




MEMORANDUM

DATE: May 19, 2011

TO: Authority Board of Directors and Alternates
Interested Parties
TAC Members

FROM: Chris Lehon, Executive Director 
Vince Ferro, Recycling Coordinator

SUBJECT: Bag Ban Regional Study Released

The following is the release of the Bag Ban Feasibility Study. If you have questions or comments please contact me at (510) 215-3127 or email: chrisl@recyclemore.com.

Single-use carry bags comprise a high percentage of litter and debris. In order to comply with the Municipal Regional Water Permit Litter Mitigation requirements cities and counties will be required to reduce trash in water-ways by 40 percent by 2014, and 70 percent by 2018.

These measures can be expensive, and thus, a burden to municipalities with already strained budgets. Some California cities and counties are therefore looking to reduce the amount of litter in their waterways by regulating the problem materials at the source. The issue of plastic film (thin single-use bags) was brought to the West Contra Costa Integrated Waste Management Authority (RecycleMore) Board of Directors (BOD) in an earlier report. The BOD directed staff to gauge the level of interest in supporting a regional movement from Member Agencies (cities).

With the study completed it is appropriate to bring the issue back for discussion at the June 2011 BOD meeting.



SINGLE-USE BAG BAN FEASIBILITY STUDY

INTRODUCTION

This report considers issues and options regarding single-use bag bans. It is based on the State and other jurisdictions experience in attempting to decrease the disposal impacts of single-use plastic bags. There are several reasons for RecycleMore and its Member Agencies to consider banning single-use bags:

- To address solid waste source reduction and resource conservation
- To decrease the cost associated with litter cleanup
- To address increasing public interest in environmental issues
- To aid the long-term life of marine environments

The issue of plastic bags was brought to the Board of Directors in October of 2010. In October 2010, the West Contra Costa Integrated Waste Management Authority (RecycleMore) Board of Directors (BOD) directed staff to gauge the level of interest in supporting a regional movement from Members.

BACKGROUND

RecycleMore staff requested each Member Agency City Councils to authorize staff to coordinate with RecycleMore and other local cities to explore the future feasibility of a single-use bag ordinance. A feasibility study would address environmental compliance, costs and legal analysis. The BOD would consider further action once the study is released.

The Hercules, Pinole and San Pablo City Councils supported this effort. El Cerrito Environmental Quality Committee endorsed a regional effort and forwarded the recommendation to the City Council to consider on June 6. The City of Richmond is considering a bag ban ordinance and City and RecycleMore staff have worked to seek City Council support.

Single-Use Bags – Statewide Impacts

An estimated 19 billion single-use plastic carryout bags are used statewide each year. Many bags are given to customers, at no charge, when they are purchasing groceries and other retail items. When littered or discarded, these bags have undesirable impacts on water quality, stormwater, wildlife, aesthetics, solid waste and recycling.

Plastic bags have historically suffered from low recycling rates (less than 5%) despite recycling and voluntary solutions to control pollution from plastic bags.¹ Blown plastic often becomes litter because the bags are so lightweight and aerodynamic, they are quickly transported into waterways. Once the plastic bags have entered into the environment they do not chemically degrade or decompose into the natural environment, but instead breakup into smaller and smaller pieces.

Plastic bags are not amenable to being recycled as part of curbside recycling programs. Their physical characteristics lead to bags clogging and jamming machinery. Bags recovered in this way are often so contaminated that end-users who recycle plastics into new products do not accept them.

Paper bags made from virgin materials are not sustainable one-for-one substitutes for plastic carryout bags because the production of virgin material bags contributes to deforestation, natural resource depletion, greenhouse gas emissions, and additional waterborne wastes. Paper carryout bags are 100-percent recyclable and those that are made from post-consumer recycled fiber have fewer negative impacts than virgin fiber paper bags.

As staff researched the issue and scoped out what an ordinance might look like, it kept an eye on developments in other jurisdictions and at the state level. In 2010 it appeared that the State would preempt local action with a state level ban on single-use plastic bags. The bill, supported by the California Grocers Association and Governor Schwarzenegger, passed the Assembly and was defeated in the Senate on the last day of the session.

There are seven jurisdictions in California that adopted bag bans: Fairfax, Malibu, Manhattan Beach, Palo Alto, San Francisco, Los Angeles County, and San Jose. Marin County, Santa Cruz, Sunnyvale, and Santa Clara County may soon be the next jurisdictions to implement bans. Dozens of other cities are convening commissions to study the issue and are interested in pursuing bans.

Banning Single-Use Plastic Bags and Placing a Charge on Paper Bags

Due to California Law (AB 2449), local jurisdictions are not permitted to place a fee on single-use plastic bags. Thus, an ordinance aims to use the ban on plastic bags and the fee on paper to use the proven strategy of price to help shift consumers to reusable bags.

Reusable bags can be made of cloth or other durable materials and are designed to be used many times and have lower environmental impacts, on a per use basis, than single-use bags. Experience in other parts of the world as well as here in the United States has shown that mandatory charges on single-use bags have resulted in significant declines in bag use and consumption.

