

County of Santa Clara

Department of Agriculture and Environmental Management
Integrated Waste Management Division



1553 Berger Drive, Bldg. #1
San Jose, CA 95112
(408) 282-3180
Fax (408) 282-3188
www.ReduceWaste.org

MEMORANDUM

DATE: October 22, 2008
TO: Recycling and Waste Reduction Commission
FROM: Elizabeth Constantino, Manager
Integrated Waste Management Division
SUBJECT: Single Use Disposable Carry-out Bag Ordinance

BACKGROUND

Single-use carryout bags are a source of litter impacting the County of Santa Clara and the wider environment. According to the Santa Clara Valley Urban Runoff Pollution Prevention Program, 60 percent of the litter found in Bay Area creeks is plastic. While paper has been noted in land-based litter studies such as San Francisco's recent report of 2007, "biodegradable" material, which would include paper, only comprises 12% of the litter found in Bay Area creeks. Litter collection for beaches, state highways, cities and counties costs the state \$303.2 million each year.

The collective problem of plastics in the marine environment affects the world beyond Santa Clara County. Santa Clara County land-based debris, including litter (mostly bags, packaging and single-use disposable products) is conveyed through storm drains to local creeks, into San Francisco Bay and into the Pacific Ocean. The environmental impacts and issues include the use of fossil fuels (petroleum and natural gas) equivalent to more than 12 million barrels of oil to produce plastic bags, the related pollution and energy consumption due to resource extraction, manufacture and transportation, the billions of bags that end up as litter each year and the fact that plastic breaks into toxic bits that foul soil, waterways and the food web.

The Technical Advisory Committee (TAC) has discussed at length, several options for the specifics of a model ordinance. These include what types of bags would be covered, which retailers, fee versus ban or a combination of both, enforcement, provisions for sunset/reevaluation and performance standards.

It should be noted that the Technical Advisory Committee has not taken an official vote on the text that follows. As you saw from the documentation presented at the August 27 RWRC meeting, the specific options vary from city to city within Santa Clara County. The TAC has however, reached consensus on the larger issues in the document and look to the RWRC for further direction on the draft model ordinance.

MEMORANDUM

TO: RECYCLING AND WASTE REDUCTION COMMISSION
FROM: SKIP LACAZE, CHAIR, TAC SOURCE REDUCTION & RECYCLING
SUBCOMMITTEE
SUBJECT: DISPOSABLE BAG ISSUES
DATE: 10/15/2008
CC: TAC DISTRIBUTION LIST; SRR DISTRIBUTION LIST

The Technical Advisory Committee (TAC) and its Source Reduction and Recycling Subcommittee (SRR) have been discussing unresolved issues related to plastic bags and other disposable carryout shopping bags since the August 27 Commission meeting. Strong consensus has been achieved on some of the components of a model Countywide ordinance, while some issues have achieved the agreement of only a majority of the participants.

TAC requests that the Commission consider the various issues discussed below, determine which of TAC's recommendations or alternatives to adopt, and direct County staff and TAC to return to the Commission as soon as practicable with a draft model ordinance for Commission approval. Since some of the recommendations and alternatives may be challenged on environmental or legal grounds, TAC also recommends that the Commission request County Counsel to work with interested City attorneys to advise the Commission and draft the model ordinance, and that a legal opinion be requested of the Attorney General if appropriate.

Since many of the issues associated with disposable bags have been discussed at length at previous meetings of the Commission and in other venues, no extensive background and analysis has been prepared for this report. The staff report for the recommended model ordinance will be more extensive.

Policy Issues

At its August 28 meeting, SRR determined that several major policy issues had achieved a broad, but not necessarily unanimous, consensus:

1. All types of disposable carryout bags should be included in the ordinance—plastic, paper, and compostable plastic;
2. The ordinance would reduce the use of disposable bags primarily through fees, rather than bans;
3. Single-use, disposable plastic carryout bags should be banned, but individual stores could opt out of the ban if they voluntarily charged a fee on such bags;
4. All retail establishments should be included, except that restaurants and take-out food establishments would be excluded initially, and retailers that were very small or subject to extreme circumstances would be able to apply for exemption;
5. The ordinance should become effective six months after enactment.

TAC accepted these positions at its September 11 meeting and identified the following “deal points” for SRR to address further prior to TAC’s October meeting, to clarify any recommendations to the Commission:

1. Problem Statement – what is it we are trying to address/correct through our efforts?
2. Enforcement – how will the restrictions be enforced? who? how? etc.
3. Bag Size – what size bags should be addressed?
4. Performance Standards – how can we measure effectiveness? Is it bags found in litter?
5. Sunset/Re-evaluation Provision – when should our effectiveness be evaluated and changes considered?

SRR discussed these issues at its September 25 meeting, reporting back to TAC on October 9 that it had consensus on the problem statement, bag size, and provisions for a sunset or reevaluation, but not on enforcement or performance standards. TAC agreed by a near-unanimous vote to submit to the Commission the recommendations that had been agreed to and a selection of alternatives.

