



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

M-1

For the meeting of: July 22, 2014

Date: July 14, 2014
To: Board of Supervisors
From: Phillip Smith-Hanes, County Administrative Officer *PSH*
Subject: Single-Use Plastic Bag Ban

RECOMMENDATION(S):

That the Board of Supervisors:

1. Receive a staff report on possible options for implementation of a single-use plastic bag ban in the unincorporated areas of the County, and
2. Provide additional direction to staff as appropriate on how to proceed.

SOURCE OF FUNDING: General Fund – Solid Waste Fees

DISCUSSION:

On January 14, 2014, the Board of Supervisors directed staff to “bring back proposals for consideration for a single-use plastic bag ban for the unincorporated areas of the County.” The County Administrative Office met with an informal working group of other County staff involved in the solid waste system and identified the following two options:

Prepared by Cheryl Dillingham

CAO Approval *[Signature]*

REVIEW:

Auditor _____ County Counsel _____ Human Resources _____ Other _____

TYPE OF ITEM:

☐ Consent
☒ Departmental
☐ Public Hearing
☐ Other _____

PREVIOUS ACTION/REFERRAL:

Board Order No. G-1, G-1, M-1

Meeting of: 11/2/2010, 3/6/2012, 1/14/2014

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor _____ Seconded by Supervisor _____

Ayes _____
Nays _____
Abstain _____
Absent _____

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: _____

By: _____

Kathy Hayes, Clerk of the Board

*BOARD ORDER

- Craft a local ordinance based on the model developed by the Humboldt Waste Management Authority (HWMA) and adopted by the City of Arcata
- Hold development of a local ordinance in favor of a statewide approach, as specified in the County's legislative platform

Staff was initially hopeful that Senate Bill (SB) 270 would be passed and result in a statewide policy on single-use bags. At this point it is unknown if SB 270 will be passed and signed into law, and therefore adoption of a local ordinance should be considered.

SB 270 proposes to prohibit specified grocery stores and pharmacies from distributing single-use plastic bags beginning July 1, 2015. Starting July 1, 2016, the bill would also prohibit convenience and liquor stores from making available single-use plastic bags. Additionally, the bill would prohibit stores from selling or distributing recycled paper bags for less than ten cents. As currently written, the bill would preempt local ordinances already in place if they are adopted after September 1, 2014.

HWMA has developed a model ordinance for regulation of single-use carry-out bags and the associated environmental review documents. As defined in the model ordinance a single-use carry-out bag does not include a bag provided solely for produce, bulk food, meat, or by a pharmacy for prescription medication. The City of Arcata has adopted this model ordinance and the associated Negative Declaration as required by the California Environment Quality Act (CEQA) with minor changes. Arcata's ordinance is also primarily consistent with the proposed State legislation. Staff recommends that if an ordinance is developed that it be similar to the one adopted by the City of Arcata.

According to the Californians Against Waste website, at least 110 cities and counties and public agencies throughout California have adopted ordinances banning plastic bags including San Francisco, San Jose, Long Beach, Los Angeles County, Los Angeles City, Santa Clara County, and Alameda County. Many of these local governments also require stores to charge a fee for a paper carryout bag, and a few have banned both single-use plastic and paper carryout bags. By January 1, 2015, it is estimated that local bans will have been implemented by jurisdictions covering over one-third of the State's population.

Staff is looking for direction regarding development of an ordinance implementing a single-use bag ban and completion of an Initial Environmental Study as required by CEQA.

If the Board chooses to proceed with implementation of an ordinance banning single-use carry-out bags in the unincorporated area, the following additional items should be considered:

- Defining what establishments qualify as "Stores" and are subject to single-use bag regulation
- Timing for implementation of the single-use bag ban and impacted "Stores"
- Amount to charge for a paper bag and timing for implementation of the charge
- Delegation of a County enforcement department

What establishments should be included?

The HWMA model ordinance includes supermarkets, pharmacies, large retail stores, convenience food stores and public eating establishments (see attachment section 2(b)). The Arcata ordinance and State legislation do not include public eating establishments. For consistency staff recommends that public eating establishments not be included in a County ordinance. Staff did some preliminary research and estimates the total number of establishments in the unincorporated areas of the County as follows: eight supermarkets, seven pharmacies, three large retail stores, 61 convenience stores and 322 retail stores. SB 270 does not include retail stores, while Arcata's ordinance includes all retail stores. The three large retail

stores in the unincorporated areas of the County have pharmacies and would be included under that definition. Staff recommends that the County follow the States proposed legislation and include supermarkets, pharmacies, and convenience food stores in a County ordinance.

When should a ban take effect?

The HWMA model ordinance does not include a recommendation for timing of implementation. Arcata's ordinance went into effect about six months after adoption for all impacted stores. The State proposes a phased implementation with large stores and pharmacies going first, and convenience stores being regulated one year later. Staff recommends that an implementation schedule similar to the City of Arcata be followed by the County.

What amount should be charged for a paper bag?

