

**City of Culver City, California
Agenda Item Report**

Meeting Date: 12/10/2012		Item Number: <u>A-1</u>	
CITY COUNCIL AGENDA ITEM: Consideration of the Subject of Regulation of Single-Use Carryout Bags.			
Contact Person/Dept.: Helen Kerstein/PW		Phone Number: (310) 253-5618	
Fiscal Impact: Yes ☒ No ☐		General Fund: Yes ☒ No ☐	
Public Hearing: ☐		Action Item: ☒ Attachments: ☐	
Commission Action Required: Yes ☐ No ☒ Date: _____			
Public Notification: (E-Mail) Agenda and Meetings – City Council (12/07/12); (Mail) Approx. 75 Potentially Affected Businesses (11/27/12); (Published) Culver City News (11/29/12; 12/6/12); (Mail) Chamber of Commerce (11/27/12); (Mail) Downtown Business Association (11/27/12); (Mail) Californians Against Waste (11/27/12); (Mail) Heal the Bay (11/27/12); (Mail) Seventh Generation Advisors (11/27/12); (Mail) Surfrider Foundation, West LA/Malibu Chapter (11/27/12); (Mail) Environment California (11/27/12); (Mail) Clean Water Action/Clean Water Fund (11/27/12); (Mail) American Chemistry Council; (11/27/12); (Mail) California Grocers Association (11/27/12); (Mail) Command Packaging (11/27/12); (Mail) Ballona Creek Renaissance (11/27/12); (Mail) Santa Monica Baykeepers (11/27/12); (E-Mail) Sustainability and Environmental Issues Listserv (11/27/12).			
Department Approval: Charles D. Herbertson (12/04/12)		City Attorney Approval: Carol Schwab (by R. Miranda) (12/07/12)	
Chief Financial Officer Approval: Jeff Muir (12/06/12)		City Manager Approval: John M. Nachbar (12/07/12)	
<u>RECOMMENDATION:</u> Staff recommends the City Council consider the subject of regulating single-use carryout bags and direct the City Manager as deemed appropriate. <u>BACKGROUND:</u> <i>Single-Use Bag Restrictions and Legal Challenges</i> In recent years, a number of jurisdictions around the world have attempted to address the impacts associated with single-use bags by limiting their distribution by retailers. Some jurisdictions have accomplished this by requiring retailers to charge customers for every single-use bag they use (whether paper or plastic). Other jurisdictions have required retailers to charge for single-use paper bags, while banning single-use plastic bags altogether. Since 2007, jurisdictions in California have been barred from pursuing the former strategy by AB 2449 (Levine), which prohibits cities, counties, and other public agencies from requiring retailers to charge fees for single-use plastic bags. Thus, to			

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date, while a number of cities and counties across the California have taken action on single-use bags, they have taken the approach of requiring retailers to charge for single-use paper bags and banning single-use plastic bags, rather than requiring retailers to charge for both types of bags.

As jurisdictions in California have pursued this approach, they have faced legal challenges over the adequacy of their environmental review processes. Specifically, the challengers, led by an industry group called the Save the Plastic Bag Coalition, have argued that by focusing their restrictions on single-use plastic bags, these jurisdictions have encouraged the use of other bags with even larger environmental impacts.

LA County Environmental Process

In the face of this legal environment, Los Angeles County (LA County) decided to develop a comprehensive Environmental Impact Report (EIR) prior to adopting its Ordinance in November 2010. LA County's EIR analysis included all 88 incorporated cities as well as the unincorporated areas in Los Angeles County, thus facilitating the use of this EIR as a foundation for the environmental review supporting similar ordinances considered by cities within the County. Since LA County's adoption of its EIR, several LA County cities have used LA County's Ordinance as the basis for their Ordinances, including the cities of Pasadena, Calabasas, and West Hollywood. While these cities have largely mirrored the County's Ordinance, some of them have made adjustments, such as changing the types of businesses that are covered or the reporting requirements for businesses.