Policy Recommendations and Alternatives for Commission Discussion and Action

A. All types of single-use, disposable carryout bags would be included in the ordinance—plastic, paper, and compostable plastic

1. Alternative: only plastic bags would be included (there is almost unanimous consensus that this alternative is environmentally inferior due to resource consumption and disposal considerations)

B. The ordinance would reduce the use of disposable bags primarily through fees, rather than bans

1. Alternative: the ordinance would be based on bans of all types of disposable carryout bags, rather than fees (less flexible than a fee based system; does not provide revenue to offset costs of litter control or enforcement of bans)
2. Alternative: the ordinance would be based on bans of disposable, carryout plastic bags, and fees on paper bags (Palo Alto’s draft recommendation; subject to some of the same CEQA risk as above)

C. Single-use, disposable plastic carryout bags would be banned, but individual stores could opt out of the ban if they voluntarily charged a fee on such bags (San Jose’s draft recommendation for stakeholder discussion)

1. Alternative: the fees would be levied on consumers (the generators of waste bags) rather than stores, which may avoid the local fee preemption in AB 2449 (current favored alternative of California Grocers Association; needs legal review)
2. Alternative: the ordinance would be based on bans of disposable, carryout plastic bags at the stores where local fees have been preempted by AB 2449, and fees on all other bags, including plastic bags at other stores and paper bags at all stores

D. All retail establishments would be included, except that restaurants and take-out food establishments would be excluded initially, and retailers that were very small or subject to extreme circumstances would be able to apply for exemption

1. Alternative: the ordinances would apply only to the large grocers and pharmacies currently covered by AB 2449
2. Alternative: the ordinance would apply to a larger fraction of retail establishments than AB 2449, but would exclude the majority of small establishments, at least initially (this alternative might be seen as necessary by some jurisdictions if a fee-based system is chosen, due to difficulties of administering a near-universal program)
3. Alternative: the ordinance would apply to all retail except a few specified establishments (such as non-profits) and, perhaps, restaurants (this alternative is seen by the California Grocers Association and some others as superior from a public information and enforcement perspective, especially for a ban-based system)

E. The ordinance would become effective six months after enactment

1. Alternative: the local ordinances would become effective on some specified date or after a different duration
2. Alternative: the local ordinance might only become effective if a Statewide fee or ban is not in effect by January 1, 2010 or some other date
3. Alternative: the local fee would not be effective on all or some stores until the existing preemption of local fees is eliminated or expires

F. Problem Statement

The following issues should be discussed in the staff report for the proposed model Countywide ordinance and, as appropriate, in the ordinance itself:

1. Litter and inappropriate disposal
 - 1.1. street litter (aesthetics; safety; management costs)
 - 1.2. urban runoff (stream and riparian habitat degradation; bay and marine issues)
2. Resource conservation and pollution control
 - 2.1. consumption of natural resources for single-use bags (natural gas, oil, forests)
 - 2.2. energy consumption (resource extraction, manufacture, transportation)
 - 2.3. pollution (resource extraction, manufacture, transportation, disposal)
3. Public education
 - 3.1. replacement of disposable bags with reusables provides an implicit message to our residents to reduce waste, conserve resources, and protect the environment
 - 3.2. a reusable bag campaign provides additional opportunities to send complementary environmental messages
4. Reducing and recovering costs of managing discarded bags
 - 4.1. regulation of disposable bags and promotion of reusables will reduce costs to local government associated with bag litter and plastic recycling
 - 4.2. creation of a fee on disposable bags would reduce their use and provide revenues to partially offset the costs of local litter control programs

- 4.3. significant reduction in the use of disposable bags in favor of reusables would not increase total operating costs to retail stores

G. Enforcement

1. No consensus on a uniform enforcement system; alternatives mentioned were
 - 1.1. Countywide enforcement, perhaps by Environmental Health
 - 1.2. enforcement remains a local option
2. Ban compared to fee systems
 - 2.1. a ban can be enforced on a complaint basis, but
 - 2.2. a fee system requires proactive enforcement
3. An ordinance could require store signage (windows, checkout areas) to notify the public that the store is covered by the ordinance or exempt, then enforcement could be on a complaint basis

H. Bag Size – what size bags should be addressed?

1. There should be no exception for carryout bags on the basis of size
 - 1.1. bags used for protection of unpackaged food, greeting cards, and other items, which are then placed in carryout bags, would be exempt
 - 1.2. small carryout bags issued at internal points of sale (e.g., pharmacy counters inside larger stores) would not be exempt
2. Used cardboard boxes and other types of carryout packaging would not be covered

I. Performance Standards

One or more of the following alternatives should be selected:

1. Alternative: litter surveys (number or percentage of disposable bags in street surveys; creek trash assessments, collected litter, etc.)
2. Alternative: store surveys of bag use (percentage of disposable and reusable bags)
3. Alternative: amount of disposable bags purchased or used by stores, by number or weight (AB 2449 reporting, expanded to other covered stores to the extent practicable)

J. Sunset/Re-evaluation Provision – when should our effectiveness be evaluated and changes considered?

1. There should be no sunset on local bag ordinances
2. The effectiveness of local ordinances should be evaluated after three years and modifications should be considered as appropriate