Multiple studies have assessed the value of fees on single-use bags. Herrera et al. (2008) examined a range of policy options to reduce disposable grocery bag use.² This study

¹ California Integrated Waste Management Board Study
www.ciwmb.ca.gov/lgcentral/basics/plasticbag.htm

² Master Environmental Assessment.

examined the 30-year impact of multiple policy options for reducing disposable shopping bag use, including enhanced education, a ban on disposable plastic shopping bags, and a mandatory advanced recovery fee (10-25 cents) on disposable shopping bags.³ The study resulted in:

- Education efforts alone would only result in a 5% shift away from plastic bags.
- A 15 cent fee on plastic bags would result in a shift from 100% plastic bags to 35% plastic bags, 21% paper, and 37% reusable bags, with a 7% reduction in bag use.
- A fee on both paper and plastic would shift bag use from 100% plastic to 35% plastic, 0% paper 52%, reusable bags, and a 13% reduction in bag use.

Referenced in the City of San Monica's Nexus Study, the County of Los Angeles Department of Public Works also estimated bag costs in 2007. Plastic bags were estimated at \$0.03 per bag, paper bags at \$0.10 per bag and biodegradable bags at \$0.15 per bag. A "cost recovery" fee charged for single-use paper bags is not a Proposition 26 "tax" since the fee is retained by the retailer and not a local jurisdiction.

CEQA Compliance

Jurisdictions that implemented bag ban laws completed an Environmental Impact Report (EIR). Currently, the California Supreme Court is evaluating whether it is necessary for local agencies to perform EIRs in order to ban single-use bags. Arguments begin May 4, 2011 for the court case: *Manhattan Beach vs. Save the Plastic Bag Coalition*. Consultations with legal counsel from each party have stated that the Supreme Court will make a decision within 90 days of hearing the case. One of alternatives for the BOD to consider is to wait for a ruling in this current case.

A key issue in considering a City bag ban is compliance with the requirements of the California Environmental Quality Act (CEQA). CEQA requires the city to consider the potential environmental impacts of every discretionary action it takes (not including certain actions that are "categorically exempted").

Oakland, Palo Alto, Manhattan Beach and Santa Monica were all sued in a similar fashion. Ironically, the plastics industry sues these cities based on insufficient environmental impact reports. They believe that the anti-plastic bag laws are an endorsement of paper bags, which they argue do more harm to the environment than plastic bags. On the whole, plastic bags are much more environmentally damaging than paper; however, the plastics industry does have a point. Paper bags are still single-use items, and come from trees.

Opponents of plastic bag bans have frequently used CEQA's requirements to challenge, in court, the actions of cities and counties that pass ordinances that place controls on plastic bags. With this in mind, staff is recommending that the BOD, if it decides to proceed with development of a bag ordinance, identify which single-use carryout bag controls it wishes to include in the ordinance.

³ Herrera et al. 2008. Alternatives to Disposable Shopping Bags and Food Service Items Volume I and II. Prepared for Seattle Public Utilities. January 2008.

In March 2010, Green Cities California (GCC) released its Master Environmental Assessment (MEA) on Single-use and Reusable Bags. The MEA summarizes existing studies on the environmental impacts of single-use plastic, paper, compostable and reusable bags, as well as the impacts of policy options such as fees and bans. The intent of the MEA is to provide assistance to those jurisdictions seeking to foster more sustainable communities by adopting ordinances that discourage the use of single-use bags, and encourage the use of reusable bags.

An MEA is not an EIR or another CEQA analysis because it does not reach conclusions regarding local significance and does not propose either mitigation measures or alternatives. The MEA provides local governments a one-stop reference about the impacts of restricting the use of single-use grocery bags and can be used in preparing EIRs⁴. Jurisdictions may be able to comply with CEQA without preparing an EIR by either: 1) adopting a Negative Declaration or a Mitigated Negative Declaration; or 2) adopting a Categorical Exemption.

Litigation

It is important for the BOD to be aware that most jurisdictions in California have been sued or threatened with litigation by a group known as savetheplasticbag.com. SaveThePlasticBag.com (STPB) was formed in June 2008 and includes plastic bag manufacturers, bag distributors, and citizens who are concerned about the environmental information being distributed by those seeking to reduce the use of availability of plastic bags. STPB is headed by lawyer Stephen Joseph of Tiburon. For more information, refer to www.savetheplasticbag.com.

Water Agencies

A single-use bag ban ordinance would enable Members to meet regulatory requirements under the Municipal Regional Permit for Stormwater regulatory compliance. A letter from the Regional Water Quality Control Board states that staff will work with municipalities to determine the credit (%) a bag-ban would receive towards trash load reductions.

Bay region municipalities are required to reduce trash loads in State water from storm sewer systems by 40% by 2014. These reductions can be met through trash capture devices as well as source control measures such as a bag ban. RecycleMore staff may want to work with the Contra Costa Clean Water staff to understand what percentage of State mandated litter cleanup is comprised of single-use plastic bags. Trash audit findings could determine whether proceeding with potential bans are warranted.

Education and Outreach

Staff did not initiate an extensive public outreach process until the feasibility study was completed. The public outreach process can be conducted before or during the CEQA process.

