



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

November 16, 2010

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**SINGLE-USE PLASTIC AND PAPER CARRYOUT BAGS
CERTIFY THE FINAL ENVIRONMENTAL IMPACT REPORT
ADOPT ORDINANCE
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

SUBJECT

This action is to certify the Environmental Impact Report and adopt an Ordinance restricting the use of plastic carryout bags and imposing a ten (10) cent charge on recyclable paper carryout bags at stores, as defined, in the County unincorporated areas.

IT IS RECOMMENDED THAT YOUR BOARD, AFTER THE PUBLIC HEARING:

1. Certify that the Final Environmental Impact Report for the Proposed Ordinances to Ban Plastic Carryout Bags in Los Angeles County has been completed in compliance with the California Environmental Quality Act and reflects the independent judgment and analysis of the County of Los Angeles; find that the Board has reviewed and considered the information contained in the Final Environmental Impact Report prior to approving the project; adopt the Mitigation Monitoring Program, finding that the Mitigation Monitoring Program is adequately

designed to ensure compliance with the mitigation measures during project implementation; and determine that significant adverse effects of the project have either been reduced to an acceptable level or are outweighed by the specific considerations of the project, as outlined in the Environmental Findings of Fact and Statement of Overriding Considerations, which findings and statement are adopted and incorporated by reference.

2. Approve and adopt the Ordinance banning plastic carryout bags at all supermarkets and other grocery stores, convenience stores, food marts, pharmacies, and drug stores located in the County unincorporated areas, while requiring stores that provide recyclable paper carryout bags to impose a charge of ten (10) cents per bag to a customer, effective beginning July 1, 2011, for certain affected stores and January 1, 2012, for all other affected stores.
3. Find that the proposed Ordinance has no effect on fish and wildlife and authorize the Director of the Public Works to complete and file a Certificate of Fee Exemption for the project with the County Clerk.
4. Direct the Department of Public Works to communicate and collaborate with all the cities in Los Angeles County and local Councils of Government to encourage cities to adopt ordinances consistent with the County's Ordinance in order to coordinate local action to reduce the regional environmental impact resulting from single-use plastic bags and litter attributable to their use.
5. Direct the Departments of Agricultural Commissioner/Weights and Measures and Public Health to assist with enforcement of the Ordinance by monitoring compliance during the conduct of their respective routine inspection and regulatory activities and by reporting any apparent violations to the Department of Public Works.
6. Direct the Department of Public Works to monitor Statewide legislative efforts regulating single-use carryout bags, and update the Board as needed regarding these Statewide legislative efforts and how they impact the Ordinance.

PURPOSE JUSTIFICATION OF RECOMMENDED ACTION

Approval of the recommended actions would regulate the use of plastic and paper carryout bags in the County unincorporated areas and greatly reduce the various environmental impacts caused by such bags.

Recommended Project

The recommended project for adoption, as analyzed in the Final Environmental Impact Report (FEIR, Enclosure I) under Alternative 5, is an Ordinance (Enclosure II) banning plastic carryout bags and imposing a ten (10) cent charge on recyclable paper carryout bags at all supermarkets and other grocery stores, pharmacies, drug stores, convenience stores, and foodmarts. Following consultation with County Counsel and the Chief Executive Office (CEO), the Department of Public Works (Public Works) recommends pursuing Alternative 5, as contained in the enclosed draft Ordinance. Alternative 5 meets all six of the project objectives specified by the County:

- Conduct outreach to all 88 incorporated cities of the County to encourage adoption of comparable ordinances.
- Reduce the Countywide consumption of plastic carryout bags from the current estimate of 1,600 plastic carryout bags per household in 2007 to fewer than 800 plastic bags per household in 2013.
- Reduce by 50 percent by 2013 the Countywide contribution of plastic carryout bags to litter that blights the County's public spaces.
- Reduce by \$4 million the County's, cities', and Los Angeles County Flood Control District's costs for prevention, cleanup, and enforcement efforts to reduce litter in the County.
- Substantially increase awareness of the negative impacts of plastic carryout bags and the benefits of reusable bags, and reach at least 50,000 residents (5 percent of the population) with an environmental awareness message.
- Reduce Countywide disposal of plastic carryout bags in landfills by 50 percent from 2007 annual amounts.

Background

On January 22, 2008, your Board directed the CEO, working with the Director of Public Works and County Counsel to submit a draft Ordinance banning plastic carryout bags and to complete any review required by the California Environmental Quality Act (CEQA) prior to submitting the Ordinance. County staff completed the enclosed FEIR (Enclosure I).

As detailed in Enclosure III, Public Works determined that the voluntary Single-Use Bag Reduction and Recycling Program (Program) was not successful in achieving its goals. Over a two-year period and despite State law requirements under AB 2449 (stores are to maintain and make available to local jurisdictions records for a minimum of three years describing the collection, transport, and recycling of plastic bags), stores in the County unincorporated areas did not provide data that would enable Public Works staff to determine if the voluntary Program benchmark of 30 percent disposal reduction of plastic bags by July 1, 2010, was met. In addition, throughout the course of the voluntary Program, not more than eight (8) stores at any given time had met the minimum participation levels. Although the public education and outreach aspects of the voluntary Program, including the Brag About Your Bag Campaign[□], raised awareness of the impacts of single-use bags and the benefits of reusable bags, it could not be determined if this awareness translated into a shift in consumer behavior that was significant enough to address the major objectives of the County.

Recommended Ordinance Provisions

The recommended Ordinance will ban the issuance of plastic carryout bags and place a ten (10) cent charge on the issuance of recyclable paper carryout bags by an affected store, as defined. The Ordinance requires a store to provide or make available to a customer only recyclable paper carryout bags or reusable bags. The Ordinance also encourages a store to educate its staff to promote reusable bags and to post signs encouraging customers to use reusable bags. The stores that will be affected are located within the County unincorporated areas and are one of the following:

1. A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, that sell 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 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, 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 Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.

The operative effect of the recommended Ordinance is phased. Larger grocery stores and pharmacies will have until July 1, 2011, to comply, and all other affected stores will have until January 1, 2012, to comply.

The Ordinance includes compostable and biodegradable plastic carryout bags in the definition of plastic carryout bags, and, as a result, these types of plastic bags will be banned as well. The Ordinance imposes a ten (10) cent charge on the recyclable paper carryout bag and requires that the paper bags be one hundred percent (100%) recyclable overall, contain a minimum of forty percent (40%) post-consumer recycled material, and accepted for recycling in curbside programs in the County, among other criteria. With respect to reusable bags, the Ordinance requires that the reusable bag be designed for a minimum lifetime of 125 uses, be machine washable and not contain lead, cadmium, or any other heavy metal in toxic amounts, among other criteria.

All monies collected by a store will be retained by the store and may be used for costs associated with complying with the requirements of the Ordinance, actual costs of providing recyclable paper carryout bags, or costs associated with a store's educational materials or campaigns encouraging the use of reusable bags, if any. The recommended Ordinance also requires affected stores to report to Public Works on a quarterly basis, the number of recyclable paper carryout bags provided, the total monies collected by that store, and a summary of any efforts the store has undertaken to promote the use of reusable bags by customers during the prior quarter. Public Works will report back to your Board on the effectiveness of the Ordinance using this data on an annual basis.

The Ordinance does exempt the ten (10) cent charge for those customers who are participating either in the California Special Supplemental Food Program for Women, Infants, and Children or the Supplemental Food Program. Stores must provide at the point of sale, free of charge, either reusable bags or recyclable paper carryout bags or both, to these customers, at the store's option. Customers may also opt to use their own reusable bags or not use any bag.

Assembly Bill 1998 (AB 1998)

The Ordinance contains provisions which are similar to the most recent version of AB 1998 by author Julia Brownley (D-Santa Monica). AB 1998 would have prohibited supermarkets and large retail stores with a pharmacy from providing a single-use plastic carryout bag to customers. After extensive discussions at the State level among numerous stakeholders, including local governments, environmental organizations, grocers, and industry, an amended version was developed which placed a fee on

single-use paper bags and expanded the ban to a broader section of retail food stores. The Bill, which was defeated in the Senate on August 31, 2010, was supported by the County Integrated Waste Management Task Force, the Board of Supervisors, and 145 other organizations including stores, labor unions, and government officials.

Assessment of Ten (10) Cent Charge

Based on the analysis in the FEIR, comments from stakeholders, research conducted by Public Works, and available resources, it was determined that a ten (10) cent charge on paper carryout bags is sufficient at this time to avoid a wholesale switch by customers from single-use plastic bags to paper carryout bags and to minimize the potential for trading one set of environmental impacts for another. The ten (10) cent charge is large enough to deter a significant transition to paper carryout bags, while allowing an affected store to only recover the reasonable cost of compliance with the Ordinance.

The discussion of Alternative 5 in the FEIR noted the effectiveness of a fee or charge of at least five (5) cents on paper carryout bags. The FEIR noted the success of Washington D.C.'s five (5) cent fee implemented earlier this year for each disposable carryout bag provided. The District of Columbia Office of Tax and Revenue estimated that affected establishments issued about 3.3 million bags in January 2010, which was a significant 86 percent decrease from the estimated 22.5 million bags issued per month in 2009. To further deter a significant transition to paper bags, Public Works staff recommends implementing the higher charge of ten (10) cents.

The ten (10) cent charge is also sufficient to cover the reasonable costs of compliance with the Ordinance by affected stores. The ten (10) cent charge will be retained by the stores to cover their actual costs for providing recyclable paper carryout bags, a store's own educational materials or campaign encouraging the use of reusable bags, if any, and cost of compliance with the Ordinance. Research conducted by Public Works in the staff report "An Overview of Carryout Bags in Los Angeles County," as cited in the FEIR, indicates that the average cost per bag of paper carryout bags is ten (10) cents, with a reasonable range being between five (5) and twenty three (23) cents, depending on whether the bags have handles, the minimum percentage of recycled content, the quality of the bag, and other factors. The Master Environmental Assessment (MEA) on Single-Use and Reusable Bags (March 2010) prepared by Green Cities California, estimates a similar range of costs for paper carryout bags of fifteen (15) to twenty five (25) cents per bag. Subsequent discussions by staff with paper bag manufacturers and review of other references indicates that ten (10) cents is a reasonable average cost.

Aside from the actual cost of the recyclable paper carryout bags, potential costs of compliance by stores could include: free recyclable paper carryout bags or reusable bags provided to exempt customers; administrative costs of complying with the Ordinance, including quarterly reporting; any public education costs taken on by a store; labor costs to train employees about the requirements of the Ordinance; operational costs including programming their registers to reflect the purchase of recycled paper bags on a customer's receipt; and the total number of recyclable paper carryout bags sold. This is consistent with the findings in the City of Santa Monica Nexus Study (October 2009). Prior proposed State law, AB 87 (2009), which would have placed a twenty five (25) cent charge on plastic carryout bags, would have allowed retailers to retain seven (7) cents of the charge to recover their own costs of implementation. In addition, AB 68 (2009) would have allowed stores to keep ten (10) cents for paper bags.

Finally, the ten (10) cent charge for recyclable paper carryout bags is not a tax. Taxes are imposed for general revenue purposes rather than in return for a specific benefit conferred or privilege granted. Taxes raise revenue to finance general government services and functions and are usually placed into a general fund to pay for a variety of public services. In this case, no portion of the ten (10) cent charge is being remitted back to the County. The charge is being retained by the affected stores, as defined, to cover their reasonable costs of compliance with the Ordinance, including actual costs of providing recyclable paper carryout bags, or costs associated with a store's own educational materials or campaign encouraging the use of reusable bags, if any. In addition, the charge only applies if a customer chooses to use a recyclable paper carryout bag, and pays for that benefit or privilege.

Education, Outreach, and Enforcement if Ordinance is Adopted

Upon adoption by your Board of the Ordinance, Public Works will initiate a focused public education and outreach effort in support of the Ordinance. This effort will include, at a minimum, the following aspects:

1. Collaborating with all incorporated cities in Los Angeles County and local Councils of Government, as described above, to encourage cities to adopt ordinances consistent with the County's Ordinance.
2. Coordinating with all affected stores in the County unincorporated areas to make them aware of the provisions of the Ordinance and encouraging them to ensure their customers are informed of the Ordinance in advance of the effective date. Materials will be provided to stores for them to share with customers. This effort will focus on the cost-effectiveness and environmental

benefits of reusable bags. In addition to encouraging the use of reusable bags, this campaign will remind residents to wash their reusable bags and to recycle their paper bags at curbside along with other recyclables.

3. Providing information on the County's www.BragAboutYourBag.com website regarding the Ordinance. Public Works will also establish a dedicated hotline for residents or businesses to call with inquiries or to report violations.
4. Coordinating with manufacturers of reusable bags and recyclable paper carryout bags, and others, to determine appropriate certification and compliance procedures for the various bag standards in the Ordinance. Public Works is currently in discussion with certification agencies to provide third party certifications, which will help reusable bag manufacturers confirm that their products meet the Ordinance requirements. This will assist affected stores in identifying manufacturers who make compliant products.

Regarding enforcement, the Department of Agricultural Commissioner/Weights and Measures staff visits all stores that have a scanner, a scale, and/or sell pre-weighted packages of food (typically large stores and many smaller stores) once every one to two years during the conduct of their routine inspection and regulatory activities. The Department of Public Health visits a number of retail stores, including grocery stores, the main type of stores identified in the Ordinance, once per year for routine inspections. Meat markets and grocery store meat departments are visited up to three times per year by Public Health. These two Departments already visit all of the stores that would be subject to the Ordinance. Public Works will be responsible for follow-up compliance actions, which will comprise of (1) tracking and processing complaints or reports of stores being out of compliance; (2) sending warning letters to stores identified as being out of compliance; (3) conducting follow-up verification visits to determine compliance status; (4) issuing fines; and (5) processing appeals.

Public Works intends to use an existing system, which is currently used to track illegal dumping complaints, to track complaints and reports pertaining to violations of the Ordinance. A form letter will also be developed to issue warnings to stores. Follow-up visits to stores that have received warnings will be conducted by Public Works inspectors already engaged in daily field assignments. All response to complaints from the public or observations by other County Departments will be handled by Public Works in a timely manner.

In lieu of the more extensive voluntary Single-Use Bag Reduction and Recycling Program, existing Public Works resources will be shifted to this more focused public education effort. Public Works will seek out partnerships among stores, cities,

environmental organizations, and other interested stakeholders wherever feasible to leverage additional opportunities to increase awareness of the Ordinance. Following the operative dates in the Ordinance, Public Works will also work to ensure compliance with the Ordinance by stores in the County unincorporated areas.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Operational Effectiveness (Goal 1), and Community and Municipal Services (Goal 3). The recommendation would reduce single-use bag consumption in the County unincorporated areas and associated litter, while promoting the use of reusable bags. The recommended action will help meet these goals by implementing environmentally responsible practices to reduce the County's impacts, promote environmental stewardship and coordinate departmental resources effectively to implement environmentally beneficial programs in a cost-effective manner. The recommended action would also help to reduce blight, litter, and other negative environmental impacts associated with single-use bags while promoting sustainability and improving the well-being of County unincorporated area residents.

FISCAL IMPACT FINANCING

Costs of enforcement of the Ordinance by Public Works are to be fully offset by Public Works Solid Waste Management Fund. The adoption of the recommended Ordinance is not anticipated to have any impact on the County's General Fund or any Department budget.

Further, although not required by CEQA, Public Works initiated the development of an independent study (Enclosure IV) to evaluate the potential socio-economic impacts the Ordinance may have. The study found that the average expected per capita cost resulting from a ban on plastic carryout bags and the imposition of a charge of ten (10) cents on paper carryout bags is approximately \$5.72 per year.

FACTS AND PROVISIONS LEGAL REQUIREMENTS

As described above, the recommended Ordinance would ban single-use plastic carryout bags and impose a ten (10) cent charge at all supermarkets and other grocery stores, pharmacies, drug stores, convenience stores, and foodmarts located in the County unincorporated areas. The Ordinance would become operative for larger stores on July 1, 2011, and for all other affected stores on January 1, 2012.

The Board of Supervisors is holding a public hearing for the Ordinance, and published notice of such public hearing in accordance with California Government Code 6062a in

the Daily News, La Opinion, Antelope Valley Press, Daily Breeze, and the Los Angeles Daily Journal.

Nothing in the Ordinance is intended to create any requirement, power, or duty in conflict with any Federal or State law.

ENVIRONMENTAL DOCUMENTATION

The FEIR was prepared in accordance with Section 15365 of the CEQA Guidelines. The original proposed project studied in the Draft EIR (DEIR) would have banned the issuance of plastic carryout bags at the larger supermarkets and retail establishments with a pharmacy in the County unincorporated areas, and it further evaluated impacts if all 88 cities adopted similar ordinances.

Notice of Preparation

On December 1, 2009, the County circulated the Notice of Preparation (NOP) for a DEIR for the proposed ordinances to the State Clearinghouse and to various Federal, State, regional, and local government agencies. A public Notice of Availability (NOA) of the NOP was published in the *Los Angeles Times*. The NOP and Initial Study were mailed (or e-mailed) directly to approximately 480 agencies and interested parties. The NOP advertised six public scoping meetings for interested parties to receive information on the proposed ordinances and the CEQA process, as well as providing an opportunity for the submittal of comments. The meetings were held on December 7, 8, 9, 10, 11, and 14, 2009, at designated locations throughout the County. The comment period for the NOP and Initial Study closed on January 4, 2010. A total of 18 individuals attended the scoping meetings and a total of seven (7) comment letters were received in response to the NOP and Initial Study. The Initial Study determined that the proposed ordinances would not be expected to result in significant impacts to 12 environmental issue areas: aesthetics, agricultural and forestry resources, cultural resources, geology and soils, hazards and hazardous materials, land use and planning, mineral resources, noise, population and housing, public services, recreation, and transportation and traffic.

Draft EIR and Public Comment

The DEIR was completed and forwarded to the Governor's Office of Planning and Research (OPR) State Clearinghouse on June 2, 2010, for a 45-day review period that ended on July 16, 2010. An electronic copy of the DEIR was made available at all public libraries in the County, and a hard copy of the DEIR was made available at each of 10 public libraries. An NOA of the DEIR was advertised for public review in the *Los Angeles Times*, delivered to all public libraries in the County, and sent to 27 public agency representatives and approximately 460 stakeholders, including private

organizations and individuals. A total of 11 letters of comment and a petition including over 1,800 signatures were received in response to the DEIR. In addition, the County hosted six (6) public meetings throughout the County to provide the public with key findings of the DEIR and to solicit comments. All comments received and responses to the comments are included in the FEIR and were sent to relevant agencies pursuant to Section 21092.5 of the State CEQA Guidelines.

The FEIR was prepared based on the DEIR and incorporates clarifications and revisions resulting from public review of the DEIR.

Evaluation of Original Proposed Project and Alternatives

As a result of the Initial Study, comments received during the scoping period, and the environmental analysis undertaken in the DEIR, six (6) alternatives, including the [No Project Alternative], were determined to represent a reasonable range of alternatives to the proposed project:

1. No Project Alternative
2. Alternative 1, Ban Plastic and Paper Carryout Bags in Los Angeles County
3. Alternative 2, Ban Plastic Carryout Bags and Impose a Fee on Paper Carryout Bags in Los Angeles County
4. Alternative 3, Ban Plastic Carryout Bags for All Supermarkets and Other Grocery Stores, Convenience Stores, Pharmacies, and Drug Stores in Los Angeles County
5. Alternative 4, Ban Plastic and Paper Carryout Bags for All Supermarkets and Other Grocery Stores, Convenience Stores, Pharmacies, and Drug Stores in Los Angeles County
6. Alternative 5, Ban Plastic Carryout Bags and Impose a Fee on Paper Carryout Bags for All Supermarkets and Other Grocery Stores, Convenience Stores, Pharmacies, and Drug Stores in Los Angeles County

The FEIR evaluates the potential significant impacts from the original proposed project and the Alternatives to air quality, biological resources, greenhouse gas (GHG) emissions, hydrology and water quality, and utilities and service systems. In addition, the ability of each Alternative to assist in achieving the project objectives was evaluated.

With respect to the original proposed project, there were no significant impacts except to GHG emissions, where, under the County's conservative worst-case scenario, the indirect impacts from the life cycle of paper carryout bags including decomposition at the end of life, would have the potential to be cumulatively considerable. While the original proposed project meets all of the project objectives, it is not recommended because it does not regulate the issuance of paper carryout bags and would have impacted only a limited number of stores, compared to Alternatives that applied the Ordinance to a larger number of stores.

The No Project Alternative did not meet most of the project objectives, and was further not recommended because impacts to biological resources, hydrology and water quality, and utilities and service systems, would not be avoided or reduced under this Alternative.

Alternative 1 had no significant impacts because it would have banned all plastic and paper carryout bags at a limited number of affected stores. While Alternative 1 meets all the project objectives, this alternative is infeasible because it does not allow an option for consumers to purchase paper bags when they forget or do not know to bring their reusable bags. This Alternative is not recommended because the Ordinance would have a limited effect compared to other Alternatives that applied the Ordinance to a greater number of stores.

Alternative 2 had no significant impacts except to GHG emissions, where, under the County's conservative worst-case scenario, the indirect impacts from the life cycle of paper carryout bags including decomposition from the end of life, would have the potential to be cumulatively considerable. Alternative 2 also meets all of the project objectives. However, Alternative 2 is not recommended because the Ordinance would have a limited effect compared to other alternatives that applied the Ordinance to a greater number of stores.

With respect to Alternative 3, it was found not to have any significant impacts except to GHG emissions, where, under the County's conservative worst-case scenario, the indirect impacts from the life cycle of paper carryout bags including decomposition at the end of life, would have the potential to be cumulatively considerable. While Alternative 3 meets all of the project objectives, it is not recommended because it does not regulate the issuance of paper carryout bags.

Alternative 4 had no significant impacts because it would have banned all plastic and paper carryout bags at a greater number of stores. It is also the Environmentally Superior Alternative and meets all of the project objectives. However, Alternative 4 is infeasible

because it does not allow an option for consumers to purchase paper bags when they forget or do not know to bring their reusable bags.

With respect to Alternative 5, it was found not to have any significant impacts except to GHG emissions, where, under the County's conservative worst-case scenario, the indirect impacts from the life cycle of paper carryout bags from decomposition at the end of life, would have the potential to be cumulatively considerable. Alternative 5 also meets all of the project objectives. Alternative 5 is feasible because it bans plastic carryout bags at a greater number of stores, while retaining an option for consumers to purchase paper carryout bags.

Overriding Considerations

The economic, environmental and policy benefits of implementing the Ordinance (Alternative 5), outweigh and override the one adverse effect of the recommended Ordinance, as detailed in the Environmental Findings of Fact and Statement of Overriding Considerations (Enclosure I). The overriding considerations for the Ordinance include helping to reduce litter costs associated with plastic carryout bags and reducing the environmental impacts associated with plastic carryout bag use, including those impacts to marine wildlife. It is consistent with the County's commitment to environmental stewardship and to reduce single-use bag consumption and litter while increasing the use of reusable bags and recycling in the County unincorporated areas.

Mitigation Monitoring

To reduce the potential cumulative indirect impacts to GHG emissions from end of life decomposition of paper carryout bags, Mitigation Measure GHG-1 (Enclosure I) would monitor, reduce consumption of, and encourage the further recycling of paper carryout bags to offset GHG emissions due to end of life to the maximum extent feasible.

Upon your Board's certification of the FEIR and finding that the project has no effect on fish and wildlife, Public Works will file a certificate of fee exemption with the County Clerk in accordance with Section 711.4 of the California Fish and Game Code. Public Works will also file a Notice of Determination in accordance with Section 21152(a) of the California Public Resources Code and pay the required filing and processing fees with the County Clerk.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Restricting the use of single-use plastic carryout bags and promoting environmentally friendly alternatives would raise environmental awareness of residents, assist the

County in meeting the Federal Clean Water Act requirements, enhance the County's image as a leader in the area of environmental stewardship, and improve the quality of life for residents in the County unincorporated areas.

Following approval of the Ordinance, the Department of Agricultural Commissioner/Weights and Measures and the Department of Public Health will, when conducting their respective Retail Food Inspections Program and routine site visits, monitor those stores which are routinely inspected under their respective programs for compliance with the Ordinance. Public Works will monitor any reports of alleged violations, issue notices of violations to affected stores, and follow-up with stores to assure compliance. This monitoring will encompass all stores addressed under the Ordinance.

CONCLUSION

Please return one adopted copy of this letter to the Chief Executive Office, County Counsel, Agricultural Commissioner/Weights and Measures, Internal Services, Public Health, and Public Works Departments.

Respectfully submitted,



GAIL FARBER
Director of Public Works

GF:td

Enclosures (4)

c: All County Departments
Sanitation Districts of Los Angeles County

ANALYSIS

This ordinance amends Title 12 – Environmental Protection of the Los Angeles County Code, by adding a Chapter regulating the use of plastic carryout bags and recyclable paper carryout bags and promoting the use of reusable bags within the County unincorporated area.

Pursuant to this new Chapter, plastic carryout bags, as defined, may no longer be distributed by affected stores and a 10-cent (\$0.10) charge for recyclable paper carryout bags distributed by those stores will apply.

ANDREA SHERIDAN ORDIN
County Counsel

By 

TRUC L. MOORE
Deputy County Counsel
Public Works Division

TLM:ia

09/23/10 (Requested)

10/22/10 (Revised)

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%) post-consumer recycled material; (3) is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; (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; (4) does not contain lead, cadmium, or any other heavy metal in toxic amounts; (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 10-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 10 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]