costs to the City for implementation and enforcement of this ordinance. Because the fee was eliminated from the ordinance after the passage of Proposition 26 the ordinance will no longer generate revenues to offset the City's costs to administer the ordinance.

Budget authority for subsequent years will be requested in each annual budget cycle for Council approval. Additional requests for one-time funding in the amount of \$40,000 and on-going funding in the amount of \$10,000 plus the request for an addition of a 0.5 FTE Administrative Analyst (\$65,000) for ongoing implementation of this ordinance will be requested as an enhancement to the OSE FY 2011-12 budget.

**Prepared by:** Dean Kubani, Director

**Approved:**



Dean Kubani  
Director, Office of Sustainability and the  
Environment

**Forwarded to Council:**



Rod Gould  
City Manager

**Attachments:**

1. Resolution Certifying Final Environmental Impact Report
2. Resolution Making CEQA Findings
3. Final Environmental Impact Report
4. Ordinance
5. Analysis of Cost Pass-Through
6. Analysis of AB 1998 (Brownley)