The HWMA model ordinance includes a minimum charge for paper bags of \$0.05. The State and Arcata both include a minimum charge of \$0.10 for a recycled paper bag. Part of the reason for charging for paper bags is to encourage the use of reusable bags. Life Cycle Assessment studies have shown that reducing the use of both single use plastic and paper bags decreases the use of non-renewable energy sources. In order to allow time for retailers and shoppers to become educated about the new bag requirements the City of Arcata did not implement the charge until six months after the original single-use plastic bag ban went into effect. Staff recommends that the County develop an ordinance that utilizes the same charge and timing for implementation as that adopted by Arcata.

What department should enforce the Ordinance?

Adoption of a local ordinance regulating single-use bags requires identifying the County department that will have primary responsibility for enforcement. The department will be authorized to establish regulations and take actions necessary to obtain compliance with the ordinance. Currently two County departments have responsibilities related to enforcement of County Code regulating solid waste activities: Public Works and the Department of Health and Human Services - Environmental Health. It is recommended that if your Board chooses to proceed with an ordinance regulating single-use bags that this item be referred to the potentially affected departments for further evaluation.

FINANCIAL IMPACT:

Adoption of an ordinance by the County to regulate single-use bags would require the completion of an Initial Environmental Study as required by CEQA. Preliminary estimates are that it would cost about \$5,000 for Public Works to develop this document. If an ordinance is adopted there will be on-going costs associated with educational outreach and enforcement. These costs are not known at this time. It is anticipated that all costs related to development and implementation of a single-use plastic bag ban ordinance would be covered by franchise fee revenue in the Solid Waste budget and there should be no financial impact to the General Fund.

The requested action supports the Board's Strategic Framework Core Roles by making proactive decisions to advance local interests in natural resource discussions.

OTHER AGENCY INVOLVEMENT: None.

ALTERNATIVES TO STAFF RECOMMENDATIONS: Board discretion.

ATTACHMENTS: Model Ordinance: Single Use Carry Out Bag Prohibition

ORDINANCE NO. _____

AN ORDINANCE OF THE [JURISDICTION]
AMENDING _____ OF THE _____ CODE,
REGULATING THE USE OF PLASTIC CARRY-OUT BAGS AND RECYCLABLE
PAPER CARRY-OUT BAGS AND PROMOTING THE USE OF REUSABLE BAGS

The [governing body] of the [jurisdiction] ordains as follows:

Section 1. Chapter _____ is hereby added to read as follows:

SEC 1. FINDINGS. The [governing body] of the [jurisdiction] finds and declares the following:

1. The use of single-use shopping bags (plastic, paper, biodegradable) has severe environmental impacts, including greenhouse gas (GHG) emissions, litter, harm to wildlife, ground level ozone formation, atmospheric acidification, water consumption and solid waste generation.
2. There are approximately _____ (____) retail establishments or stores as defined herein in the [jurisdiction], most of which provide single-use, disposable carry-out bags to their customers.
3. Many of these single-use carry-out bags are made from plastic or other material that does not readily decompose.
4. It has been estimated that approximately 500 bags per person per year, or sixty million single-use plastic bags are used annually in Humboldt County, and _____ bags are used annually within the [jurisdiction].
5. Numerous studies have documented the prevalence of single-use plastic carry-out bags littering the environment, blocking storm drains and fouling beaches.
6. Taxpayers must bear the brunt of the clean-up costs of this litter.
7. Plastic bags are a significant source of marine debris and are hazardous to marine animals and birds which often confuse single-use plastic carry-out bags for a source of food resulting in injury and death to birds and marine animals.
8. Of all single-use bags, single-use plastic bags have the greatest impacts on litter and marine life.
9. The use of single-use paper bags result in greater GHG emissions, atmospheric acidification, water consumption, and ozone production than single-use plastic bags.

10. Single use non-recyclable shopping bags are difficult to recycle, contaminate the solid waste recycling stream and impede the [jurisdiction's] landfill diversion goals.
11. From an overall environmental and economic perspective, the best alternative to single-use plastic and paper carry-out plastic bags is a shift to reusable bags.
12. There are several alternatives to single-use carry-out bags readily available in the [jurisdiction].
13. It is the [jurisdiction's] desire to conserve resources, reduce the amount of GHG emissions, waste, litter and marine pollution and to protect the public health and welfare including wildlife, all of which increase the quality of life for the [jurisdiction's] residents and visitors.

