



STAFF REPORT

Meeting Date: November 27, 2012

Agenda Item # _____

Agency: City of Belmont

Staff Contact: Carlos de Melo, Community Development Department, (650) 595-7440
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Agenda Title: CONSIDERATION OF AN ORDINANCE REGULATING SINGLE USE CARRY OUT BAGS

Agenda Action: Introduce Ordinance, Set Public Hearing Date for Adoption, and Consider CEQA Findings

Recommendation

Staff recommends that the City Council introduce an Ordinance adopting by reference the County of San Mateo's Reusable Bag Ordinance (See Attachment B) and making conforming changes to Belmont City Code Chapter 31 "Waste Reduction", and set a public hearing date of January 8, 2013 to consider adoption of the ordinance. This public hearing procedure is required when adopting an ordinance by reference.

Staff also recommends that the City Council review the enclosed draft resolution making findings related to the California Environmental Quality Act ("CEQA") and provide any comments. Staff will present the draft resolution to the City Council for adoption on January 8, 2013 with the ordinance.

Background

In January 2012, San Mateo County proposed that all cities within the County adopt a model ordinance regulating single use carryout bags. This regional approach would ensure uniform, consistent regulations in a broad geographical area. A benefit of a consistent County-wide Ordinance is that consumers and businesses would have clear expectations on the application of regulations throughout the County. In addition, San Mateo County Health Department (SMHCD) offered to be responsible for enforcement of the regulations.

The County also proposed to perform the environmental review necessary to study the effects of the implementing the model ordinance in both the unincorporated areas of the County as well as within the cities that agreed to consider adopting the model ordinance. Eighteen cities in San Mateo County and six cities in Santa Clara County ultimately agreed to consider the adopting the ordinance and participate in the environmental study, including the City of Belmont, which adopted a resolution agreeing to be a participating agency on February 14, 2012.

The County prepared a Program Environmental Impact Report (EIR) to study the potential impacts of adopting the model ordinance ("Reusable Bag Ordinance") on a region-wide basis. The eighteen cities in San Mateo County (Belmont, Brisbane, Burlingame, Colma, Daly City, East Palo Alto, Foster City, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco, and Woodside) and the six cities in Santa Clara County (Campbell, Cupertino, Los Altos, Los Gatos, Milpitas, and Mountain View), constituted the

Final Program EIR "Study Area". These agencies participated with the County in preparing the program-level environmental review that studied the region-wide environmental impacts of the model reusable bag ordinance. The County EIR was guided by the following objectives:

1. Reducing the amount of single-use plastic bags in trash loads in conformance with the trash load reduction requirements of the National Pollutant Discharge Elimination System (NPDES) Municipal Regional Permit;
2. Reducing the environmental impacts related to single-use plastic carryout bags, such as impacts to biological resources, water quality and utilities;
3. Deterring the use of paper bags;
4. Promoting a shift toward the use of reusable bags; and,
5. Avoiding litter and associated adverse impacts to storm water systems, aesthetics and the marine environment.

The San Mateo County (Draft and Final Program) EIR can be viewed online at the following website: <http://www.co.sanmateo.ca.us/portal/site/planning>. A hard copy is also available for review in the City Clerk's Office at Belmont City Hall.

Tonight's meeting will serve as a first reading of the proposed ordinance. Should the Council introduce the ordinance, a public hearing for second reading and adoption would be scheduled for the January 8, 2013 City Council meeting. This project is one of the Council's FY2011-2012 Priorities.

Analysis

The proposed Belmont Reusable Bag Ordinance is textually identical to the County's model ordinance and is sufficiently described and within the scope of the County's EIR. Belmont's Ordinance is consistent with the City's General Plan.

The intent of the Ordinance is to reduce the environmental impacts related to single-use carryout bags and to promote the use of reusable bags. The Ordinance would regulate the distribution of paper and plastic single-use carryout bags by all retail establishments in Belmont, including those selling clothing, food, and personal items directly to the customer. It would not apply to restaurants or non-profit charitable reuse organizations, as defined by the Ordinance.

The Ordinance would: (1) prohibit the free distribution of single-use carryout paper and plastic bags; and (2) require retail establishments to charge customers for recycled paper bags and reusable bags at the point of sale. The minimum charge would be ten cents per paper bag until December 31, 2014 and twenty-five cents per paper bag beginning January 1, 2015.

