



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Anastazia Aziz, AICP, Senior Planner
MEETING DATE: May 7, 2014
SUBJECT: Regulation of Single-Use Carry-Out Bags
CEQA STATUS Exempt

RECOMMENDATION

1. Direct staff to thank the County of Monterey for its offer of technical assistance to prepare a single-use carry-out bag ordinance, and respectfully decline that assistance.
2. Monitor SB 270 and prepare for its probable implementation as State law.

BACKGROUND

On March 6, 2013, a draft ordinance to regulate single-use carry-out bags, similar to ordinances already adopted by neighboring jurisdictions, was brought before Council. At that time, there were clear differences among individual Councilmembers as to what approach the City should take with respect to certain major issues, such as whether or not to include paper bags, what fees to charge (if any) for single-use carry-out plastic and paper bags, and the range of retail establishments to include. The Council did not adopt an ordinance, and directed staff to work with the County, as the County was set to seek bids for an EIR covering the County and participating cities. Since then, however, new developments have arisen from appellate court cases concerning the extent of environmental review required and from newly proposed statewide plastic bag legislation.

In 2013, two California appellate court decisions were published that upheld the use of a categorical exemption under the California Environmental Quality Act (CEQA) for ordinances that restricted use of plastic bags and imposed a charge on paper bags.

On January 23, 2014, a California State reusable bag bill, Senate Bill 270 (SB 270), was introduced with a key provision that would preempt local jurisdictions from implementing similar ordinances adopted after September 1, 2014. Proposed state law would be phased in and require a \$0.10 charge on all reusable bags in retail stores that sell food, liquor, or drugs. The reusable bags may be plastic, but must be at least 2.25 mils thick and capable of being reused at least 125 times.

County staff has contacted City staff to determine whether Pacific Grove is interested in collaborating with the County on a plastic bag ban ordinance with technical assistance provided by a County-paid consultant. On March 18 the County Board of Supervisors authorized staff to pursue an ordinance and offer CEQA assistance to any city wishing to collaborate on similar ordinances. To date the City of Salinas has confirmed and a number of other cities are

considering the issue. “Technical assistance” would include preparation of substantial evidence; findings for a categorical exemption; and a Notice of Exemption that the cities can use for staff reports and/or draft resolutions in connection with adoption of the ordinance. Additional services include consultants appearing at up to two hearings and one meeting with city staff. There will be no obligation for participating cities to reimburse the County; however, the County will provide a summary of cost to each city for the amount of service provided by the consultant based on the tasks described in the contract.

DISCUSSION

SB 270 would apply to the City’s major distributors of single-use plastic bags, namely Safeway, RiteAid, and Save Mart, effective July 1, 2015, as all stores have over 10,000 sq. ft. of retail space. Trader Joe’s and Grove Market are both under 10,000 square feet in size and do not currently offer plastic bags. They, as well as all other food stores and stores that sell alcoholic beverages, will be required to meet the same requirements after July 1, 2016. The minimum \$0.10 fee would be applied to the sale of all in-store and carry-out plastic and paper bags on July 1, 2016.

Reusable paper and plastic bags that are greater than 2.25 mils may be offered for sale. The ban would go into effect at smaller retail stores July 1, 2016. The attached spreadsheet gives an overview of a bag survey that was completed October 2012-February 2013.

Below is a table comparing SB 270 with the City of Monterey and City of Carmel’s current ordinances.

	Prohibited	Fee for bags	Effective Date(s)	Applicability
SB 270	Single-Use Plastic (less than 2.25 mils)	10 cents for paper or plastic reusable bag	July 1, 2015 & July 1, 2016	July 1, 2015 -10,000 sq. ft. or min sales of \$2M. July 1, 2016 - Convenience food store, foodmart, or good to be consumed off premises.
City of Monterey	Single-Use Plastic (less than 2.25 mils)	10 cents for paper 25 cents per bag effective January 1, 2013	July 1, 2012	Prevents retail stores from providing customers with single-use plastic carryout (shopping) bags, including those advertised as compostable, biodegradable, photo-degradable or similar. Allows retail stores to provide customers with any size recyclable paper or reusable carryout bags; or provide carryout bags made of plastic 2.25 mils or thicker, with or without

				charge at their discretion.
	Prohibited	Fee for bags	Effective Date(s)	Applicability
City of Carmel	Single-Use Plastic (less than 2.25 mils)	No fee for paper bags.	February 3, 2013	No retail establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items

(It is important to note that Carmel is currently considering amending its ordinance.)

Any ordinance adopted after September 1, 2014 would be preempted by SB 270, if it were to pass. The preemption clause in the bill (Article 5) states that local public agencies cannot enforce ordinances adopted on or after September 1, 2014, unless expressly authorized. Pacific Grove would have to adopt an ordinance prior to September 1, 2014 in order to be in effect.

SB 270 appears likely to pass in its current or a similar form, and it would apply to the City’s major distributors of single-use plastic bags, effective July 1, 2015. SB 270 does impose a fee of at least \$0.10 for the sale of reusable bags, which acts as an incentive for customers to bring their own reusable bags. Reusable plastic bags that are greater than 2.25mils would be allowed for purchase. If a customer forgets to bring their bags, or did not bring enough bags, reusable bags would be available for sale for a nominal fee.

As a result, staff recommends waiting for the outcome of the legislature’s deliberations on SB 270. Statewide consistency would benefit Pacific Grove in that it would ease implementation and reduce confusion for customers. Consumers will be accustomed to the \$0.10 fee, and the types of reusable bags for sale. The City would be in alignment with the majority of the State, and would be part of a State-wide initiative that could spur other states to take action.

