



**DATE:** October 25, 2016

**TO:** Mayor and City Council

**FROM:** Director of Utilities & Environmental Services

**SUBJECT**

Approval of the City's Participation in the Alameda County Waste Management Authority's Reusable Bag Ordinance Expansion

**RECOMMENDATION**

That Council adopts the attached resolution approving the City's participation in Alameda County Waste Management Authority Ordinance No. 2012-2 as amended by Ordinance No. 2016-2, expanding the regulation of carryout bags and promoting the use of reusable bags.

**SUMMARY**

The City, alongside other Alameda County jurisdictions, adopted the County-wide Reusable Bag Ordinance in January 2013. Implementation of the Ordinance resulted in a significant decrease in the use of single-use plastic and paper bags at grocery, drug, and liquor stores. Due to the effectiveness of the ordinance, the Waste Management Authority (WMA) Board initiated preparations to expand the ordinance coverage, to include all retail stores and restaurants in Alameda County. As drafted, all WMA member agencies will be considered opted in at the time of the second reading and adoption of the ordinance expansion by the WMA Board on October 26, 2016. The City, along with other member agencies, can choose to opt out of the expanded ordinance via resolution adoption by December 9, 2016.

**BACKGROUND**

Reusable Bag Ordinance 2012-2, which went into effect in January 2013, applies to approximately 1,300 grocery, drug and liquor stores in Alameda County that traditionally distributed a high volume of single-use bags. The ordinance promotes the use of reusable bags to reduce waste and litter, and minimize plastic bags in local waterways.

### Ordinance Requirements

As of January 1, 2013, affected stores can only distribute reusable bags or bags made of recycled content paper, and only if the store charges a minimum price of 10 cents per bag, itemized on the receipt.

### Ordinance Effectiveness

Since implementation, the reusable bag ordinance has had dramatic results:

- Overall bag purchases by affected Alameda County retail stores have declined by 85%.
- The number of shoppers bringing a reusable bag, or not using a bag at all, has more than doubled.
- Stores are participating with a compliance rate of 90%.
- Plastic bags found in Alameda County Storm drains has decreased 44%.

### Ordinance Expansion

The current ordinance does not apply to retail stores other than grocery, drug, and liquor stores. In light of the effectiveness of the current ordinance, the WMA Board directed its staff to plan for an expansion of the reusable bag ordinance to include all retail stores and restaurants.

### Timeline

In January 2012, Reusable Bag Ordinance 2012-2 was adopted by WMA Board, effective January 2013 for all Alameda County jurisdictions. In October 2014, the WMA Board approved ordinance expansion activities to be conducted by StopWaste, the public agency governed by WMA among other governing bodies. Upon approval of the draft ordinance expansion language in March 2016, StopWaste staff began offering assistance to member agency governing boards.

The Reusable Bag Ordinance Expansion was presented during the May 9, 2016 Council Sustainability Committee meeting. Staff presented draft ordinance language and discussed possible implications of adopting the ordinance expansion in Hayward. During the meeting, a StopWaste staff member was present to answer the questions posed by the Committee members. The Committee was in favor of the reusable bag ordinance expansion and requested that staff bring it before Council as a consent item.

In September 2016, the ordinance was introduced via the first reading by WMA Board, thereby finalizing all ordinance language and provisions. During the September 2016 meeting, the WMA also approved the necessary Addendum to the Environmental Impact Report. The ordinance second reading and adoption by WMA Board has been scheduled for October 26, 2016, and all member agencies will be considered "opted in".

## DISCUSSION

The ordinance expansion changes were developed together with legal counsel and with input from member agency staff via the Technical Advisory Committee. The expanded ordinance affects all retail stores County-wide (an estimated 9,000 additional stores) and restaurants (estimated 4,000). It is estimated that roughly 10% of these stores are located in Hayward.