Special outreach should be conducted due to the amount and intensity of interest in this issue on the part of residents and businesses; outreach meetings can be conducted before or during

⁴ Master Environmental Assessment on Single-Use and Reusable Bags, ICF International, San Francisco, CA March 2010.

the CEQA process. Print advertisement, web site information, a press release and notices can promote the meetings. An Internet-based survey can be used to collect and summarize input from the community.

Education and outreach will target the wider group of affected stores such as grocery stores. Outreach is expected to be focused on:

- Outreach to affected stores as defined by an ordinance with encouragement to other stores, which may be interested in voluntary participation.
- Community outreach in each city to bring the message to consumers.

Enforcement

A ban on single-use bags requires some mechanism of enforcement, which may be proactively enforced or complaint driven. Violations commonly result in a fine, which increases with multiple violations. Associated costs would include staff time to respond to complaints, send notices of violation and collect fines. Some cities integrate enforcement into existing municipal activities including inspections of weights and measures or code enforcement. Cities that have successfully implemented bans have generally relied on complaint driven enforcement followed by education, warnings, and finally fines in cases of continued incidents of infraction.

Job Impacts

Staff research has shown that no manufacturers of single-use bags exist within Contra Costa County, however there is a single manufacturer of reusable bags, "Keep Cool Bags" located in Lafayette, CA. The state of California contains roughly a dozen companies that produce single-use bags, single-use bags represent one of many products offered by these companies and some of these companies also produce reusable bags. A 2008 study on the job impacts of single-use bag bans conducted in Scotland found that significant job losses were not associated with a single-use bag ban.⁵ Authority staff was unable to locate economic studies on single-use bag bans completed in the United States.

FISCAL IMPACT

Staff estimates the cost of a full EIR at \$100,000. Whether or not the ordinance will require an EIR, Mitigated Negative Declaration or Negative Declaration will depend on the findings of the CEQA Initial Study and any updates to case law between now and the date the Members' Councils considers ordinance adoption. Actual costs could thus range from \$40,000 (Negative Declaration) to \$100,000 (EIR). Funding options are discussed in the "Alternatives" section.

CONSIDERATIONS

Although litter reductions in our waterways are handled by some Members, decreasing litter is also a goal of RecycleMore. RecycleMore may wish to take a proactive measure in West

⁵ Convery, F., S. McDonnell, and S. Ferreira. 2007. The most popular tax in Europe? Lessons from the Irish plastic bags levy. *Environmental Resource Economics* 2007(38):1-11.

Contra Costa County by banning single-use bags. Staff suggests that if the Board wishes to address this issue, like San Jose, consideration should be given to stakeholders and the community by engaging them prior to any action. Staff is also exploring joining with other jurisdictions and the County Clean Water Program, to share in costs for implementing such a measure.

Each West County city would have to implement a bag ordinance because RecycleMore does not have the same power to enact ordinances. If the BOD would like to proceed with a single-use carryout bag ordinance, then staff can prepare a model ordinance that:

- Bans the distribution of all single-use carryout bags, regardless of composition
- applies the ban to:
 - Supermarkets with gross sales in excess of \$2 million per year and pharmacies with more than 10,000 square feet of retail floor space
 - Other Large Retailers with more than 10,000 square feet of retail floor space
 - Other Food and Beverage Stores, which includes neighborhood grocers, liquor stores, convenience stores and gasoline stations that sell snacks and beverages
- Exclude restaurants, take-out food establishments or any other business that 90% or more of their revenue from the sale of food prepared or packaged at the establishment.
- Exempt customers participating in government-sponsored food programs like WIC (Woman Infants and Children) from paying the charge for a paper bag.
- Allows an exception to the ban if retailers package customer purchases in Green Paper Bags (bags containing at least 40% recycled paper content), so long as the retailer charges the customer a separately displayed cost-recovery fee of at least fifteen cents per bag, with 100% of the fee to be retained by the retailer.
- Define the specific factors (durability, washability, and safety of materials) that qualify for a reusable bag.
- Exclude plastic bags used to carry meats and vegetables in grocery stores.

ALTERNATIVES

Staff recommends the following alternatives and funding options for the BOD to consider:

Alternative 1

Delay further action until the California Supreme Court decides whether an EIR is required to pass an ordinance. (*Supreme Court decision will be made before August 1st 2011*)

Alternative 2

Pursue a county-wide effort with the Clean Water Program, waste management agencies, and other parties in order to significantly defray the CEQA compliance cost.

Alternative 3

Direct staff to prepare a model Single-Use Bag ordinance to be implemented by all five Members and request proportional financial support from Members for CEQA compliance (12.5% per each Board Member and RecycleMore):

- RecycleMore \$12,500 City of El Cerrito \$12,500
- City of Hercules \$12,500 City of Pinole \$12,500
- City of Richmond \$37,500 City of San Pablo \$12,500

Alternative 4

Amend RecycleMore's annual budget by ten percent (\$100,000) to fund a regional EIR and Members could provide funding to cover Planning Department time as well as ongoing implementation. Each Member Agencies' city council would then pass and implement the model ordinance.

Alternative 5

No further action