OPTIONS

1. Implement a City ordinance prior to September 1, 2014, either on our own or in concert with the County. This does not appear warranted, as there is no provision that appears crucial to Pacific Grove that would be precluded by passage of SB 270. If SB 270 does not pass, the City can proceed on its own or in concert with the County.

2. Start working with the County, as a contingency measure, in case SB 270 doesn’t pass. There appears to be little value gained for the amount of effort that would need to be expended. In addition, the Environmental Programs Manager position is currently vacant.

FISCAL IMPACT

Forgoing a City ordinance, and allowing the State ban to go into effect, will have no fiscal impact to the City.

ATTACHMENTS

1. SB 270 regulating single use carry out bags
2. Pacific Grove Bag survey
3. County correspondence

- 4. LA Times Editorial
- 5. Mercury News Editorial

RESPECTFULLY SUBMITTED:

REVIEWED BY:



Anastazia Aziz, AICP
Senior Planner



Thomas Frutchey
City Manager

LEGISLATIVE COUNSEL'S DIGEST

SB 270, as amended, Padilla. -Solid waste: single-use carryout bags.

(1) Existing law, until 2020, requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store.

This bill, as of July 1, 2015, would prohibit stores that have a specified amount of sales in dollars or retail floor space from providing a single-use carryout bag to a customer, with specified exceptions. The bill would also prohibit a store from selling or distributing a recycled paper bag at the point of sale unless the store makes that bag available for purchase for not less than \$0.10. The bill would also allow such a store, on or after July 1, 2015, to distribute compostable bags at the point of sale only in jurisdictions that meet specified requirements and at a cost of not less than \$0.10. The bill would require these stores to meet other specified requirements on and after July 1, 2015, regarding providing reusable grocery bags to customers, including distributing those bags only at a cost of not less than \$0.10.

The bill, on and after July 1, 2016, would additionally impose these prohibitions and requirements on convenience food stores, foodmarts, and entities engaged in the sale of a limited line of goods, or goods intended to be consumed off premises, and that hold a specified license with regard to alcoholic beverages. The bill would allow a retail establishment to voluntarily comply with these requirements, if the retail establishment notifies the department and pays a registration fee established by the department.

The bill would require the operator of a store that has a specified amount of sales in dollars or retail floor space, in addition to complying with existing requirements, to establish an at-store recycling program that provides an opportunity for customers to return to the store clean polyethylene, polypropylene, and polyethylene terephthalate bags, including requiring those bags that are provided by the store to display a specified notice and providing for the placement of collection bins in a specified manner.

The bill would require certain stores selling a reusable grocery bag on and after July 1, 2015, to a customer at the point of sale to meet specified requirements with regard to the bag's durability, material, labeling, heavy metal content, and, with regard to reusable grocery bags made from plastic on and after January 1, 2016, recycled material content. The bill would impose these requirements as of July 1, 2016, on the stores that are otherwise subject to the bill's requirements.

The bill would prohibit a producer of reusable grocery bags made from specified plastics from selling or distributing those bags on and after January 1, 2016, unless the producer is certified by the Department of Resources Recycling and Recovery. The bill would require the application for certification to include specified information that verifies the incorporation of clean postconsumer recycled material. The bill would also authorize a supplier of postconsumer recycled material to a producer of those bags to apply to the department for certification as a supplier of material. The bill would specify a procedure for a person to submit a written request to the department objecting to approval of a certification and for the holding of a hearing regarding that approval.

The department would be authorized to suspend or revoke a certification under specified circumstances and would be required to publish on its Internet Web site a list of certified reusable grocery bag producers and suppliers and reusable grocery bags that comply with the requirements of the bill. The bill would require the department to establish a certification fee schedule to cover the department's costs to implement these requirements, which a reusable grocery bag producer or supplier applying for certification would be required to pay. The bill would also require a reusable grocery bag producer to submit specified laboratory test results to the department.

A violation of these requirements would be subject to an administrative civil penalty assessed by the department. The department would be required to deposit these penalties into the Reusable Bag Account, which would be created in the Integrated Waste Management Fund, for expenditure by the department, upon appropriation by the Legislature, to implement those requirements.

The bill would allow a city, county, or city and county, or the state to impose civil penalties for a violation of the bill's requirements, except as specified. The bill would require these civil penalties to be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, and would allow the penalties collected by the Attorney General to be expended by the Attorney General, upon appropriation by the Legislature, to enforce the bill's provisions. The bill would provide that these remedies are not exclusive, as specified.

The bill would declare that it occupies the whole field of the regulation of reusable grocery bags, single-use carryout bags, and recycled paper bags and would prohibit a local public agency from enforcing or

implementing an ordinance, resolution, regulation, or rule adopted on or after September 1, 2014, relating to those bags, against a store unless expressly authorized. The bill would allow a local public agency that has adopted such an ordinance, resolution, regulation, or rule prior to September 1, 2014, to continue to enforce and implement that ordinance, resolution, regulation, or rule, and would preempt any amendments to that ordinance, resolution, regulation, or rule, except that the bill would allow a local public agency to adopt or amend an ordinance, resolution, regulation, or rule setting a price for a recycled paper bag, compostable bag, or reusable grocery bag.

(2) The California Integrated Waste Management Act of 1989 creates the Recycling Market Development Revolving Loan Subaccount in the Integrated Waste Management Account and continuously appropriates the funds deposited in the subaccount to the department for making loans for the purposes of the Recycling Market Development Revolving Loan Program. Existing law makes the provisions regarding the loan program, the creation of the subaccount, and expenditures therefrom inoperative on July 1, 2021, and repeals them as of January 1, 2022.