### Revised definitions:

- Store: Any commercial establishment operating from a permanent enclosed structure that sells perishable or nonperishable goods including, but not limited to, clothing, food and personal items directly to a customer (Intent: to capture all types of retail stores. Any place where you can walk into a “brick and mortar” store and purchase a tangible item is covered by the ordinance).
- Public Eating Establishment: Any restaurant, take-out food establishment or other business (including but not limited to food sales from vehicles or temporary facilities open to the public) that receive 90% or more of its revenue from the sale of prepared and ready-to-consume foods and/or drinks to the public (Intent: to cover food trucks and vendors who distribute food in bags).

### Exemptions:

- Produce/Product Bags: bags that are integral to the packaging of the product, or bags without handles provided to the Customer (i) to transport produce, bulk food or meat from a produce, bulk food or meat department within a Store to the point of sale, (ii) to hold prescription medication dispensed from a pharmacy, or (iii) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Content Paper Bag.
- Stores operating in a certified farmers’ market registered in accordance with Section 47020 of the California Food and Agricultural Code (Twenty California certified markets operate in the county, and many use the produce bags without handles, which are already exempt from the 2012 ordinance).

Public Eating Establishments are not required to charge customers if distributing recycled content paper bags, but must charge a minimum of 10 cents for a compliant reusable bag.

### Other Changes:

- Recordkeeping requirements for bag sales and purchasing are removed.
- Switch routine inspections to complaint-based inspection only.

### Opt-Out Provisions:

Jurisdictions may choose not to participate in the ordinance by December 9, 2016. Should Council elect not to participate, staff would bring this matter back with the appropriate resolution for Council adoption.

### Related State Legislation

The California Plastic Bag Ban Veto Referendum (Proposition 67), will be on the November 8, 2016 ballot. If passed, Proposition 67 will uphold contested legislation, Senate Bill 270 banning distribution of single-use plastic bags. SB 270 was signed into law September 2014 but suspended via referendum by the American Progressive Bag Alliance. Proposition 67 would prohibit pharmacies, grocery, convenience, and liquor stores from providing plastic single-use carryout bags. Additionally, it will mandate stores to charge 10 cents for recycled, compostable, and reusable grocery bags. On September 20, 2016, Council adopted a resolution in support of Proposition 67.

Proposition 65, also on the November 8, 2016 ballot, is a competing ballot initiative that would, if passed, direct any fees retailers collect for bags to an environmental fund for environmental projects. Proposition 65 does not include the plastic bag ban provision as outlined in Proposition 67. However, in the event that both propositions pass, and Proposition 65 receives more votes than Proposition 67, then the Proposition 65 funding convention would be used. However, if Proposition 67 receives more votes, then the revenue would be kept by stores, as originally implemented in SB270, to help cover compliance costs.

If either Proposition is passed, neither would directly affect the local Alameda County ordinance expansion. The original ordinance, passed in 2012, will be grandfathered in. The ordinance expansion, if adopted on October 26, 2016, would also be grandfathered in. Therefore, the ordinance parameters in place prior to November 8, 2016 would remain in place, and if either Proposition is passed on that date, it would only limit future changes to the local ordinance. Specifically, even if Proposition 65 is passed, all Alameda County jurisdictions opted into the local ordinance expansion will continue to allow fees collected by retailers to stay with the store.

### **ECONOMIC IMPACT**

The economic impacts to customers as a result of the proposed single-use carryout bag ordinance include: (1) the additional store charge at retail stores required for paper and reusable bags in order to deter requests for paper and encourage use of reusable bags; and (2) the additional costs for restaurants and retail stores to purchase reusable bags. As a result of the regulation, the retail stores' own costs will be slightly less (no more free single-use bags handed out) and consumers' costs slightly more (for those who choose not to bring their own reusable bags and, instead, pay for single-use paper bags). Consumers using reusable bags will not incur increased transaction costs, aside from the nominal initial cost of purchasing reusable bags.

### **FISCAL IMPACT**

Fiscal impacts to the City would include staff time to educate local retail stores and restaurants on the expanded ordinance. There would be no impact to the General Fund. Existing Solid Waste Program staff would provide some assistance to restaurants and retail stores to comply with the ordinance.

Opting in to the county-wide expanded ordinance as it is written will place the majority of the fiscal impact and responsibility of enforcement on StopWaste staff. The ordinance language was finalized at the first reading by the WMA Board in September 2016. Including additional provisions or modifications to the ordinance would require that the jurisdiction opt out of the county-wide ordinance and develop a local ordinance. If directed by Council to opt out of the county-wide ordinance expansion and develop Hayward-specific ordinance provisions, the responsibility of enforcement and dedication of resources would fall on the City.

## **SUSTAINABILITY FEATURES**

1. *Energy*: The proposed ordinance expansion may further encourage shoppers to use reusable bags and restaurants and stores to minimize use of bags, which could minimize energy-use attributed to plastic-bag manufacturing and transportation.
2. *Water*: The ordinance would help the City meet storm water permit requirements to reduce trash in storm drains and creeks.
3. *Solid Waste*: The ordinance expansion will decrease the amount of plastic bags purchased by stores and restaurants in the City, as well as promote the use of reusable bags among shoppers, decreasing the use of single-use plastic bags overall. This will result in less litter in the community.

## **PUBLIC CONTACT**

StopWaste staff conducted outreach activities to inform and solicit input from potentially affected stores. StopWaste staff reached out to all member agency economic development staff, contacted key business stakeholders such as retail groups, downtown associations, mall operators, restaurant associations, chambers of commerce, and others throughout the county.

StopWaste staff presented potential expansion concepts at meetings and events (though opportunities were minimal). Reactions to presentations were generally supportive, with little opposition. Most were grateful for update but did not voice opposition to an expansion of the ordinance.

Outreach to the California Retailers Association revealed support for an expanded ordinance as long as the definition of compliant bags was the same as identified in proposed statewide reusable bag veto referendums Proposition 67 and Proposition 65 to ensure consistency amongst key definitions in ordinances across the state.

### Regional Meetings

StopWaste staff hosted a series of regional meetings throughout the county (Oakland, Union City and Pleasanton) to solicit input from retail and restaurant operators. Despite rigorous promotion of the meetings by agency and local jurisdiction staff (including handing out flyers to retailers), no one showed up at the meetings.

## Business Surveys

To ensure that retailers and restaurant owners have an opportunity to voice their concerns even if they could not attend an in-person meeting, StopWaste staff developed an eight question online survey to receive feedback. Sixty-one surveys (representing eleven Alameda County cities) were completed; almost three quarters of those surveys came from restaurant and clothing store operators.

In general, survey responses show an almost even split between support and opposition for expansion of the Ordinance. Expansion to all retail resulted in 45% support, 45% oppose and 10% “don’t care” responses whereas the expansion to all retail plus restaurants showed 40% support, 50% oppose and 10% “don’t care.”

As 35% of survey respondents came from restaurants, further discussions with the restaurant industry were conducted. The biggest concern was related to charging customers for bags. Restauranters felt that an ordinance will penalize their type of businesses, especially take-out/fast-food/to-go restaurants where there is little opportunity to change behavior as food is bagged either prior to the customer’s arrival or in the back of the house; neither activity conducive to incorporating reusable bags. In addition, many restaurants said it is too complicated to charge for a “doggy” bag after a bill has been paid. Incorporating this feedback, language was included in the ordinance expansion to clarify that Public Eating Establishments are not required to charge customers for distribution of recycled content paper bags, and are only required to charge 10 cents for a compliant reusable bag. Including this language bolstered restaurant support.

## **NEXT STEPS**

The following timeline details the remaining key expansion activities:

<u>December 2016</u>	Any member agency choosing to opt out must do so by a resolution of its governing body by December 9, 2016.
<u>May 2017</u>	Ordinance effective for expanded retail stores.
<u>November 2017</u>	Ordinance effective for all restaurants.

Staff is seeking approval from Council on participation in the ordinance expansion. Staff has included a resolution of adoption in this report. If directed by Council, staff can draft a resolution to opt out of the ordinance, to be brought to Council prior to the December 9<sup>th</sup>, 2016 deadline.

*Prepared by:* Jennifer Yee, Sustainability Technician

*Recommended by:* Alex Ameri, Director of Utilities & Environmental Services

*Approved by:*

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

---

Kelly McAdoo, City Manager