A single-use plastic carryout bag is defined as a bag made from petroleum or bio-based plastic that is less than 2.25 mils thick (0.00225 inches). The Ordinance would not prohibit the distribution of product bags, which are bags without handles provided to the customer to transport food from a department within a grocery store to the point of sale, to hold prescription medication dispensed from

a pharmacy, or to segregate food or merchandise that could damage or contaminate other food or merchandise. Regulated retail establishments would be required to keep a complete and accurate record of the purchase and sale of any recycled paper or reusable bags for a minimum period of three years from the date of purchase and sale.

The Ordinance would be effective in Belmont beginning on April 22, 2013 (Earth Day), giving stores and consumers time to comply with the ordinance and locate reusable bags as alternatives to carry purchases from stores. The Ordinance authorizes and directs the County Environmental Health Services Division to enforce the Ordinance's requirements within the City of Belmont. The Ordinance would be enforced by complaint response, as well as through random compliance visits by Environmental Health Specialists. It is not expected that Belmont would require significant staffing resources for enforcement of the ordinance. The County is planning on performing early outreach regarding the ordinance and will educate businesses during their normal inspections.

Environmental Clearance (CEQA)/Environmental Impact Analysis

The Final Program EIR examined the potential environmental impacts associated with the adoption of the Proposed Ordinance in the Program EIR Study Area. The Draft Program EIR was issued with a 45-day public review period, from June 22, 2012 to August 6, 2012. The Final Program EIR was issued with a 10-day public review period, from August 31, 2012 to September 10, 2012.

The Final Program EIR estimated the volume of current plastic bag usage within the Study Area at 552 million bags per year. With the Proposed Ordinance's regulations in effect, it is anticipated that 95 percent of that volume would be replaced by a combination of paper (165,879,409) and reusable (6,911,642) bags, leaving 27 million plastic bags still used each year. The Final Program EIR identifies the potential environmental impacts of such a shift in bag usage as follows:

Air Quality: (1) A *beneficial impact* associated with a reduction in emissions due to a reduction in the total number of plastic bags manufactured; and (2) A *less than significant impact* associated with an increase in emissions resulting from increased truck trips to deliver recycled paper and reusable carryout bags to local retailers.

Biological Resources: A *beneficial impact* associated with a reduction in the amount of single-use plastic bags entering the coastal and bay habitat as litter.

Greenhouse Gas (GHG) Emissions: A *less than significant impact* associated with increased GHG emissions due to an increase in the manufacturing of single-use paper bags.

Hydrology/Water Quality: (1) A *beneficial impact* associated with a reduction in the amount of litter and waste entering storm drains; and (2) A *less than significant impact* due to an increase in the use of chemicals associated with an increase in production of recyclable paper bags.

Utilities and Service Systems: (1) A *less than significant impact* due to increased water usage resulting from the washing of reusable bags; (2) A *less than significant impact* due to increased wastewater generation resulting from the washing of reusable bags; and (3) A *less than significant impact* due to an increase in solid waste generation resulting from increased usage of paper bags.

The Project EIR determined that no significant impacts to the environment would occur if the Project is approved. The Project EIR does identify impacts that would be considered less than significant without need for mitigation and impacts that would be considered beneficial to the environment (as noted above). If adopted, Belmont's Ordinance would be consistent with the project for which the County EIR was prepared. Belmont's Ordinance will not cause any project-specific effect which was not addressed as a significant effect in the County EIR, nor require mitigation measures or alternatives.

Staff has included with this report a draft resolution which City Council will be asked to adopt on January 8, 2013 making findings related to the California Environmental Quality Act ("CEQA") and determining under CEQA Guidelines Section 15168(c)(2) that the City Ordinance is within the scope of the project covered by the County's Final Program EIR for county-wide implementation of the ordinance (State Clearinghouse # 2012042013) and that no further environmental documentation is required. Staff requests that the Council review the draft resolution and provide comments.

County of San Mateo Actions

On September 12, 2012, the County Planning Commission voted to recommend that the County Board of Supervisors certify the Final Program EIR and adopt the Reusable Bag Ordinance. They also recommended that the Environmental Health Services Division furnish two reports for the Board and Planning Commission's review: the first to be prepared 12 months after the ordinance effective date that analyzes the performance of the ordinance in meeting the program's objectives; the second to come 18 months after the ordinance's effective date, recommending any modifications necessary to improve upon the ordinance's performance in meeting the program's objectives.

The County Board of Supervisors conducted a public hearing and held a First Reading of the Model Ordinance on October 23, 2012 and certified the Final Program EIR; The Board of Supervisors adopted the Ordinance on November 6, 2012 (Second Reading). As noted earlier, the proposed effective date of Belmont's ordinance is April 22, 2013.