This bill would appropriate \$2,000,000 from the Recycling Market Development Revolving Loan Subaccount in the Integrated Waste Management Account to the department for the purposes of providing loans and grants for the creation and retention of jobs and economic activity in California for the manufacture and recycling of plastic reusable grocery bags that use recycled content. The bill would require a recipient of a grant to agree, as a condition of receiving a grant, to take specified actions.

DIGEST KEY

Vote: MAJORITY Appropriation: YES Fiscal Committee: YES Local Program: NO

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Chapter 5.3 (commencing with Section 42280) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 5.3. Single-Use Carryout Bags

Article 1. Definitions

42280.

- (a) "Department" means the Department of Resources Recycling and Recovery.
- (b) "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 byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
- (c) "Recycled paper bag" means a paper carryout bag provided by a store to a customer at the point of sale that meets all of the following requirements:
 - (1) (A) Except as provided in subparagraph (B), contains a minimum of 40 percent postconsumer recycled materials.
 - (B) An eight pound or smaller recycled paper bag shall contain a minimum of 20 percent postconsumer recycled material.
 - (2) Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the state.
 - (3) Has printed on the bag the name of the manufacturer, the country where the bag was manufactured, and the minimum percentage of postconsumer content.
- (d) "Reusable grocery bag" means a bag that is provided by a store to a customer at the point of sale that meets the requirements of Section 42281.
- (e) (1) "Reusable grocery bag producer" means a person (1) or entity that does any of the following:
 - (A) Manufactures reusable grocery bags for sale or distribution to a store.
 - (B) Imports reusable grocery bags into this state, for sale or distribution to a store.
 - (C) Sells or distributes reusable bags to a store.
- (2) "Reusable grocery bag producer" does not include a store, with regard to a reusable grocery bag for which there is a manufacturer or importer, as specified in subparagraph (A) or (B) of paragraph (1).
- (f) (1) "Single-use carryout bag" means a bag made of plastic, paper, or other material that is provided by a store to a customer at the point of sale and that is not a recycled paper bag or a reusable grocery bag that meets the requirements of Section 42281.

- (2) A single-use carryout bag does not include either of the following:
 - (A) A bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code to a customer purchasing a prescription medication.
 - (B) A nonhandled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag, a reusable grocery bag, or a compostable plastic bag.
- (g) "Store" means a retail establishment that meets any of the following requirements:
 - (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 groceries, canned goods, or nonfood items, and some perishable items.
 - (2) Has 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 has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.
 - (3) Is a convenience food store, foodmart, or other entity that is engaged in the retail sale of a limited line of goods, generally including milk, bread, soda, and snack foods, and that holds a Type 20 or Type 21 license issued by the Department of Alcoholic Beverage Control.
 - (4) Is a convenience food store, foodmart, or other entity that is engaged in the retail sale of goods intended to be consumed off the premises, and that holds a Type 20 or Type 21 license issued by the Department of Alcoholic Beverage Control.
 - (5) Is not otherwise subject to paragraph (1), (2), (3), or (4), if the retail establishment voluntarily agrees to comply with the requirements imposed upon a store pursuant to this chapter, notifies the department of its intent to comply with the requirements imposed upon a store pursuant to this chapter, and pays the registration fee that may be established pursuant to Section 42284.

**Article 2. Reusable Grocery Bags
42281.**

- (a) On and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, may sell or distribute a reusable grocery bag to a customer at the point of sale only if the reusable bag meets all of the following requirements:
 - (1) Has a handle and is designed for at least 125 uses. A bag satisfies this minimum use requirement if the bag is capable of carrying two full, one gallon milk jugs for 125 uses and meets either of the following requirements:
 - (A) If the bag is made of polyethylene, polypropylene, or polyethylene terephthalate, the bag has a minimum thickness of at least 2.25 mils.
 - (B) If the bag is made of a woven or nonwoven polymer or fiber, the bag has a minimum fabric weight of at least 80 grams per square meter.
 - (2) Has a volume capacity of at least 15 liters.
 - (3) Is machine washable or made from a material that can be cleaned and disinfected.
 - (4) Has printed on the bag, or on a tag attached to the bag that is not intended to be removed, and in a manner visible to the consumer, all of the following information:
 - (A) The name of the manufacturer.
 - (B) The country where the bag was manufactured.
 - (C) A statement that the bag is a reusable bag and designed for at least 125 uses.
 - (D) Instructions to return the bag to the store for recycling or to another appropriate recycling location, if applicable.
 - (5) Does not contain lead, cadmium, or any other heavy metal in toxic amounts. This requirement shall not affect any authority of the Department of Toxic Substances Control pursuant to Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20 of the Health and Safety Code and, notwithstanding subdivision (c) of Section 25257.1 of the Health and Safety Code, the reusable grocery bag shall not be considered as a product category already regulated or subject to regulation.
 - (6) Complies with Section 260.12 of Part 260 of Title 16 of the Code of Federal Regulations related to recyclable claims if the reusable grocery bag producer makes a claim that the reusable grocery bag is recyclable.
- (b) In addition to the requirements in subdivision (a), a reusable grocery bag made from plastic, including sheet, woven, or nonwoven plastic, shall meet all of the following requirements:
 - (1) On and after January 1, 2016, be made from a minimum of 20 percent postconsumer recycled material,
 - (2) On and after January 1, 2020, be made from a minimum of 40 percent postconsumer recycled material.
 - (3) All postconsumer recycled material shall be cleaned using washing equipment specifically designed for that purpose.
 - (4) In addition to the information required to be printed on the bag or on a tag, pursuant to paragraph (4) of subdivision (a), a statement that the bag is made partly or wholly from postconsumer material, as applicable, as well as stating the percentage.
- (c) A plastic reusable grocery bag that also meets the specifications of the American Society of Testing and Materials (ASTM) Standard Specification for Compostable Plastics D6400, as published in September 2004, is not required to meet the requirements of paragraph (1) or (2) of subdivision (b), but shall be labeled in accordance with the applicable state law regarding compostable plastics.