SEC 2. DEFINITIONS:

For the purposes of this Ordinance, the following definitions shall apply:

- (a) **“Recyclable Paper Bag”** means a paper bag provided at the check stand or other appropriate point of departure from the store for the purpose of transporting food or merchandise that meets the following requirements:
 - (1) Contains no old growth fiber and a minimum of forty percent post consumer recycled materials except for an eight pound or smaller recycled paper bag shall contain a minimum of 20 percent postconsumer recycled materials;
 - (2) The recyclable paper bag shall be accepted at curbside and drive-up recycling centers within the (jurisdiction);
 - (3) Is capable of composting, consistent with the timeline and specifications of the American Society of Testing materials (ASTM) Standard D6400; and
 - (4) Is printed with the word RECYCLABLE, the manufacturer and country of origin, and post consumer content information.
- (b) **“Reusable Bag”** means a bag with handles that has a minimum volume of 15 liters, is specifically designed and manufactured for long term use and is:
 1. Designed and made of durable machine washable material that can be cleaned and disinfected; and
 2. Proven capable of carrying a minimum of 22 pounds 125 times over a distance of 175 feet.
 3. Shall not contain lead, cadmium, or any other heavy metal in toxic amounts.
 4. If made of plastic or biologically based source, is a minimum thickness of at least 2.25 mils.
- (c) **“Single Use Carry-Out Bag”** means a bag made of plastic or paper provided at the check stand, cash register, point of sale, or other point of departure for the purposes of

transporting food or merchandise out of the establishment. Single Use Carry-Out Bags do not include bags provided solely for produce, bulk food, or meat provided to the customer at those departments within a store or a bag provided by a pharmacy for prescription medication.

(d) **“Store”** means any of the following retail establishments located within the geographical limits of the [jurisdiction] that meets the following requirements:

1. **“Supermarket”** which means a full line, self service retail store with gross annual sales of two million dollars (\$2,000,000) or more, and which sells a line of dry grocery, canned goods or non-food items and some perishable items.
2. **“Pharmacy”** means any retail store where the profession of pharmacy by a pharmacist licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code is practiced and where prescriptions (and possibly other merchandise) are offered for sale.
3. **“Large Store”** means a retail store with at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5, commencing with Section 7200, of Division 2 of the Revenue and Taxation Code).
4. **“Convenience Food Store”** means any entity engaged in the retail sale of a limited line of goods that includes milk, bread, sodas, and snack foods including those stores with a Type 20 or 21 License issued by the California Department of Alcoholic Beverage Control.
5. **“Public Eating Establishment”** means a restaurant, take-out food establishment, or any other business that receives more than 90% of its revenue from the sale of prepared food to be eaten on or off its premises.

SEC 3. CARRY OUT BAG REGULATION.

- (a) On or after _____, 20__, a Store shall not provide a Single-Use Carry-Out Bag to a customer at the point of sale, except as provided in this section.
- (b) On or after _____, 20__, Stores may provide only the following check out bags to customers at point of sale:
 1. Recyclable Paper Bag
 2. Reusable Bag
- (c) One year following the effective date of this Ordinance, a Store may make available for purchase by a customer a Recycled Paper Bag for a minimum charge of \$0.05. Bag cost shall be separately itemized on the sales receipt. Revenues from this charge shall be retained by the Store.

- (d) Violation of the requirements set forth in this ordinance shall subject the Store to penalties as set forth in Section 4(b).
- (e) Nothing in this section shall be read to preclude Stores from making Reusable Bags available for sale to customers.
- (f) Nothing in this Chapter is intended to prohibit Stores from reusing their cardboard boxes by providing them to customers for the purpose of carrying away goods, or to prohibit customers from using carry out bags of any type that they bring into the Store.
- (g) Notwithstanding any other law, on or after _____, a Store shall provide customers participating in the California Special Supplemental Food Program for Women, Infants, and Children (Health and Safety Code section 123275 et seq.) and customers participating in the Supplemental Nutritional Assistance Program (SNAP) (Welfare and Institutions Code section 15500 et seq.) with Recyclable Bags at no cost.

SEC 4. ADMINISTRATION, ENFORCEMENT, AND PENALTIES.

- (a) The Director of the [*jurisdiction's*] _____ Department shall have primary responsibility for enforcement of this Chapter. This Director is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this Chapter, including, but not limited to, inspecting any Store's premises to verify compliance.
- (b) Penalties shall not be enforced for the first two years following the effective date of this Ordinance.
- (c) Any person who violates this Chapter shall be considered guilty of an infraction subject to the following penalties for each offense:
 - 1. A fine not exceeding \$100.00 for the first infraction;
 - 2. A fine not exceeding \$200.00 for the second violation within one year;
 - 3. A fine not exceeding \$500.00 for each subsequent violation within the same year.
- (d) Any violation of the Chapter is subject to the recovery of administrative penalties pursuant to California Government Code, Section 53069.4.
- (e) The [*jurisdiction*] may seek legal, injunctive, or other equitable relief to enforce this Chapter.

- (f) The remedies and penalties provided in this section are cumulative and not exhaustive, and nothing in this Chapter shall preclude the [jurisdiction] from pursuing any other remedy provided by law.

Section 2. Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Chapter. The [governing body] hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid under law.

Section 3. Effective Date. This ordinance will take effect thirty (30) days after the date of its adoption.

DATE: _____, 20____

ATTEST:

APPROVED:

Clerk, [jurisdiction]

[Presiding Officer], [jurisdiction]

Clerk's Certificate

I hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, passed and adopted at a regular meeting of the [governing body] of the [jurisdiction], Humboldt County, California on the _____ day of _____, 20____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

Clerk, [jurisdiction]