General Plan/Vision Statement

Review and Adoption of a Reusable Bag Ordinance for the City of Belmont furthers the City's Vision Statement as follows:

Natural Beauty - Our actions today preserve and enhance Belmont's beauty to make it even lovelier for our grandchildren.

Conclusion

Staff recommends that the City Council:

1. Introduce the Belmont Municipal Code Amendments amending Chapter 31 – Waste Reduction, and adopting the County of San Mateo’s Resusable Bag regulations (Chapter 4.114) by reference as proposed.
2. Schedule a public hearing for the January 8, 2013 City Council meeting for second reading and adoption of the Ordinance.
3. Provide comments on the draft resolution making CEQA findings.

Alternatives

1. Direct any questions to staff for additional research and response.
2. Direct staff to return to Council with an Amended Ordinance for Public Hearing review/adoption.
3. Disapprove the Municipal Code Amendments.
4. Take no action.

Attachments

- A. Draft Resolution Making CEQA Findings
- B. Reusable Bag Ordinance

Fiscal Impact

- No Impact/Not Applicable
 - Funding Source Confirmed: Not Applicable
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Source:

- Council
- Staff
- Citizen Initiated
- Other

Purpose:

- Statutory/Contractual Requirement
- Council Vision/Priority
- Discretionary Action
- Plan Implementation

Public Outreach:

- Posting of Agenda
- Other: Publication of Public Hearing Notice will occur two times before the January 8, 2013 Public Hearing.

ATTACHMENT A

Draft Resolution Making CEQA Findings

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT FINDING ADOPTION OF AN ORDINANCE REGULATING SINGLE USE CARRY OUT BAGS TO BE WITHIN THE SCOPE OF THE COUNTY'S FINAL PROGRAM EIR FOR COUNTY-WIDE IMPLEMENTATION OF THE ORDINANCE (STATE CLEARINGHOUSE # 2012042013) AND NO FURTHER ENVIRONMENTAL DOCUMENTATION IS REQUIRED UNDER CEQA GUIDELINE SECTION 15168

WHEREAS, in January 2012, San Mateo County proposed that cities within the County adopt a model ordinance regulating single use carry bags and offered to enforce the model ordinance in jurisdiction within the County that adopt the model ordinance;

WHEREAS, the regional approach proposed by San Mateo County will ensure uniform, consistent regulations in a broad geographical area and provide consumers and businesses with clear expectations on the implementation and application of the regulations throughout the County.

WHEREAS, San Mateo County also proposed to perform the environment review necessary to study the effects of the implementing the model ordinance in the unincorporated areas of the County as well as the effects of implementing the model ordinance within the cities that agreed to consider adopting the ordinance.

WHEREAS, the City Council adopted a resolution agreeing to be a participating agency on February 14, 2012; and,

WHEREAS, seventeen other cities in San Mateo County and six cities in Santa Clara County ultimately agreed to consider the adopting the ordinance and participate in the environment study; and,

WHEREAS, the San Mateo County Board of Supervisors adopted an ordinance known as the Reusable Bag Ordinance, codified in the San Mateo County Ordinance Code as Chapter 4.114 ("County Ordinance"), which prohibits retail establishments in the unincorporated areas of the County from providing single-use carryout bags to customers and requiring those establishments to charge customers a fee for reusable bags; and,

WHEREAS, the San Mateo County Board of Supervisors certified a Final Program Environmental Impact Report (State Clearinghouse # 2012042013) ("EIR") that analyzed the possibility of the 24 participating cities, including the City of Belmont, adopting the County Ordinance within their own jurisdictions; and,

WHEREAS, the City Council is considering an ordinance that would adopt the County Ordinance by reference and regulate single use carry out bags in the City of Belmont ("City Ordinance" or "activity") in a manner that is substantively identically to the County Ordinance; and,

WHEREAS, the City Council intends that the City's proposed ordinance remain within the scope of the County's EIR;

WHEREAS, city staff have presented information to the City Council as to whether the City's Ordinance was described in the County EIR and whether the City activity may cause any additional significant effects on the environment which was not previously examined in the County's EIR;

NOW, THEREFORE, the City Council of the City of Belmont resolves as follows:

SECTION 1. Based on the County's Initial Study, Notice of Preparation, EIR, and public comment received by the County of San Mateo, which are hereby incorporated by reference into the City record for this project, and based on the staff report, public comments, and other materials and testimony in the record, the City Council finds in light of the whole record as follows:

- (a) The City Council has independently reviewed the EIR prepared by the County for the County's Ordinance, and exercising its independent judgment the City Council finds the EIR to be complete, correct, adequate, and prepared in accordance with the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* ("CEQA") and the CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 *et seq.*.
- (b) The ordinance proposed by the City would adopt regulations effective in the City of Belmont that are textually identical to the County Ordinance in all respects other than the name of the jurisdiction, date of adoption, and other conforming changes (e.g., references to city officials and departments).
- (c) The City Ordinance is consistent with the project for which the County EIR was prepared.
- (d) The City Ordinance is sufficiently described by the County's EIR.
- (e) The City Ordinance if adopted would not substantially change the project for which the County EIR was prepared.
- (f) The City Ordinance will not cause any project-specific effect which was not addressed as a significant effect in the County EIR and will not substantially increase the severity of a previously identified effect.
- (g) The circumstances under which the City Ordinance is to be undertaken have not substantially changed since the County EIR was prepared and will not substantially change with the adoption of the City Ordinance.
- (h) Adoption of the City Ordinance will not create any site-specific operations giving rise to environmental effects different from those examined by the County EIR.

(i) No new information of substantial importance which was not known and could have been know with the exercise of reasonable diligence at the time the County EIR was certified as complete shows the City Ordinance will have one or more significant effects not discussed in the County EIR.

(j) There is no substantial evidence that the City Ordinance may have a significant effect on the environment.

(k) The City Ordinance is consistent with the General Plan of the City.

SECTION 2. Based on the findings in Section 1, the City Council determines as follows:

(a) In accordance with CEQA Guideline Sections 15162, the City Council finds that no new effects could occur and no mitigation measures or new alternatives are required by the City Ordinance.

(b) Because the City Ordinance would not have effects that were not examined in the EIR, a new initial study is not required.

(c) The City Ordinance is within the scope of the project covered by the EIR, and no further environmental documentation is required.

SECTION 3. The City Manager is directed to file a Notice of Determination.

* * *

ADOPTED _____, 2012, by the City of Belmont City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney

ATTACHMENT B

Reusable Bag Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BELMONT, CALIFORNIA, ADOPTING BY REFERENCE SAN MATEO COUNTY ORDINANCE CODE CHAPTER 4.114 “REUSABLE BAGS” AND AMENDING THE BELMONT CITY CODE BY REORGANIZING CHAPTER 31 “WASTE REDUCTION” INTO ARTICLE I “SINGLE-USE CARRYOUT BAGS” AND ARTICLE II “POLYSTYRENE FOOD SERVICE WARE”

The City Council of the City of Belmont does ordain as follows:

SECTION 1. PURPOSE

(a) The City Council finds that:

(1) The use of single-use carryout bags by consumers at retail establishments is detrimental to the environment, public health and welfare.

(2) The manufacture and distribution of single-use carryout bags requires utilization of natural resources and results in the generation of greenhouse gas emissions.

(3) Single-use carryout bags contribute to environmental problems, including litter in storm drains, creeks, the bay and the ocean.

(4) Single-use carryout bags provided by retail establishments impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance.

(5) the City has a substantial interest in protecting its residents and the environment from negative impacts from plastic carryout bags.

(b) For the reasons set forth in subsection (a) City Council determines that the use of single use carry-out bags should be restricted.

(c) The San Mateo County Board of Supervisors approved a Final Program Environmental Impact Report (“EIR”) and adopted an ordinance banning single-use carryout bags from stores, while requiring stores that provide reusable bags to charge customers ten cents (\$.10) per bag. County’s ordinance encouraged cities within and neighboring the County to adopt similar ordinances and the County’s EIR specifically analyzed the possibility of 24 cities (18 cities within San Mateo County and 6 cities in Santa Clara County) adopting the County’s ordinance within their own jurisdictions. The City intends this Ordinance to fall within the scope of the County’s EIR and has therefore modeled this Ordinance on the County’s ordinance.

SECTION 2. LEGISLATIVE FINDINGS

The City Council finds that:

(a) After the first reading of this ordinance, the City Council scheduled a public hearing on January 8, 2013.

(b) Notice of the public hearing stating the time and place of the hearing, stating that copies of San Mateo County Ordinance Code Chapter 4.114 are on file with the City Clerk and open to public inspection, and providing a description of this ordinance and its subject matter was published one a week for two weeks in a newspaper of general circulation before the public hearing as required by Government Code Section 6066.

(c) The description provided in the published public notice was sufficient to give notice to interested parties of the purpose of the ordinance and its subject matter.