(d) On and after July 1, 2016, a store as defined in paragraph (3) or (4) of subdivision (g) of Section 42280, shall comply with the requirements of this section.

42281.5.

(a) On and after January 1, 2016, a producer of polyethylene, polypropylene, or polyethylene terephthalate reusable grocery bags shall not sell or distribute a reusable grocery bag in this state unless the producer is certified by the department pursuant to this section. Certification shall require that the reusable grocery bags sold by the producer comply with the requirements of Section 42281. The application for certification submitted by the producer shall verify the incorporation of cleaned postconsumer recycled material into bags, as required by paragraphs (1), (2), and (3) of subdivision (b) of Section 42281, and shall include all of the following:

(1) Names, locations, and contact information of all sources and suppliers of postconsumer recycled material. Except as provided in subdivision (c), the supplier shall be certified by the department as a post-consumer recycled material supplier pursuant to subdivision (b).

(2) Quantity and dates of postconsumer recycled material purchases by the reusable bag producer.

(3) Any other information that the department may require to enable verification of the information provided in the application.

(b) A supplier of material to a producer of polyethylene, polypropylene, or polyethylene terephthalate reusable grocery bags may apply to the department for certification as a supplier of material. The application for certification shall verify the methods of collecting and processing the postconsumer recycled material, including all of the following:

(1) How the postconsumer material is obtained.

(2) Washing equipment, including the name of the maker, model, description, photographs, and exact locations of the equipment.

(3) Any other information that the department may require to enable verification of the information provided in the application.

(c) If a reusable grocery bag producer obtains postconsumer recycled material without an intermediate supplier, the reusable grocery bag producer is not required to provide, in its application, the information regarding the certification of a supplier pursuant to subdivision (b), but shall provide the department with the same information otherwise required under paragraphs (1) to (3), inclusive, of subdivision (b).

(d) The department shall provide a system to submit applications for certification online.

(e) The department shall post on its Internet Web site 90 days written notice of its intention to approve or disapprove a certification application submitted pursuant to subdivision (a) or (b), including its proposed decision, and shall invite public comments. The notice shall include copies of all documents submitted in support of the application, with pricing information removed. The department may respond to any public comments submitted in writing. The department shall issue a written ruling on the application, stating its reasons and fully explaining its responses to any objections.

(f) (1) A person may object to a proposed approval of a certification on the grounds that the application for certification of the reusable grocery bag producer or supplier did not comply with the requirements imposed pursuant to this section, including the verification of postconsumer recycled material, by submitting a written request to the department.

(2) Upon receiving a written request pursuant to paragraph (1), the department shall hold a public hearing before approving the application.

(3) After holding a hearing pursuant to paragraph (2), the department shall issue a written ruling on the application, stating its reasons and fully explaining its response to any objections in the written request.

(4) A person objecting to the department's approval of certification, following a hearing conducted pursuant to paragraph (2), may file an action for review of that approval in the superior court of Sacramento County within 90 days of the ruling. The court shall make its own independent findings on whether the department, in approving the application for certification, obtained verified evidence of postconsumer material, and may consider evidence that was not submitted to the department.

(g) The department may suspend or revoke a certification of a reusable grocery bag producer or supplier upon 90 days written notice if the department receives a complaint supported by substantial and credible evidence that the reusable grocery bags distributed by the producer do not comply with the requirements of Section 42281 or that the supplier is not in compliance with the information supplied in the application for certification.

(h) On and after January 1, 2016, the department shall publish a list on its Internet Web site that includes all of the following:

(1) The name, location, and contact information of all certified reusable grocery bag producers and all certified post-consumer recycled material suppliers.

(2) The reusable grocery bags distributed by a reusable grocery bag producer certified by the department.

42282.

(a) Upon request by the department, a reusable grocery bag producer shall submit laboratory test results from independent, accredited (ISO/IEC 17025) laboratories to the department confirming that the reusable grocery bag meets the requirements of Section 42281 for each type of reusable grocery bag that is manufactured, imported, sold, or distributed in the state and provided to a store for sale or distribution.

- (b) The department may test any reusable grocery bag manufactured by a reusable grocery bag producer and provided to a store for sale or distribution for compliance with this article and the regulations adopted pursuant to this article.
- (c) The department may inspect and audit a certified reusable grocery bag producer subject to this article to ensure continuing compliance with Section 42281. All costs associated with the audit shall be paid by the reusable grocery bag producer.
- (d) The department may enter into an agreement with other state entities that conduct inspections to provide necessary enforcement of this article.

42282.1.

- (a) A reusable grocery bag producer or supplier shall submit the fee established pursuant to subdivision (b) to the department when making an application for certification.
- (b) The department shall establish a certification fee schedule that will generate fee revenues sufficient to cover, but not exceed, the department's reasonable costs to implement and enforce this article. The department may expend the fees collected pursuant to this section, upon appropriation by the Legislature, to carry out this article.

42282.2.

- (a) Notwithstanding Section 42285, a violation of this article shall be subject to an administrative civil penalty assessed by the department in an amount not to exceed five hundred dollars (\$500) for the first violation. A subsequent violation is subject to a penalty of up to five hundred dollars (\$500) per prior violation, not to exceed five thousand dollars (\$5,000) per violation.
- (b) On and after January 1, 2016, a store in violation of Section 42281 shall remove from the point of sale any reusable grocery bags made from polyethylene, polypropylene, or polyethylene terephthalate that were not distributed or sold by a certified reusable grocery bag producer pursuant to Section 42282 within seven days after the store receives notification of the violation.

