



Council Agenda Report

Date: <MEETING_DATE>

Item No: <#>

FROM: Hans Uslar, Assistant Director of Plans and Public Works
Prepared By: Angela Brantley, Solid Waste Program Manager

SUBJECT: Pass Ordinance to Print to Ban the Use of Plastic Single-Use Carry-Out Bags and Prohibit the Free Distribution of Recycled Paper Bags by Retail Establishments (Negative Declaration Proposed)

RECOMMENDATION:

That the City Council certify the Negative Declaration and pass to print the proposed Ordinance with embedded Findings (Attachment 1).

POLICY IMPLICATIONS:

The action is consistent with Council's vision statement and value drivers that demand to: *"Work to improve the quality of life of our residents;"* and, *"Appropriately preserve, promote, and maintain our historic, cultural, and environmental assets."*

Staff estimates that Council approval of the proposed ordinance will reduce plastic bag distribution in the City of Monterey by approximately 2.8 million bags annually.

FISCAL IMPLICATIONS:

The proposed ordinance has limited fiscal implications. Funds are budgeted to cover the local advertising and postal costs.

ENVIRONMENTAL DETERMINATION:

The City Council considered the Initial Study, Negative Declaration (IS/ND Attachment 2) and public comment and determined that there is not substantial evidence, in light of the whole record, that the project has a significant effect on the environment which has not been avoided.

The IS/ND were prepared according to the California Environmental Quality Act and circulated for public review for a required 20-day review period. All related documents were made available at the City of Monterey and on the City's website. The IS/ND concluded that the project will not have a significant impact on the environment.

Several comment letters were received during the 20-day public review period. A letter received from the Monterey Bay Air Pollution Control District indicated their concurrence with the IS finding that the proposed ordinance would have a less than significant impact on air quality.

Fifteen letters received were from residents and five were from organizations: Monterey Green Action, Save Our Shores, B-Sage, Surfrider Foundation, and Oceana. The letters were generally supportive of the ordinance, although several comments indicated an interest in expanding the ordinance provisions to include restaurants.

Attached are copies of the comments received by staff regarding the approval of this ordinance. Any additional comments received after the posting of this agenda report will be placed on the dais for your review. Staff conducted three public outreach meetings on September, 29, October 3, and October 17, 2011, to solicit input from members of the community and businesses.

ALTERNATIVES CONSIDERED:

The City Council could choose to continue the free distribution of plastic and paper bags in the City of Monterey.

DISCUSSION

Newly added Information:

With this agenda report, staff is presenting again a proposal to pass an ordinance to ban the use of plastic bags, prohibit the free distribution of recycled paper bags, and to certify a negative declaration.

This reintroduction became necessary, in part, to modify the definition of a “reusable bag”. There are also several additional changes to the ordinance before you, but these are not substantial changes and they were verbally introduced during the November 1, 2011 Council meeting.

- Ensure that all dates for program implementation are consistent throughout the document. Dates for program implementation are six (6) months and nine (9) months after the final reading of the ordinance.*
- The reference to reusable bag thickness is 2.25 mils.*

The revised definition of “reusable bag” is the same definition set forth in California Public Resources Code §42250(d) and by the City of San Jose in its ordinance. The County of Santa Cruz has a substantially similar definition. This revised definition was discussed with representatives of the “Save the Plastic Bag Coalition” during a telephone conference call on November 9, 2011.

- The reusable bag description will include, “or a durable plastic bag with handles,” and will read as follows:*

“A “reusable bag” is defined as a bag made of cloth or other machine washable fabric that has handles, or a durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse”.

Staff considered the input given by the representatives of “Save the Plastic Bag Coalition,” and agrees that having some regional uniformity in the definition of ‘reusable bag’ can help facilitate a smoother transition for the affected retail establishments.

Motivation to Act:

The Pacific Ocean contains a huge accumulation of debris known as the “Great Pacific Garbage Patch” which consists mostly of plastic debris. Scientists estimate the density of plastic in this garbage patch as one million pieces of plastic per square mile. Most plastic bags do not biodegrade but slowly break down through abrasion, tearing, and photo degradation into toxic plastic bits that contaminate soil and water. Plastic bags that find their way into the marine environment essentially remain there indefinitely.

While the exact numbers are unknown, there are many reported instances of marine animals being injured or dying from ingesting or choking on plastic debris in the ocean. The Monterey Bay National Marine Sanctuary has stated that, “Marine pollution has been shown to be harmful to animals commonly seen in the Monterey Bay National Marine Sanctuary such as California Sea Lions, Common Nurses, Brandt’s Cormorants, Common Loons, and endangered Leatherback Sea Turtles.”

The proposed ordinance will significantly reduce the amount of litter generated by the use of plastic bags and in turn have a beneficial impact on the City of Monterey by keeping our land and waterways cleaner and free from debris. As a coastal city, Monterey has a strong interest in protecting the marine environment, an element which contributes to the unique quality of life in the City.