(d) The ordinance description adequately summarized the ordinance for purposes of Government Code Section 36933(c)(1).

(e) Since before the publication of the public hearing notice, and for a period of at least 15 days before the public hearing, the City Clerk has continuously maintained at least one certified copy of San Mateo County Ordinance Code Chapter 4.114 on file in the City Clerk's Office for public inspection.

(f) The City has complied with the requirements of Government Code Section 50022.2 through 50022.9 for adopting a County code by reference.

SECTION 3. BCC CHAPTER 31, ARTICLE I ADDED

Belmont City Code Chapter 31 (Waste Reduction) is amended and organized by the inclusion of an Article I entitled "Single Use Carryout Bags".

SECTION 4. BCC CHAPTER 31, ARTICLE I, SECTIONS 31-1 THROUGH 31-4 ADDED

Belmont City Code Chapter 31 (Waste Reduction), Article I (Single-Use Carryout Bags) is amended by adding Sections 31-1, 31-2, 31-3, and 31-4 to read:

Sec. 31-1 Adoption of San Mateo County Ordinance Code Chapter 4.114 (Reusable Bags).

(a) San Mateo County Ordinance Code Title 4, Chapter 4.114 entitled "Reusable Bags" as adopted by the San Mateo County Board of Supervisors on November xx, 2012, is hereby adopted by reference under Government Code Section 50022.9. Amendments to Chapter 4.114 as may be adopted by the Board of Supervisors shall not be effective unless subsequently adopted by the City Council in accordance with Government Code Section 50022.7.

(b) The City Clerk is directed to maintain at least one copy of Chapter 4.114 on file in the City Clerk's Office for public inspection.

(c) The regulations set forth in San Mateo County Ordinance Code Chapter 4.114 as adopted by subsection (a) shall be effective and enforced in the City of Belmont beginning April 22, 2013.

Sec. 31-2 Administration and Enforcement by County of San Mateo.

(a) Subject to such terms and conditions as may be required by the City Manager, the County of San Mateo Environmental Health Division is authorized to administer and enforce San Mateo County Ordinance Code Title 4, Chapter 4.114, as adopted herein and when effective as provided in Section 31-1(c), within the City of Belmont, including issuing of administrative fines and holding hearings. The City Manager is authorized to execute agreements with the County necessary to implement the authority provided by this section.

(b) The authority provided by this section supplements all other authority of the City and shall not limit the authority of the City to enforce the regulations adopted by reference in Section 31-1.

Sec. 31-3 References to Director of the Environmental Health Division.

For purposes of administration and enforcement by the City of Belmont, all references in San Mateo County Ordinance Code Title 4, Chapter 4.114 to the Director of the Environmental Health Department shall mean the City Manager or designee.

Sec. 31-4 Violation.

(a) It is unlawful for a retail establishment, and any person who is an agent, employee or owner of a retail establishment, to provide a single-use carry-out bag to a customer in violation of the regulations adopted by Section 31-1.

(b) Violation of the regulations adopted by Section 31-1 is an offense that may be charged as set forth in Section 1-8.

(c) Violation of the regulations adopted by Section 31-1 may be remedied by any means available to remedy a violation of this Code. The remedies for violation of Section 31-1 are cumulative.

(d) Administrative fines issued under Chapter 30 for violation of the regulations adopted by Section 31-1 shall be as follows: \$100 for a first violation, \$200 for a second violation, and \$500 for a third and subsequent violations.

SECTION 5. BCC CHAPTER 31, ARTICLE II ADDED

Belmont City Code Chapter 31 (Waste Reduction) is amended and organized by the inclusion of an Article II entitled “Polystyrene Food Service Ware” incorporating and to include Sections 31-10 through 31-14 as previously adopted by Ordinance 1065.

SECTION 6. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Belmont hereby declares that it would have passed this Ordinance and each section or subsection, sentence, clause and

phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall take effect and will be enforced thirty (30) days after its adoption.

SECTION 8. PUBLICATION AND POSTING

The City Clerk has caused to be published a summary of this ordinance, prepared by the City Attorney under Government Code Section 36933, subdivision (c) of the, once, in a newspaper of general circulation printed and published in San Mateo County and circulated in the City of Belmont, at least five days before the date of adoption. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause the summary of this ordinance to be published again with the names of those City Council members voting for and against the ordinance; and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

* * *

The foregoing ordinance was introduced before the City Council of the City of Belmont, County of San Mateo, State of California, at the regular meeting of the City Council, held on [insert date], 2012 and finally adopted at a regular meeting of the City Council held on [insert date], 2012 by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney