



## CITY OF BEVERLY HILLS STAFF REPORT

**Meeting Date:** October 18, 2011  
**To:** Honorable Mayor & City Council  
**From:** Daniel E. Cartagena, Senior Management Analyst  
Arnetta Eason, Management Analyst  
**Subject:** Request by Councilmember Mirisch for Discussion Regarding a  
Plastic Bag Ban Ordinance  
**Attachments:** 1. County of Los Angeles Ordinance

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### INTRODUCTION

This report was prepared to provide information to the City Council for discussion purposes of the regional status of cities and the County of Los Angeles to ban plastic carry-out single-use plastic bags provided at the point-of-sale.

In 2007, the California State Legislature enacted Assembly Bill 2449. This law requires retail stores that have over 10,000 square feet that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law and licensed pharmacies; or stores with gross annual sales of \$2 million or more to provide customers the option to return clean plastic carry-out bags for recycling. The law also requires these stores to make reusable bags available to customers for purchase. Additionally, and in importance to local governments, AB 2449 prohibits a city, county or other public agency from imposing a per bag fee on plastic bags. However, local ordinances can impose a fee for recyclable paper carry-out bags.

Plastic carry-out bags (or plastic bags) contribute to litter and have many negative impacts on the environment. Made from plastic resin, approximately 5 to 6 billion plastic carryout bags are consumed in Los Angeles County, equal to 500-600 bags per person per year. According to Cal Recycle (formerly California Integrated Waste Management Board – CIWMB), plastic bags are recyclable, however, less than 5 percent are recycled. Plastic bags have a propensity to become litter due to the expansive and lightweight characteristics, they are easily windblown and end up littering landscape, streets, storm drains and ultimately our oceans. It has been found that plastic bags make-up approximately 25 percent of the overall landfill disposal waste and 25 percent of the litter stream. Public agencies throughout California spend more the \$375 million each year for cleanup, disposal and litter prevention. It is estimated the cost to taxpayers is \$25 million annually to clean up the coastal waterways and beaches.

The primary alternatives to plastic bags are reusable bags (made from cloth or other durable materials) and paper bags. Reusable and paper bags are widely available in the marketplace and are currently being used at grocery stores, restaurants and other retail stores. Most grocery stores and large retail stores offer reusable bags for sale while some offer incentives for customers that bring and use their own reusable bags.

## **DISCUSSION**

California now has a total of 15 jurisdictions with plastic bag bans: 11 cities, including Calabasas, Fairfax, Long Beach, Malibu, Manhattan Beach, Oakland, Palo Alto, San Francisco, San Jose and Santa Monica, West Hollywood and four counties including Santa Clara, Santa Cruz, Los Angeles and Marin. Each ordinance shares in the common goal of banning the distribution of plastic bags, requiring stores to offer reusable bags and all include exemption clauses. However, they differ in the phased-approach of implementing the types of businesses affected, fees and penalties imposed, and method of enforcement. Most of the ordinances in Los Angeles County are modeled on the County's Ordinance. This report summarizes programs currently in place in Los Angeles County.

### **County of Los Angeles**

The County of Los Angeles adopted an ordinance in November 2010. The ordinance prohibits distribution of plastic bags at affected stores (as defined in AB 2449) and imposes a 10-cent charge for each recyclable paper carryout bag distributed by the affected stores within unincorporated county areas.

Additional details of the County ordinance:

- Expands definitions of retail store to include drug store, pharmacy, supermarket, grocery store, convenience store, food mart, of other entity engaged in the retail sale of a limited line of goods that include milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.
- All stores shall make available to customers only recyclable paper carry-out bags or re-usable bags.
- All stores must provide reusable bags to customers, either for sale or at no charge
- All stores must provide at the point of sale, free of charge, either reusable bags or recyclable paper carryout bags or both to any customer participating either in the California Special Supplemental Food Program for Women, Infants, and Children
- If a violation is determined to have occurred, a warning notice to the store operator will be issued
- Failure to comply with after a written notice, a store will be cited for an infraction. First violation fine, not to exceed \$100. Second violation fine, not to exceed \$200. Third violation fine \$500

In conjunction with the ordinance, the County prepared and certified an Environmental Impact Report (EIR). Although the EIR was prepared for the County's action of adopting its ordinance, the County's EIR contemplated that the 88 cities in the County might follow the County's lead and adopt similar ordinances. Therefore, the County EIR analyzed the environmental impacts that might occur if each of the cities in the County adopted an ordinance similar to that adopted by the County. In so doing, the County's

EIR provides useful information should a City opt to adopt an ordinance that is similar to the County's ordinance.

**Malibu:** Ordinance adopted in May 2008 prior to the County's action, Malibu plastic bag ban extends to all retail, restaurant, vendors and non-profit vendors and city facilities and properties.

**Manhattan Beach:** Ordinance adopted in July 2008, banned all point-of-sale plastic carry-out bags. The ban would take effect for grocery stores, food vendor, restaurants, pharmacies and City facilities six months after the ordinance is adopted. One year after the ordinance is adopted the program will include retail establishments and vendors.

**Santa Monica:** Adopted its ordinance in February 2011. The ordinance went into effect September 1, 2011. In addition to retail stores, grocery stores and pharmacies, plastic bags are banned at City facilities, City-managed concessions and City sponsored events. Moreover, plastic bags are banned at the Santa Monica Farmers Market.

**Calabasas:** Banned the use of single-use carry-out plastic bags on February 9, 2011. As of July 1, 2011, disposable plastic bags are no longer available while shopping at Calabasas supermarkets: Albertsons, Ralph's, Gelson's, Maddy's Market and Rite Aid. On January 1, 2012, smaller drug stores, convenience food stores, smaller retail stores and grocers will stop offering plastic bags (small plastic bags will still be available in stores for fruits and vegetables).

**Long Beach:** In May, the city banned plastic bags by manner of an addendum to the Los Angeles County EIR to address the possible environmental effects associated with adoption of an ordinance within the City of Long Beach. The ordinance bans plastic carry-out bags at all supermarkets, and other grocery stores, pharmacies, drug stores, convenience stores, food marts and farmers markets placing a 10-cent charge on the issuance of recyclable paper carry-out bags by an affected store.

**West Hollywood:** On September 6, 2011. The city council adopted its ordinance modeled after the County's ordinance.

### **California Environmental Quality Act Considerations**

Adoption of an ordinance regulating the use of disposable plastic bags by some or all businesses in the City would be a "project" subject to review pursuant to the California Environmental Quality Act ("CEQA"). The approach to implement the CEQA's requirements could depend on the contents of the ordinance ultimately considered by the City Council.

While the Los Angeles County Ordinance and EIR were not challenged, members of the plastic bag industry including Save the Plastic Bag Coalition (hereafter referred to as "SPBC") have challenged the actions of a number of other local agencies. SPBC challenged Manhattan Beach's attempt to adopt a ban by challenging that city's CEQA document – a negative declaration. Both the Trial Court and the Court of Appeal concluded that the City's action violated CEQA, and that an EIR was required. The California Supreme Court, however, held that the City's reliance on a negative declaration for its ban on plastic bags (with no fee imposed for paper bags) was proper, in part because of the small size of the City and limited impact of a ban in that small geographic area. Also, last week, a decision by the County of Marin to adopt a plastic bag ban ordinance in conjunction with a determination that the ordinance was exempt

from CEQA as an action to protect the environment, was upheld by the Superior Court. It appears likely that SPBC will appeal that discussion.

In June 2011, SPBC also filed suit against the City of Long Beach's ordinance and its reliance on an addendum to the Los Angeles County EIR. According to court records, that case is still pending. SPBC's petition for writ of mandate recites how the City of Calabasas relied upon the Los Angeles County EIR, stating that SPBC "did not object to or challenge the City of Calabasas ordinance as the City of Calabasas adopted the County EIR, Findings of Fact and Statement of Overriding considerations." In a letter to the City of Long Beach dated April 27, 2011, SPBC threatened to challenge the City of Long Beach's ordinance on CEQA grounds, but suggested that it would not mount a challenge if "the City of Long Beach [adopted] the Los Angeles County Findings of Fact and Statement of Overriding Considerations without amendment. According to SPBC's letter, the appropriate model is the, "City of Calabasas Ordinance."

Staff and the City Attorney's office will review how to comply with CEQA's requirements upon receiving direction from the Council on the content of a draft ordinance.

Should the City Council direct staff and the City Attorney to draft an ordinance banning single-use carry-out plastic bags, staff would request that this matter be referred to a Council Ad Hoc Committee where further details relating to this issue may be presented for review and consideration.

#### **FISCAL**

None at this time.

#### **RECOMMENDATION**

Staff requests direction from the City Council with regard to the development of an ordinance to ban carry-out single-use plastic bags in the City of Beverly Hills.



David Gustavson  
Approved By

# **Attachment 1**

**ORDINANCE NO. \_\_\_\_\_**

An ordinance amending Title 12 - Environmental Protection of the Los Angeles County Code, relating to regulating the use of plastic carryout bags and recyclable paper carryout bags and promoting the use of reusable bags within the County unincorporated area.

The Board of Supervisors of the County of Los Angeles ordains as follows:

**SECTION 1.** Chapter 12.85 is hereby added to read as follows:

**12.85.010 Definitions.**

The following definitions apply to this Chapter:

- A. "Customer" means any person purchasing goods from a store.
- B. "Operator" means the person in control of, or having the responsibility for, the operation of a store, which may include, but is not limited to, the owner of the store.
- C. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.
- D. "Plastic carryout bag" means any bag made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or other plant sources, which is provided to a customer at the point of sale. "Plastic carryout bag" includes compostable and biodegradable bags but does not include reusable bags, produce bags, or product bags.
- E. "Postconsumer recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. "Postconsumer recycled material" does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.
- F. "Produce bag" or "product bag" means any bag without handles used exclusively to carry produce, meats, or other food items to the point of sale inside a store or to prevent such food items from coming into direct contact with other purchased items.
- G. "Recyclable" means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.
- H. "Recyclable paper carryout bag" means a paper bag that meets all of the following requirements: (1) contains no old growth fiber, (2) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) postconsumer recycled material; (3) is capable of composting, consistent with the timeline and specifications of the American Society

of Testing and Materials (ASTM) Standard 06400; (4) is accepted for recycling in curbside programs in the County; (5) has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the percentage of postconsumer recycled material used; and (6) displays the word "Recyclable" in a highly visible manner on the outside of the bag.

I. "Reusable bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; (2) has a minimum volume of 15 liters; (3) is machine washable or capable of being cleaned and disinfected; (4) does not contain lead, cadmium, or any other heavy metal in toxic amounts as defined by applicable State and Federal standards and regulations for packaging or reusable bags; (5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and (6) if made of plastic, is a minimum of at least 2.25 mils thick.

J. "Store" means any of the following retail establishments located within the unincorporated area of the County:

(1) A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;

(2) A store of 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) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or

(3) A drug store, pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.

**12.85.020 Plastic carryout bags prohibited.**

A. No store shall provide to any customer a plastic carryout bag.

B. This prohibition applies to bags provided for the purpose of carrying away goods from the point of sale and does not apply to produce bags or product bags.

**12.85.030 Permitted bags.**

All stores shall provide or make available to a customer only recyclable paper carryout bags or reusable bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this Chapter. Nothing in this Chapter prohibits customers from using bags of any type that they bring to the store themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the store.

**12.85.040 Regulation of recyclable paper carryout bags.**

A. Any store that provides a recyclable paper carryout bag to a customer must charge the customer 10 cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.

B. No store shall rebate or otherwise reimburse a customer any portion of the 1 a-cent (\$0.10) charge required in Subsection A, except as otherwise provided in this Chapter.

C. All stores must indicate on the customer receipt the number of recyclable paper carryout bags provided and the total amount charged for the bags.

D. All monies collected by a store under this Chapter will be retained by the store and may be used only for any of the following purposes: (1) costs associated with complying with the requirements of this Chapter, (2) actual costs of providing recyclable paper carryout bags, or (3) costs associated with a store's educational materials or education campaign encouraging the use of reusable bags, if any.