Background:

The City of Monterey is in compliance with state legislation AB 939 requirements to divert at least 50% of its waste from the landfill. The City’s current diversion rate is closer to 74%. The City and its recycling and waste hauler, Monterey City Disposal Service, in partnership with Monterey Regional Waste Management District has extensive experience in successfully managing public outreach to achieve City goals on waste reduction, recycling, and other important environmental issues.

Past outreach efforts have included implementation of leading edge waste and curbside recycling collection programs and marketing a variety of targeted environmental management programs for household hazardous waste, business recycling technical assistance, and construction and demolition recycling. In August 2009, the City passed an ordinance requiring businesses to use compostable packaging for take-out food containers. The City also provides on-going outreach to developers, residents, and businesses related to storm water and wastewater pollution prevention, and appropriate pharmaceutical and e-waste disposal.

In August 2011, the California Supreme Court ruled that the City of Manhattan Beach could ban retailers from using plastic bags without going through a lengthy environmental study on the increased use of paper bags. Although the City of Monterey is very similar to the City of Manhattan Beach in terms of population, location, coastal community, and sensitive marine species, we have chosen to reduce the amount of paper bags used by encouraging the use of reusable bags and requiring businesses to charge for the use of paper bags. The City of Manhattan Beach prepared and adopted a Negative Declaration on its proposed ordinance to

prohibit single-use plastic carry-out bags and allow paper bags and the Supreme Court of California concurred with the City of Manhattan Beach findings.

In September 2011, a similar move to block Marin County's plastic bag ban was tossed out when a Marin Superior Court judge rejected assertions the ban violated environmental rules. Unlike the City of Manhattan Beach, which allowed the free distribution of paper bags, effective in January 2012, Marin County will ban plastic bags at checkout stands at retail markets in the county's unincorporated areas and impose a charge on paper bags.

On October 18, 2011, the "Save the Plastic Bag Coalition" filed suit against the County of Santa Cruz. The Santa Cruz County law also bans restaurants and food vendors from handing out plastic bags to customers taking home prepared foods. One main argument for the law suit is the thesis that plastic bags are safer to carry hot carry out food. Monterey's proposed ordinance exempts the restaurant businesses, which means that carry out food could be transported out of the restaurants using plastic bags.

In 2010, the State of California attempted to pass Assembly Bill 1998, which banned the use of plastic bags statewide. Cities throughout California, including the City of Monterey, deferred passing ordinances in their jurisdictions on this issue in anticipation of the bill's approval. Although the bill failed, a large coalition of jurisdictions joined to draft a model ordinance for cities to use to allow them to remove plastic single-use bags from their waste stream.

City of Monterey staff members looked at this model ordinance and ten others before deciding to emulate and modify an ordinance that was passed by the City of San Jose. Staff then tailored an ordinance to Monterey's specific and unique environmental settings. San Jose collaborated with stakeholders from the Grocers Association and retail establishments throughout their jurisdiction in an effort to create an ordinance that would allow the process of eliminating plastic bag usage to proceed as smoothly as possible for all involved. As part of our outreach efforts, City of Monterey staff also met with the California's Grocers Association and was informed that the San Jose ordinance proposed a solution to the plastic and paper bag issue that was acceptable to their industry.

Grocery stores throughout the state of California have struggled with requirements that differ in each city. The Grocers Association recommended following the San Jose ordinance as much as possible to create a uniform process for the Peninsula cities. They also requested that the ordinance include all retail establishments - not just grocery stores. Grocery store managers believe that their businesses have been singled out and that undue restrictions are placed on grocery stores and not other types of businesses that also generate a great deal of plastic bag waste. As a result of these meetings, we have used San Jose's ordinance as a model for the attached proposed ordinance.

The City of San Francisco exemplifies the fact that banning single-use plastic bags is only one step in a multi-step process. After San Francisco banned plastic bags, the use of paper bags in their city increased exponentially. While paper bags may degrade quickly as litter, studies conducted by several sources found that the production of paper bags has greater negative impact on the environment than the production of plastic bags. The recommendation to place a charge on paper bags is modeled after existing programs that follow this concept. When a charge was placed on a single-use bag, a 50% to 90% reduction in use was realized. Simply eliminating the choice between "Paper or Plastic" is not enough for today's consumer to

embrace a behavioral change that will have a positive impact on the environment. We anticipate increased motivation with the concept of paying once for reusable bags vs. paying for paper bags on each and every shopping trip.

Statistics

In order to develop an ordinance that recognizes the local specific consumer behavior, City staff conducted surveys to determine the current estimated use of plastic and paper bags in our community.

At the time of the survey, the research found that 190 existing businesses in the City of Monterey would be affected by this ordinance. On a weekly basis, these 190 businesses utilize approximately 87,000 single-use carryout bags. Almost 63% of these bags (54,500) are plastic and 37% are paper bags.

Number of Single-Use Bags Used by Businesses Affected by the Proposed Ordinance

Type	Current Estimate Number of Bags (Weekly)	Current Estimate Number of Bags (Annual)	Percentage
Single-Use Carryout Plastic Bag	54,500	2,834,000	63%
Single-Use Carryout Paper Bag	32,000	1,664,000	37%
Reusable Bag	Unknown	Unknown	
Total	86,500	4,498,000	100%

The City estimates that the proposed Ordinance will shift consumer behavior to utilize reusable bags. Specifically, the City estimates the Ordinance will eliminate the use of 2.8 million plastic bags annually and reduce paper bag consumption to approximately 924,000 annually. A detailed analysis and projections are included in the attached Initial Study.

The following table summarizes the estimates of the change.

Assumed Consumer Behavior Changes with Ordinance Adoption

	Current Estimate Number of Bags Weekly	Current Estimate Number of Bags Annual	PROJECT PROPOSAL Number of Bags Weekly	PROJECT PROPOSAL Number of Bags Annual
Single-Use Carryout Plastic Bag	54,500	2,834,000	0	0
Single-Use Carryout Paper Bag	32,000	1,664,000	17,775 (1)	924,300
Reusable Bag	Unknown	Unknown	415(2)	21,580
Total Use	86,500	4,498,000	18,190	945,880

Proposed Ordinance:

The City of Monterey proposes to adopt an Ordinance that will:

- Eliminate the common use of Single-Use Carryout Bags;
- Establish a charge for paper bags;
- Encourage the use of reusable bags by consumers and retailers.

Specifically, the Ordinance prohibits retail establishments from providing a plastic single-use carry-out bag to a customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment.

Plastic single-use carry-out bags do not include bags without handles (no larger than 11" x 17") provided to the Customer:

- To transport produce, bulk food or meat from within a store to the point of sale;
- To hold prescription medication dispensed from a pharmacy;
- To segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Paper Bag.

It is important to emphasize that the charges collected for the sale of the paper bags will stay with the businesses. The City will not profit from the sale of paper bags, rather, the minimum charge is reasonably related to the cost of providing the product.

The initial charge for a paper bag will be 10 cents. After twelve months the charge for paper bags will be adjusted to at least 25 cents. The imposition of a 25 cents charge will ensure a major shift to reusable bags. The EIR of the City of San Jose (First Amendment to the DEIR, October 2010, page 20) confirms the anticipated shift of consumer behavior by stating, "Once the \$.25 bag charge is implemented ..., the percentage of customers using reusable bags (or no bag) will increase to 89%. These numbers are probably low, based on the survey of San Jose residents..."

Recent efforts by the opponents of similar ordinances in California have focused on a rather broad interpretation of Proposition 26. Prop 26 redefines regulatory fees as taxes. This means that new regulatory fees must now be treated like taxes and must be approved by a legislative supermajority (at the state level) and a voter supermajority for local measures.

The City Attorney of the City of San Jose issued the legal opinion that finds that Prop 26 does not apply to such bag bans because it does "not result in revenue to the state or local government. Rather, like the sale of any other product, the retail establishment retains the revenue from the sale without any requirement that the retailers pay for governmental activity."

Since the City will not derive revenues from the sale of the paper bags and the Prop 26 argument becomes questionable, staff also weighed the initial cost of 10 cents per bag, and subsequent 25 cents per bag, as reasonable charges related to the cost of providing the product. In order to come to this conclusion staff evaluated the paper bag charges of other jurisdictions such as San Jose. Furthermore, staff did an internet based price comparison for paper bags that found the costs for bulk paper bags differs widely between 6 cents to 18 cents per bag. The Master Environmental Assessment (MEA) on Single-Use and Reusable Bags prepared by Green Cities California dated March 2010 estimates the range of costs for paper

carry out bags to be 15 cents to 25 cents per bag. The City of Santa Monica's Office of Sustainability and the Environment's Analysis of Cost Pass-Through dated December 20, 2010 reported the reasonable cost of 100% recycled, 40% post-consumer content paper bags to be in the range of 7 cents to 25 cents. This range was based on data collected by the cities of Santa Monica and San Jose, the counties of Los Angeles, Santa Clara and Marin, and the estimates included in the Green Cities California MEA report referenced above.

The Ordinance will not apply to public eating establishments, nonprofit charitable re-users, and customers participating in the California Special Supplement Food Program for Women, Infants, and Children or the Supplemental Food Program.

Community education will include the distribution of approximately 8,000 free reusable shopping bags. At past outreach events staff has learned that although many people in the community own reusable bags, there is an issue with remembering to take the bags with them when they shop. To address this issue, staff is working with the Central Coast Media Recycling Coalition (CCRMC) to produce attractive metal signs to remind shoppers to bring their reusable bags while shopping. Samples of these can be found in the Del Monte Center parking lots.

In summary, staff recommends the City Council certify the Negative Declaration and pass to print the attached ordinance with the attached Findings.

HU/agb/mc

Attachments: 1. Ordinance
2. Initial Study
3. Written Comments.

e: All Business Associations (Email Recipients)
All Neighborhood Associations (Email Recipients)
MCDS, P O Box 2780, Monterey, CA 93940-2780
MRWMD, P O Box 1670, Marina, CA 93933-1670

c: All Business Associations (Hard Copy Recipients)
All Neighborhood Associations (Hard Copy Recipients)