Summary of LA County's Ordinance

LA County's Ordinance bans the issuance of plastic single-use carryout bags (including compostable and bio-degradable bags) and imposes a ten cent charge on each recyclable paper carryout bag. These charges are retained by the businesses and can be used to offset costs associated with compliance, including the actual costs of providing recyclable paper carryout bags, educational materials, and an educational campaign encouraging the use of reusable bags, if any. Low income customers participating in either the Special Supplemental Food Program for Women, Infants, and Children (WIC) or in the CalFresh/Supplemental Nutrition Assistance Program (SNAP) are exempted from these charges.

The LA County Ordinance covers the following types of stores (approximately 75 stores in Culver City are anticipated to meet these criteria):

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 non-food items and some perishable items; or
2. A store of at least 10,000 square feet of retail space that generates sales or use tax and that has a pharmacy; or

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3. A drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, 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 license issued by the Department of Alcoholic Beverage Control.

In order to allow sufficient time for businesses to use up their existing inventory of bags and to adjust to the requirements of the LA Ordinance, its implementation was phased-in. Larger stores were given six months to comply with the Ordinance's provisions, whereas smaller stores were given twelve months. The LA County Ordinance also included provisions that related to quarterly reporting requirements by businesses and enforcement.

Recent Changes in California State Law

AB 2449 (Levine) sunsets on January 1, 2013. Thus, as of the New Year, cities and counties in California will have the option of implementing an entirely fee-based approach to discourage single-use carryout bags should they desire to do so.

Culver City City Council and Subcommittee Actions

On July 23, 2012, the City Council voiced support for single-use carryout bag legislation at the state level, AB 298 (Brownley). AB 298 was subsequently held in the Senate Appropriations Committee and has not become law.

At meetings in July, September and November 2012, the Sustainability Subcommittee (Vice Mayor Cooper and Councilmember Sahli-Wells) discussed the topic of single-use carryout bags. At these meetings, the Subcommittee expressed support for the concept of an Ordinance to reduce consumption of single-use carryout bags and asked staff to transmit this concept to the City Council for consideration. However, there was a difference of opinion on the specifics, with one Subcommittee Member favoring a ban on single-use plastic bags and one favoring a charge on those bags (both Members favored a charge on paper bags).

DISCUSSION:

Consistent with the desires of the Sustainability Subcommittee, staff is transmitting the request to seek direction from the City Council on the topic of single-use carryout bags. The primary question is whether the City Council wishes to pursue regulation of single-use carryout bags. If it does, staff would request City Council direction on which approach is desired.

Should the City Council Determine to Pursue Regulation of Single-Use Bags

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Should the City Council determine it wishes to pursue regulation of single-use bags, staff would suggest an approach which requires retailers to charge for both single-use plastic and paper bags, rather than requiring retailers to charge just for single-use paper bags and concurrently banning single-use plastic bags. As mentioned previously, jurisdictions in California have not yet taken this approach, as they have been prohibited from doing so under AB 2449. However, Washington, D.C. has reported success with its single-use plastic and paper bag fee. The advantages of this approach include greater flexibility for retailers and customers and more efficiency from an economic perspective. This approach has also received support from the Culver City Chamber of Commerce's leadership. The disadvantages of this approach are that it would make Culver City less consistent with our neighboring jurisdictions and require a more extensive outreach and environmental review process. Specifically, this approach may require an Initial Study and, potentially, a full EIR rather than a Supplemental EIR (which is required if Culver City were to adopt an ordinance modeled on the LA County Ordinance).

Another option the City Council could consider is mirroring LA County's Ordinance and implementing a ban on single-use plastic bags. If the City Council is comfortable with this approach, it would provide the advantages of consistency with other jurisdictions in the region, as well as a faster and less expensive environmental review process.

The City Council could also consider basing Culver City's Ordinance on LA County's, but including relatively minor modifications that could still be accommodated within a Supplemental EIR. For example, West Hollywood altered the types of businesses covered, reduced the reporting required of those businesses, and provided more flexibility in exempting businesses in the case of hardship. If the City Council would like to follow the LA County model, minor modifications to the County's Ordinance such as adjustments to ease reporting requirements and allowing for exemptions in the case of hardship may be advisable as they would still maintain the spirit of the LA County policy, while making it less burdensome to covered businesses.