42282.3.

The department shall deposit all penalties collected pursuant to subdivision (a) of Section 42282.1 for a violation of this article into the Reusable Bag Account, which is hereby created in the Integrated Waste Management Fund. The moneys in the Reusable Bag Account shall be expended by the department, upon appropriation by the Legislature, to assist the department with its costs of implementing this article.

Article 3. Single-Use Carryout Bags

42283.

- (a) Except as provided in subdivisions (d) and (e), on and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, shall not provide a single-use carryout bag to a customer at the point of sale.
- (b) (1) On and after July 1, 2015, a store shall not sell or distribute a reusable grocery bag at the point of sale except as provided in this subdivision.
- (2) On and after July 1, 2015, a store may make available for purchase at the point of sale a reusable grocery bag that meets the requirements of Section 42281.
- (3) On and after July 1, 2015, a store that makes reusable grocery bags available for purchase pursuant to paragraph (2) shall not sell the reusable grocery bag for less than ten cents (\$0.10) in order to ensure that the cost of providing a reusable grocery bag is not subsidized by a customer who does not require that bag.
- (c) (1) On and after July 1, 2015, a store shall not sell or distribute a recycled paper bag except as provided in this subdivision.
- (2) A store may make available for purchase a recycled paper bag. On and after July 1, 2015, the store shall not sell a recycled paper bag for less than ten cents (\$0.10) in order to ensure that the cost of providing a recycled paper bag is not subsidized by a consumer who does not require that bag.
- (d) Notwithstanding any other law, on and after July 1, 2015, a store that makes reusable grocery bags or recycled paper bags available for purchase at the point of sale shall provide a customer participating 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 and a customer participating 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 with a reusable grocery bag or a recycled paper bag at no cost at the point of sale.
- (e) On and after July 1, 2015, a store may distribute a compostable bag at the point of sale, if the compostable bag is provided to the consumer at the cost specified pursuant to paragraph (2), the compostable bag, at a minimum, meets the American Society for Testing and Materials (ASTM) Standard Specification for Compostable Plastics D6400, and in the jurisdiction where the compostable bag is sold and in the jurisdiction where the store is located, both of the following requirements are met:
 - (1) A majority of the residential households in the jurisdiction have access to curbside collection of foodwaste for composting.

(2) The governing authority for the jurisdiction has voted to allow stores in the jurisdiction to sell to a consumers at the point of sale a compostable bag at a cost not less than the actual cost of the bag, which the Legislature hereby finds to be not less than ten cents (\$0.10) per bag.

(f) A store shall not require a customer to use, purchase, or accept a single-use carryout bag, recycled paper bag, compostable bag, or reusable grocery bag as a condition of sale of any product.

42283.5.

On and after July 1, 2016, a store, as defined in paragraph (3) or (4) of subdivision (g) of Section 42280, shall comply with the same requirements of Section 42283 that are imposed upon a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42880.

42283.6.

The operator of a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280 shall, in addition to complying with the requirements of Chapter 5.1 (commencing with Section 42250), establish an at-store recycling program that provides an opportunity for customers to return to the store a clean polyethylene, polypropylene, or polyethylene terephthalate bag, including, but not limited to, a single-use carryout bag or a reusable grocery bag. The at-store recycling program shall include all of the following:

(a) Any polyethylene, polypropylene, and polyethylene terephthalate bag provided by the store shall have printed or displayed on the bag or on a tag, in a manner visible to a consumer, and in compliance with Section 42281, the words "PLEASE RETURN TO A PARTICIPATING STORE FOR RECYCLING."

(b) A collection bin shall be placed at each store and shall be visible, easily accessible to the consumer, and clearly marked that the collection bin is available for the purpose of collecting and recycling a polyethylene, polypropylene, or polyethylene terephthalate bag.

(c) All polyethylene, polypropylene, or polyethylene terephthalate bags collected by the store pursuant to this section shall be collected, transported, and recycled in a manner that does not conflict with the local jurisdiction's source reduction and recycling element, pursuant to Chapter 2 (commencing with Section 41000) and Chapter 3 (commencing with Section 41300) of Part 2.

(d) A retail establishment that elects to comply with this chapter pursuant to paragraph (5) of subdivision (g) of Section 42280 shall establish an at-store recycling program in accordance with this section.

42284.

The department may establish a registration fee to be paid by a retail establishment that elects to comply with the requirements imposed pursuant to this chapter upon a store pursuant to paragraph (5) of subdivision (g) of Section 42280. The department shall set the amount of the fee in an amount that covers the costs to the department to regulate the fee payer's compliance with this chapter. The department may expend the fees pursuant to this section, upon appropriation by the Legislature, to carry out that regulatory authority.

Article 4. Enforcement

42285.

(a) Except as provided in Section 42282.2, a city, a county, a city and county, or the state may impose civil liability in the amount of five hundred dollars (\$500) for the first violation of this chapter, one thousand dollars (\$1,000) for the second violation, and two thousand dollars (\$2,000) for the third and subsequent violations.

(b) Any civil penalties collected pursuant to subdivision (a) shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action. The penalties collected pursuant to this section by the Attorney General may be expended by the Attorney General, upon appropriation by the Legislature, to enforce this chapter.

(c) The remedies provided by this section shall not be exclusive and shall be in addition to the remedies that may be available pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

Article 5. Preemption

42287.

(a) Except as provided in subdivision (c), this chapter is a matter of statewide interest and concern and is applicable uniformly throughout the state. Accordingly, this chapter occupies the whole field of regulation of reusable grocery bags, single-use carryout bags, and recycled paper bags, as defined in this chapter.

(b) On and after January 1, 2015, a city, county, or other local public agency shall not enforce, or otherwise implement, an ordinance, resolution, regulation, or rule adopted on or after September 1, 2014, relating to reusable grocery bags, single-use carryout bags, or recycled paper bags, against a store, as defined in this chapter, unless expressly authorized by this chapter.

(c) A city, county, or other local public agency that has adopted, prior to September 1, 2014, an ordinance, resolution, regulation, or rule relating to reusable grocery bags, single-use carryout bags, or recycled paper bags may continue to enforce and implement that ordinance, resolution, regulation, or rule that was in effect before that date. Any

amendments to that ordinance, resolution, regulation, or rule on or after January 1, 2015, shall be subject to subdivision (b), except any city, county, or other local public agency may adopt or amend an ordinance, resolution, regulation, or rule with regard to the amount that a store shall charge with regard to a recycled paper bag, compostable bag, or reusable grocery bag.

Article 6. Financial Provisions
42288.

(a) Notwithstanding Section 42023.2, the sum of two million dollars (\$2,000,000) is hereby appropriated from the Recycling Market Development Revolving Loan Subaccount in the Integrated Waste Management Account to the department for the purposes of providing loans and grants for the creation and retention of jobs and economic activity in this state for the manufacture and recycling of plastic reusable grocery bags that use recycled content, including postconsumer recycled material.

(b) The department shall expend the funds appropriated pursuant to this section to provide loans and grants for both of the following:

(1) Development and conversion of machinery and facilities for the manufacture of single-use plastic bags into machinery and facilities for the manufacturer of durable reusable grocery bags that, at a minimum, meet the requirements of Section 42281.

(2) Development of equipment for the manufacture of reusable grocery bags, that, at a minimum, meet the requirements of Section 42281.

(c) A recipient of a grant authorized by this section shall agree, as a condition of receiving a grant, to retain and retrain existing employees for the manufacturing of reusable grocery bags that, at a minimum, meet the requirements of Section 42281.

	Date of visit	Patron Count	Bag count	Counts: basis for percentages			Counts: basis for percentages			Store Size Sq Ft
				Reusable Bags &/or none	Paper Bags	Plastic Bags	Reusable Bags &/or none	Paper Bags	Plastic Bags	
Pacific Grove:										
*Safeway AM	10.27.12	79	173	17%	1%	82%	30	2	141	25000
RiteAid Drug PM	12.21.12	86		53%		47%	46		40	24000
Grove Market PM	01.31.13	77		45%	55% not available		35	42		5975
Save Mart PM	02.09.13	131		22%	18%	60%	29	24	78	38000
Trader Joes PM	01.19.13	121		57%	43% not available		69	52		13680
Average				39%	29%	63%				

MEETING:	March 18, 2014 – Scheduled 10:30 A.M.	AGENDA NO.:	20
SUBJECT:	a. Receive an oral report regarding recent factors that may influence preparation of a reusable bag ordinance to restrict single-use carry-out plastic bags and encourage use of reusable bags; and b. Provide direction to staff on alternative approaches to development of the ordinance.		
DEPARTMENT:	Health – Environmental Health Bureau		

RECOMMENDATIONS:

It is recommended that the Board of Supervisors:

- a. Receive a report regarding recent factors that may influence preparation of a reusable bag ordinance to restrict single-use carry-out plastic bags and encourage use of reusable bags; and
- b. Provide direction to staff on alternative approaches to development of the ordinance.

SUMMARY:

On July 30, 2013, the Board of Supervisors directed staff to proceed with preparation of an Environmental Impact Report (EIR) that would analyze both a proposed draft County reusable bag ordinance as well as proposed ordinances by cities within Monterey County wishing to pursue similar ordinances. On January 23, 2014, a California State reusable bag bill, Senate Bill 270 (SB270), was announced with a key provision that would preempt local jurisdictions from enforcing similar ordinances if adopted after September 1, 2014. This is a compromise bill, supported by the California State Association of Counties (CSAC), which has a good chance of passage this year according to CAO staff analysis. Due to the current consideration of SB270 by the State, the Board may want to reconsider its direction with regard to a similarly focused local ordinance. Of special significance, two appellate court decisions were published in 2013 which upheld the use of a categorical exemption under the California Environmental Quality Act (CEQA) for ordinances that restricted use of plastic bags and imposed a charge on paper bags. These developments raise the issue as to whether a local EIR is still appropriate, or whether other alternatives should now be considered. Three options have been identified and the pros and cons of each are discussed in this staff report.

DISCUSSION:

The County has been working on the development of a Reusable Bag Ordinance for some time. On July 30, 2013, the Board of Supervisors authorized staff to proceed with the preparation of an EIR with the County as the lead agency, to analyze the impacts of a reusable bag ordinance in the unincorporated County and within the cities that have yet to pass an ordinance. There are two key benefits of completing an EIR: 1) It would facilitate approval by the cities since each city could rely on the EIR in considering adoption of their ordinances; this concept has been used successfully by other counties throughout California, and 2) A range of pricing alternatives for paper bags could be analyzed simultaneously.

Since last July, two California Court of Appeal decisions were published upholding the use of categorical exemptions under CEQA for plastic bag reduction ordinances. Both ordinances in question imposed a mandatory charge on single-use paper bags.

Separately from the CEQA issue, preemption of local ordinances by state law has become more of a possibility. In June 2013 Senate Bill 405 fell 3 votes short of passage on the senate floor. On January 23, 2014, the bill's author, along with previously opposed senators, announced a compromise bill, SB270. Given the increased support for SB270 produced by compromise and the support of CSAC, along with the support of some statewide environmental groups, passage of the SB270 is considered likely enough that the implications should be considered at this time. Of primary importance for consideration is the preemption clause in the bill (Article 5) which states that local public agencies cannot enforce ordinances adopted on or after September 1, 2014, unless expressly authorized. The full text of the draft bill is attached as Attachment 1.

In summary, the combination of the appellate court decisions and the potential September 1, 2014, preemption deadline makes it appropriate to consider whether to proceed with an EIR as previously directed or follow a different path. Three options have been identified and the benefits and drawbacks of each follow:

OPTION 1: Proceed with EIR for the County and 11 cities within Monterey County, with a target adoption date of August 26, 2014.

Under this option staff would proceed with previous direction to complete an EIR with the recognition that completion of the EIR and adoption of the ordinance could likely not occur prior to September 1, a relevant date if the state legislation in its current form were adopted. The preparation of the draft EIR, public circulation of the draft EIR, preparation of the final EIR, and two readings of the ordinance at the Board of Supervisors would very likely take longer than six months. If the Board were to choose this option, however, staff would recommend sole-source selection of an environmental consultant on County's list immediately following Board of Supervisors' direction on this date (March 18, 2014) in order to expedite the process and obtain a consultant with applicable specific experience.

- Benefits of Option 1: Meets previous BOS direction; EIR covers and assists cities; flexibility for County and cities to pick the amount of charge or have no charge for paper bags; maintains local control over type and breadth of ordinance.
- Drawbacks of Option 1: Adoption prior to September 1 by County and cities is improbable and cannot be assured; passage of SB270 in its current form would preempt County efforts, and expended County funds, estimated at \$50,000, would be unproductively spent; some cities may not want to use the EIR and, instead, wait for state law to pass.

OPTION 2: A) County and each city separately adopt ordinances with independent environmental review; County could likely proceed with categorical exemption for County-only ordinance; B) County assists the cities by hiring consultant to draft ordinances and findings and conduct supporting research. City participation would be voluntary; C) the draft County ordinance would propose a 10 cents/bag charge with subsequent evaluation after a set period of time, subject to hearing by the Board of Supervisors. The cities could decide whether to have the same or different charge.

Under this option staff would confirm which cities wish to proceed with County assistance and contract with a consultant to draft ordinances and findings and conduct supporting research for each jurisdiction.

- Benefits of Option 2: Significantly less expensive than Option 1; provides customized help for cities; participants maintain local control as compared to potential state law; allows each

city to select their fee amount; may allow County to adopt its ordinance prior to September 1, 2014. Agenda Item No. 9D

- Drawbacks of Option 2: some cities may choose to wait for State legislation; possibility of different charges within the neighboring jurisdictions.

OPTION 3: County (and cities) do not pursue local ordinances and await outcome of pending state legislation.

Under this option the County would stop efforts for an ordinance and wait for the outcome of the pending state legislation. Proposed state law would require a 10¢ charge on all bags in retail stores that sell food, liquor or drugs. Other retail stores are exempt (most stores in shopping malls), and the design of reusable bags can be the same as existing single-use film-plastic bags, just thicker.

- Benefits of Option 3: No County staff or resources involved; County and up to 11 of 12 local cities would be subject to the same law; proposed law requires 20% recycled plastic content for plastic bags; proposed law states all alternative bags must be “reusable” which is defined as reusable 125 times carrying two 1-gallon containers.
- Drawbacks of Option 3: Loss of local control; many types of retailers would be exempt, potentially creating confusion among retailers and the public; the City of Monterey is opposed to SB270; the new style of “reusable bags” promoted by SB270 proponents are thicker versions of the single-use plastic film bags currently in use; opponents of SB270 contend that the true reuse rate of plastic film bags may be low, plastic film bags would still be available at every check-out making the stated goal of shifting to mesh or canvas bags more problematic, the thicker plastic film bags would still float in water, clog storm drains and jam recycling equipment and therefore have many of the same environmental issues as the current thin plastic film bags.

OTHER AGENCY INVOLVEMENT:

The Environmental Health Bureau has been working with the Resource Management Agency on the development of the ordinance and the EIR process. Staff has also been coordinating with the cities located within the County. Text of the Proposed Senate Bill 270 is on file with the Clerk of the Board as Attachment 1.

FINANCING:

The development of the program, primarily staff resources to date, has been funded through existing department budgets. Contracted consultant costs would also be funded through existing department budgets. Depending on the ultimate program details, reimbursement through the County General Fund may be required.

Prepared by:

Approved by:

Mark Dias 755-4617
Supervising Environmental Health Specialist

Ray Bullick
Director of Health

Date: _____

Date: _____

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EDITORIAL

Ban plastic bags, statewide

The latest bill in Sacramento needs work, but it would create uniformity in addressing a serious environmental hazard.

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SB 270 would allow stores to sell paper bags, but it would require that they charge at least 10 cents for each one to discourage shoppers from using them. Stores could also sell plastic bags made to last for more than 100 grocery trips for about the same price. (Los Angeles Times / February 19, 2014)

By The Times editorial board
February 20, 2014

The bill to ban single-use plastic carryout bags is back, and California has never been more ready for it. A third of Californians, including shoppers in the city of Los Angeles, already must either use their own reusable bags at the supermarket or pay a small fee for a paper one. It's time to bring the other two-thirds of Californians into line.

The newest version of the bill by state Sen. Alex Padilla (D-Pacoima) has a few twists that should be amended, but overall it outlines a sane approach to replacing plastic bags while minimizing the inconvenience for consumers. It would at first affect only food stores, including big-box stores with



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California needs single-use plastic bags -- to fight terrorists

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Drowning the oceans in plastic

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grocery departments. In a couple of years, the rules would extend to pharmacies and stores with pharmaceutical departments.

Under Padilla's proposal consumers would still be able to stuff their fruits and vegetables into the small plastic bags without handles that are usually available in the produce department. The only bags that would be banned are the familiar flimsy ones that are used to bag items at the checkout stand; they're the ones that make up most of the plastic trash in waterways and along beaches.

From there, they make their way into the ocean, where they join giant patches of floating plastic debris. The plastic is often eaten by marine animals, making it impossible for them to ingest enough food; plastic bags also choke sea birds and other marine life.

SB 270 would allow stores to sell paper bags, but it would require that they charge at least 10 cents for each one to discourage shoppers from using them. Stores could also sell plastic bags made to last for more than 100 grocery trips for about the same price.

To sweeten the pot for other bag manufacturers, the bill would create a one-time fund of \$2 million that they could tap for retooling facilities and retraining workers. It's not much money, but the fund shouldn't be necessary. Far-sighted companies will adjust to the changing landscape on their own.

One advantage to a statewide law should be uniformity, so that chain stores and consumers aren't confronted with a regulatory patchwork of rules depending on which city limits they happen to have crossed. Yet Padilla's bill would allow existing local rules to take precedence over the the state law. The legislation should be amended to fix that.

The state has come a long way since 2006, when the Legislature yielded to the bag industry's complaints by forbidding cities to impose fees on plastic bags, but every year the industry's lobbying has stopped a full bill from passing. Californians toss away more than 110,000 tons of plastic bags each year; too many of those become a marine hazard that we can prevent with the minor inconvenience of bringing our own bags to the supermarket.

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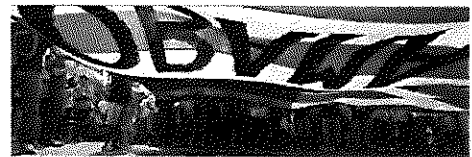
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Mercury News editorial: California ban on plastic bags is way overdue

Mercury News Editorial

POSTED: 02/03/2014 12:27:49 PM PST | UPDATED: 3 MONTHS AGO

18 COMMENTS

Bans on single-use plastic bags were pioneered in San Jose, San Francisco, Los Angeles and scores of other California municipalities because of the huge public cost of cleaning the bags out of storm drains, waterways and streets. But a state and ultimately a national ban are needed, and California should lead the way.

SB 270 on this year's docket is a testament to the persistence of Sen. Alex Padilla, D-Los Angeles, whose bill last year failed. Lawmakers and the governor should expedite this one so they can devote the rest of the spring to the tug of war over the state's revenue surplus.

Opponents of a ban on single-use bags have used the bogus argument that it would kill plastic bag manufacturing jobs. Sen. Kevin de Leon, soon to be Senate president pro tem, was skewered for pushing the job killer idea last year and accepting large contributions from the bag industry.

But de Leon and another previous opponent, Ricardo Lara of Long Beach, joined Padilla in introducing SB 270 in January. They touted the addition of a \$2 million sweetener for manufacturers to retool and start making reusable bags.

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- [Plastic bags: Deal reached in bid for California ban](http://www.mercurynews.com/business/ci_24985035/deal-reached-ban-plastic-grocery-bags-california?source=rkg)
(http://www.mercurynews.com/business/ci_24985035/deal-reached-ban-plastic-grocery-bags-california?source=rkg)

10 market shift that would have happened on its own -- the industry must have spent more \$2 million opposing prior bans -- but it's worth the money, considering how much municipalities will save if the bags go away.

44 bill would stop their use at supermarkets starting in July 2015 and at smaller stores in July 2016; require stores to charge 10 cents for paper bags and require increased use of recycled material in reusable bags -- at least 20 percent by 2016 and 40 percent by 2020.

Share The ban may still face opposition from the plastics lobby. But if they're smart, they'll retool, retrain and compete. The false choice between the environment and jobs has about worn itself out. Regulations like this close some economic doors but open others, often to more promising prospects.

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3 In example, Command Packaging in Vernon, with 300 employees, is shifting to make reusable Share out of plastic recycled from agriculture-industry use.

The state agency CalRecycle says the new bill would end the use of 13 billion single-use plastic bags a year, 95 percent of which are not recycled.

San Jose's bag ban reduced plastic bag litter 89 percent in storm drain systems, 60 percent in creeks and rivers and 59 percent in streets and neighborhoods, according to a 2012 survey. They are a big part of the trash that lines our freeways.

Local bans are saving cities and counties money and curbing pollution. Bringing washable and reusable bags can be annoying, but it's not hard once you've got the habit.

The Heartland will take awhile to convince. But when it comes to environmental advances, nothing happens unless California gets things rolling.

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Anthony van Leeuwen • a month ago

A statewide bag ban is just another Nanny State proposal that accomplishes nothing. Plastic bag litter is less than 0.6% of all litter whereas fast food litter is 29.4% of all litter. Plastic bag litter has no impact on your personal life, but a bag ban will affect you each and every time you go shopping. Not only do you have to remember to take your reusable bags with you, but you have to spend valuable water (there is a drought on) to wash your bags giving you one more thing to wash. Then there is the personal time required to refoild bags, put them back into your car, wash them, and replace them when broken. It costs about \$10-20 per year to supply your family with plastic bags and about \$250-300 per year using

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