E. All stores must report to the Director of Public Works, on a quarterly basis, the total number of recyclable paper carryout bags provided, the total amount of monies collected for providing recyclable paper carryout bags, and a summary of any efforts a store has undertaken to promote the use of reusable bags by customers in the prior quarter. Such reporting must be done on a form prescribed by the Director of Public Works, and must be signed by a responsible agent or officer of the store confirming that the information provided on the form is accurate and complete. For the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, all quarterly reporting must be submitted no later than 30 days after the end of each quarter.

F. If the reporting required in Subsection E is not timely submitted by a store, such store shall be subject to the fines set forth in Section 12.85.080.

**12.85.050 Use of reusable bags.**

- A. All stores must provide reusable bags to customers, either for sale or at no charge.
- B. Each store is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging customers to use reusable bags.

**12.85.060 Exempt customers.**

All stores must provide at the point of sale, free of charge, either reusable bags or recyclable paper carryout bags or both, at the store's option, to any customer participating either in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code or in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code.

**12.85.070 Operative date.**

This Chapter shall become operative on July 1, 2011, for stores defined in Subsections J(1) and J(2) of Section 12.85.010. For stores defined in Subsection J(3) of Section 12.85.010, this Chapter shall become operative on January 1, 2012.

**12.85.080 Enforcement and violation-penalty.**

A. The Director of Public Works has primary responsibility for enforcement of this Chapter. The Director of Public Works is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, investigating violations, issuing fines and entering the premises of any store during business hours. The Director of the Department of Agricultural Commissioner/Weights and Measures and the Director of Public Health may assist with this enforcement responsibility by entering the premises of a store as part of their regular inspection functions and reporting any alleged violations to the Director of Public Works.

B. If the Director of Public Works determines that a violation of this Chapter has occurred, he/she will issue a written warning notice to the operator of a store that a violation has occurred and the potential penalties that will apply for future violations.

C. Any store that violates or fails to comply with any of the requirements of this Chapter after a written warning notice has been issued for that violation shall be guilty of an infraction.

D. If a store has subsequent violations of this Chapter that are similar in kind to the violation addressed in a written warning notice, the following penalties will be imposed and shall be payable by the operator of the store:

(1) A fine not exceeding one hundred dollars (\$100.00) for the first violation after the written warning notice is given;

(2) A fine not exceeding two hundred dollars (\$200.00) for the second violation after the written warning notice is given; or

(3) A fine not exceeding five hundred dollars (\$500.00) for the third and any subsequent violations after the written warning notice is given.

E. A fine shall be imposed for each day a violation occurs or is allowed to continue.

F. All fines collected pursuant to this Chapter shall be deposited in the Solid Waste Management Fund of the Department of Public Works to assist the department with its costs of implementing and enforcing the requirements of this Chapter.

G. Any store operator who receives a written warning notice or fine may request an administrative review of the accuracy of the determination or the propriety of any fine issued, by filing a written notice of appeal with the Director of Public Works no later than 30 days after receipt of a written warning notice or fine, as applicable. The notice of appeal must include all facts supporting the appeal and any statements and evidence, including copies of all written documentation and a list of any witnesses, that the appellant wishes to be considered in connection with the appeal. The appeal will be heard by a hearing officer designated by the Director of Public Works. The hearing officer will conduct a hearing concerning the appeal within 45 days from the date that the notice of appeal is filed, or on a later date if agreed upon by the appellant and the County, and will give the appellant 1 a days prior written notice of the date of the hearing. The hearing officer may sustain, rescind, or modify the written warning notice or fine, as applicable, by written decision. The hearing officer will have the power to waive any portion of the fine in a manner consistent with the decision. The decision of the hearing officer is final and effective on the date of service of the written decision, is not subject to further administrative review, and constitutes the final administrative decision.

**12.85.090 Severability.**

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section,

subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this ordinance would be subsequently declared invalid.

**12.85.10 No conflict with federal or state law.**

Nothing in this ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

[1285TMCC]