One additional option for consideration is launching a program to discourage single-use carryout bags that does not rely on an Ordinance that requires fees or imposes bans. One suggestion that has been brought up is creating a program that would include plastic collection at retail stores and the manufacture and sale of branded reusable bags from that plastic. This type of program could provide some benefits, but may come with implementation challenges, including the financial viability of it and finding multiple vendors to recycle the collected bags into new bags for Culver City. Such a program could potentially be implemented along with, rather than instead of, the other options. However, given the implementation challenges and the lack of a clear necessity for the City to be involved in such a program if it were launched, staff is not recommending it at this time.

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Should the City Council wish to move forward with directing staff to draft an Ordinance, staff not only seeks direction on the nature of the desired Ordinance, but also direction regarding the desired public input process to pursue prior to the introduction and adoption of the Ordinance. Staff suggests holding one public meeting and soliciting additional feedback through notices on the City website, in the newspaper, and sent to all potentially affected businesses, but the City Council may desire to weigh in on whether they desire other public outreach. Additionally, staff is requesting direction on engaging a consultant to prepare the necessary environmental documents

FISCAL ANALYSIS:

The fiscal impact varies depending on the policy approach that is desired. The main direct cost to the City of this policy is the cost of retaining a consultant to conduct the environmental analysis. As mentioned previously, if the City's Ordinance is modeled after the LA County Ordinance, a Supplemental EIR is anticipated to be sufficient at a cost of between \$10,000 and \$15,000. If an entirely fee-based approach is taken, the cost is anticipated to be greater, between \$15,000 and \$20,000 if an Initial Study/Negative Declaration is conducted or between \$30,000 and \$35,000 if a full EIR is determined to be required.

In addition to these direct costs, there will be staff time associated with outreach, overseeing the environmental process, drafting the Ordinance, and bringing the Ordinance back for consideration. This work is anticipated to be significant, but can be accommodated if priorities are adjusted. Should the City Council ultimately adopt regulation of single-use bags, there will also be staff time associated with enforcement. Enforcement is anticipated to be undertaken on a complaint basis, and staff does not anticipate a large amount of non-compliance and associated complaints. However, in the event that there are a substantial number of complaints, reconsideration of the impact on workload would be necessary.

In addition to the costs borne by the City to create and implement an Ordinance, there could potentially be financial impacts to customers and businesses covered by the Ordinance depending on how it is crafted. Customers may bear some costs associated with charges for single-use bags that they purchase or for switching to reusable bags. If customers choose to respond to this Ordinance by shopping in jurisdictions without such Ordinances in place, there may be some lost business, which could affect sales and tax revenues. A recent study by the National Center for Policy Analysis (NCPA), a think tank that advocates for private, free-market alternatives to government regulation, presented some suggestive evidence that this may be occurring in LA County. However, this effect is likely to be small in the case of Culver City since our neighboring jurisdictions have either already passed or are actively considering their own Ordinances. Another potential impact to covered businesses suggested by the NCPA is an increase in the use of produce/product bags and shopping cart theft, but it is unclear how persistent or large this potential

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cost would be to covered Culver City businesses and whether it would be offset by lower costs associated with the purchase of fewer bags and the collection of charges for bags.

Based upon the direction (if any) provided by the City Council this evening to pursue regulation of single-use bags, staff will include additional fiscal impacts related to the approach selected by the City Council.

MOTION:

That the City Council:

1. Discuss the recommendation of the Sustainability Subcommittee on the subject of regulation of single-use bags; and,

2. Determine if the City Council wishes to pursue such regulation; and,

3. Should the City Council determine it wishes to pursue such regulation:

A. Provide direction regarding pursuing one of the following options for regulating single-use bags:

i. Requiring retailers, as defined, to charge customers for every single-use paper and plastic bag they use

ii. Requiring retailers, as defined, to charge customers for every single-use paper bag they use and banning the distribution of single-use plastic bags; or,

iii. Other approach as deemed appropriate; and,

B. Provide direction regarding any public outreach process the City Council may desire.