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# Sustainability Task Force Agenda



A Committee of the Chico City Council  
Mayor Ann Schwab, Chair

Meeting of December 5, 2011 – 5:30 p.m. to 7:30 p.m.  
Council Chamber Building, 421 Main Street, Conference Room No. 1

**\*\*\* PLEASE NOTE NEW MEETING TIME \*\*\***

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1. **APPROVAL OF THE MINUTES OF THE 11-7-11 TASK FORCE MEETING (Exhibit “A”).**
2. **CONSIDERATION OF THE CALIFORNIA PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM FOR CHICO BUSINESSES.**

California law now allows cities to offer programs to enter into voluntary agreements with property owners to finance the installation of renewable energy sources or energy/water efficient improvements, and to pay back the loans as an assessment on their property taxes. At the 11/7/11 meeting, a representative presented the California Property Assessed Clean Energy (PACE) Program for consideration. Prior to making a recommendation on this program, the Task Force requested that staff obtain additional information from cities participating in the program and to report back at today’s meeting.
3. **CONSIDERATION OF A POSSIBLE PLASTIC BAG BAN ORDINANCE**

As “Business from the Floor” at the November meeting, the Task Force received a citizen request that the Task Force discuss whether Chico should consider adopting an ordinance to ban “single-use” plastic bags. The Task Force agendized this discussion for today’s meeting and is being requested to provide a recommendation to the City Council on whether to pursue such an ordinance. A staff memo with background information on plastic bags and ban ordinances is attached as Exhibit “B.”
4. **REPORTS AND COMMUNICATIONS - No Action Required**
  - a. **Update on the Sustainable Business Recognition Program** - The Business Outreach Ad-Hoc Committee will provide an update on the Sustainable Business Recognition program.
5. **BUSINESS FROM THE FLOOR**

Members of the public may address the Task Force at this time on any matter not already listed on the agenda, with comments being limited to three minutes. The Task Force cannot take any action at this meeting on requests made under this section of the agenda.
6. **ADJOURNMENT** – The meeting will adjourn no later than 7:30 p.m. to a regular meeting scheduled for 5:30 p.m. on Monday, January 9, 2012, which was changed to the second week due to the New Year’s Day Holiday.

## ATTACHMENTS:

Exhibit “A”: 11-7-11 Meeting Minutes  
Exhibit “B”: Plastic Bag Ordinance Memo

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Distribution available from the General Services Department or the City website at [www.ci.chico.ca.us](http://www.ci.chico.ca.us).

Prepared: 12/1/11  
Posted : 12/1/11  
Prior to: 5:30 p.m.

General Services Department  
965 Fir Street, Chico, CA 95928  
(530) 896-7800

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## Members:

Dwight Aitkens  
Jon Luvaas  
Toni Scott

BT Chapman  
Scott McNall  
Jon Stallman

Tom DiGiovanni  
Jim Pushnik  
Jim Stevens

Chris Giampaoli  
Valerie Reddemann  
Scott Wolf

Ken Grossman  
Ann Schwab, Chair  
Julian Zener

**CITY OF CHICO  
SUSTAINABILITY TASK FORCE (STF)**

**Minutes of  
November 7, 2011 Regular Meeting**

<b><u>Member Present:</u></b>					
Dwight Aitkens	BT Chapman	Tom DiGiovanni	Chris Giampaoli	Jon Luvaas	
Ann Schwab	Toni Scott	Scott Wolf	Valerie Reddemann		
<b><u>Members absent:</u></b>					
Scott McNall	Ken Grossman	Jim Pushnik	Jon Stallman	Jim Stevens	Julian Zener
<b><u>Staff present:</u></b>					
Linda Herman, General Services Administrative Manager					
Ruben Martinez, General Services Director					

**ITEMS REQUIRING ACTION:**

**1. Approval of the Minutes of the 9-12-11 Task Force Meeting**

**Action:** Task Force member DiGiovanni motioned to approve the minutes as presented, which was seconded by Luvaas and approved by the Task Force ( 9-0-6 vote).

**ITEMS REQUIRING ACTION:**

**2. CONSIDERATION OF THE CALIFORNIA PROPERTY ASSESSED CLEAN ENERGY PACE) PROGRAM FOR CHICO BUSINESSES.**

In 2008, AB811 was passed which allows cities to establish a program to enter into voluntary contractual agreements with property owners to finance the installation of renewable energy sources or energy efficiency improvements, and to pay back the loans as an assessment on their property taxes. The California Property Assessed Clean Energy (PACE) Program was to provide cities and counties a means to provide AB 811energy retrofit financing to businesses.

Joe Flores from FigTree Energy Resource Company provided a PowerPoint presentation about the PACE program to the Task Force, a copy of which is attached. Task Force member Wolf inquired on whether there were certain energy saving requirements to obtain a loan, in which Mr. Flores replied there was not. Task Force member Giampaoli inquired on the terms of the loan. Citizen member Stephanie Taber inquired whether the loan improvements would trigger a reassessment of the property taxes and Mr. Flores replied that it would not because the improvements do not add square footage. Citizen member Jason Boughie also provided input on the program.

**Action:** *The Task Force continued this item and requested that staff contact some of the jurisdictions participating in the program and to report back at the next meeting.*

**3. CONSIDERATION OF SUSTAINABLE BUSINESS RECOGNITION PROGRAM CHECKLISTS**

The Committee provided a report on the development of the program and the checklists under the categories of "Energy," "Pollution Prevention," "Social Equity," "Transportation," "Waste," and "Water", in which businesses can receive recognition for their sustainability efforts in these areas. Citizen member Lauren Kennedy shared information regarding the Chico Natural Food Coop's participation in the Food Trade Sustainability Leadership Association (FTSLA) and stressed the need to establish meaningful sustainability goals as part of the program rather than just a recognition campaign. Task Force member Reddemann concurred with Kennedy and also suggested that the Chamber of Commerce be contacted to assist with the program.

**Action:** *No action was taken on this item. Committee member Wolf requested that the*

***Task Force and the public forward to City staff any suggestions on which items on the checklist should be required ,and also ideas and suggestions on how to address allowing tenants to achieve recognition through the program.***

**4. CONSIDERATION OF A LETTER OF SUPPORT FOR AN EPA BROWNFIELD ASSESSMENT GRANT**

The City's Housing and Neighborhood Services Department is applying for a grant with the Environmental Protection Agency to conduct environmental assessments of Brownfields located in the Park Avenue Corridor. A Brownfield is real property, of which the expansion, redevelopment, or reuse of such property may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. The Task Force considered providing a letter of support for the application.

***Action: The motion from Task force member Luvaas to approve the letter of support with minor corrections was seconded by Task Force member Chapman and approved (9-0-6).***

**5. BUSINESS FROM THE FLOOR**

Citizen Leslie Johnson requested that the Task Force consider discussing a potential ban on the use of plastic bags and provided some background information on several ordinances passed by other jurisdictions. This item will be placed on the Task Force's December meeting and it was suggested that a representative from Chico Bag be invited to attend due to recent lawsuits.

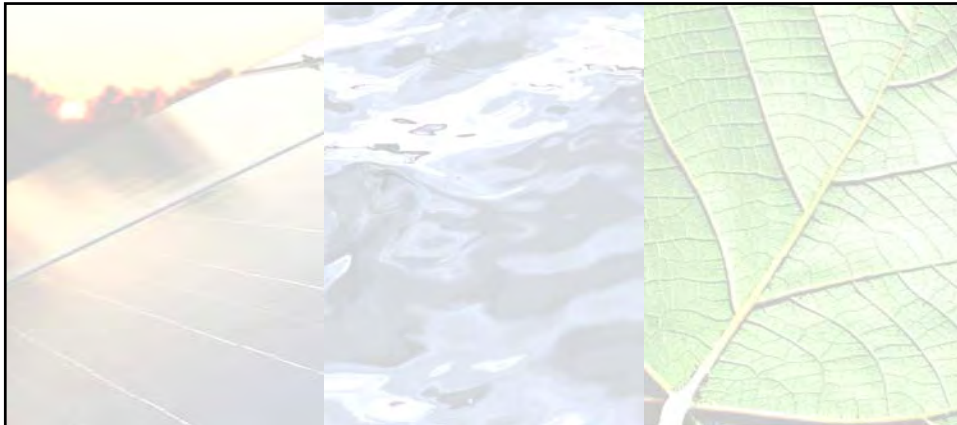
Task Force member Luvaas cited a recent report from the Department of Energy that greenhouse gas emissions are increasing with the U.S. and China being some of the largest contributors.

General Services Administrative Manager Herman announced the This Way To Sustainability Conference at CSU, Chico and Butte College to be held in March 2012, of which several Task Force members will be making presentations.

**5. ADJOURNMENT – The Task Force adjourned at 7:20 p.m. to a regular meeting scheduled for 5:30 p.m. on Monday, December 5, 2011 in Conference Room 1, 421 Main Street, Chico.**

**ATTACHMENTS:**

PACE Powerpoint Presentation



## Unlocking Clean Energy Savings

California PACE  
*Property Assessed Clean Energy*



### Who is FIGtree Energy Resource Company?

#### Formerly Public Finance Solutions & Engineering

- Bond financing experience over \$1B
- Funding expertise for government agencies
- Financial solutions for Power Purchase Agreements (PPA)
- Monetized solutions for Energy Savings Company (ESCO) model

#### Construction experience over \$100M (Residential Development and Wireless Infrastructure)

- Provides Property Management
- Provides Construction Management

#### Financial Analysis for Solar and Wind Projects

#### Compliance Solutions for Energy Legislation

#### Supply Chain Integration

Author and Administrator of Energy HELP (Residential Home Efficiency Loan Program)

Author and Administrator of California PACE (Commercial and Select Residential Properties)



## Property Assessed Clean Energy (PACE) Primer

### What is PACE?

- A financing mechanism created by California Assembly Bill 811 ("AB-811"), which provides that financing for energy retrofits may be secured by a voluntary lien on California properties.

### What is the California PACE difference?

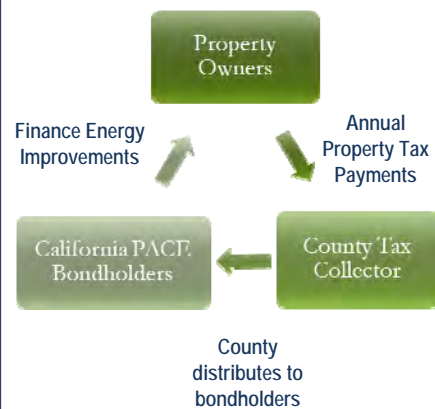
- No money down, property-based financing for energy and water efficiency improvements;
- FIGtree funds projects by issuing taxable revenue bonds secured by the improved property;
- It's available statewide:
  - Currently active in 13 cities
- Save energy, save money
  - Energy Efficiency Measures save property owners money by reducing energy usage
  - Retrofits create new jobs
  - Monetary savings put cash back into communities



## How California PACE Works

FIGtree Is the Hub of Clean Energy Finance

- **Adopt:** Cities and Counties adopt California PACE™
- **Apply:** Contractors and Property Owners apply
- **Lien:** When a Property Owner is approved, FIGtree administers a tax lien to secure the financing
- **Sell Bonds:** FIGtree coordinates the sale of bonds and proceeds are used to finance improvements
- **Install:** Approved Contractors install improvements
- **Inspect:** FIGtree ensures project completion
- **Pay:** FIGtree coordinates distribution of bond proceeds to Approved Contractors for completed work
- **Collect:** Property Owner makes semi-annual repayments to county collector via property tax bill
- **Distribute:** FIGtree coordinates distribution of semi-annual coupons to bondholders



## A Compelling Value Proposition

### Overcome Complex Qualifications

It's easy to qualify; because of the high credit quality of California PACE lien assessments, there is no need for personal credit checks or down payments.

### Gain Positive Cash Flows

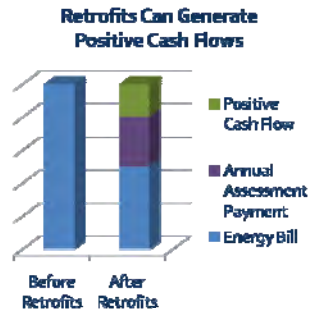
Property owners can realize energy savings that exceed financing costs, generating positive cash flows from Day 1, eliminating payback period analysis.

### Hedge Against Rising Energy Costs

Renewable energy retrofits can lock in low energy prices for up to 20 years.

### Pay Only for What You Use

California PACE financing transfers with the sale of your property, so financial benefits directly offset costs.



## Sample Savings Analysis

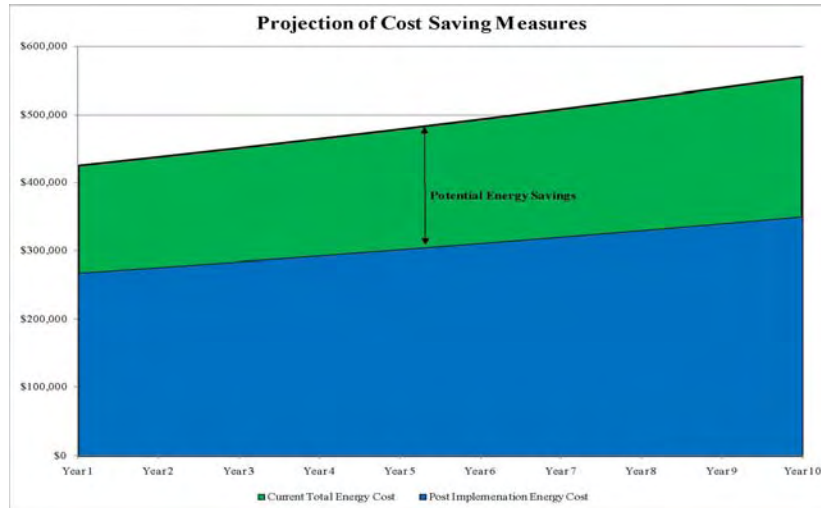
Excerpt from the Comprehensive Energy Audit Report

Recommended Measure	Estimated Installed Cost	Annual Cost Savings	Estimated Rebates	Simple Payback (Years)	Asset Value Increase (7.5% CAP)	Value Multiple
<i>No / Low Cost Measures:</i>						
1. Weather Stripping	\$1,000	\$1,050	\$152	0.8	\$14,000	14.0X
2. Economizer Repair	\$14,000	\$10,308	\$0	1.4	\$137,440	9.8X
3. CHW Supply Temp. Reset	\$15,000	\$12,945	\$11,744	0.3	\$172,600	11.5X
<i>Capital Measures:</i>						
4. Replace Boiler w/ High Eff. Boiler	\$35,000	\$2,645	\$2,645	12.2	\$35,267	1.0X
5. Add Variable Speed Drives to Fans	\$50,000	\$56,889	\$13,669	0.6	\$758,520	15.2X
6. Lighting Retrofit	\$92,000	\$17,252	\$10,673	4.7	\$230,027	2.5X
<b>TOTAL</b>	<b>\$ 207,200</b>	<b>\$138,900</b>	<b>\$38,883</b>	<b>1.2</b>	<b>\$1,852,000</b>	<b>11.0X</b>



## Sample Savings Analysis

Excerpt from the Comprehensive Energy Audit Report



## Member Cities Promote California PACE

Member cities have promoted California PACE™ to local Property Owners and Contractors.

### Water Bill Stuffers

- City of Tulare
- City of Fresno

### Telephone Campaigns

- City of Fresno

### Mailers and Brochures

- City of Palm Springs
- City of Tulare

**Energy Efficiency Retrofits — Now in Fresno**

**Get Involved**

**Save Energy, Save Money!**  
877-577-7373



## Application Fee and Energy Audit Benefits

Application Fee: \$395

*plus*

Energy Audit Fee (*if applicable*): Ranges from \$400 to \$4,000+ (per building ft<sup>2</sup>)

Fee covers:

- Application Processing
- Review of Property Title
- Review of Property Tax Payment History
- Lender Consent
- Energy Audit (*if applicable*)



## Property Owner Application Process





## Maximum Financeable Amount

Two options for upper limit

The maximum amount a property owner can assess against his or her property is determined by the greater of the following rules:

### 100% of Assessed Land Value

- Property owners can finance improvements up to the full value of their land, as determined by the County Assessor.

Assessed Land Value = Maximum Financeable Amount

### 10% of Total Assessed Value

- Property owners can finance improvements up to 10% of the full value of their land plus improvements, as determined by the County Assessor.

10% x Assessed Value = Maximum Financeable Amount



## California PACE™ Bond Financing Basics

### The Financing Rate:

The rate to property owners is currently set at about 8%. The market rate is determined at the time of financing and is fixed over the entire term, up to 20 years.

8%± up to 20 years; exact rate is determined by municipal bond market

### Requirements to access the bond market:

- Minimum Issue:** \$2 million worth of projects aggregated throughout the State.
- Fixed Costs:** 4%± for underwriters, bond counsel, trustee fee, etc.
- Minimum Project:** financed projects must be valued at a minimum of \$5,000.



## California PACE™ Bond Basics

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A Debt Service Reserve Fund (DSRF) is required by California law; the guideline is established at 10% of the Total Financed Amount.

### Example:

Property Owner A submits an application for California PACE™ financing and is approved for \$500,000. \$50,000 of that allocation will be set aside for a reserve fund and the remaining \$450,000 is eligible to be used for project costs.

- The property owner does pay interest on the entire assessment amount;
- The DSRF earns interest, which belongs to the property owner;
- If there have been no delinquencies in the aggregation of bonds, the DSRF will pay down as the final tax levy payment.



## Property Owner Keeps Rebates

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- Property owners will be informed of the rebates available to them through the energy assessment process.
- Property owners are recommended to use the auditing services of Partner Energy, a firm that specializes in rebates and financial valuation of energy efficiency projects.
- Property owners are *strongly encouraged* to use rebate funds to pay down principal of their assessment. This assists in preventing a future default and is for the benefit of the property owner.



## Contacts - Visit us at [www.FIGtreeCompany.com](http://www.FIGtreeCompany.com)

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### Joe Flores, Director of Finance

Mr. Flores serves as the leader of the Government Services department. His professional career in creating and administering special financing districts (over 200 districts with 62 public agencies) makes FIGtree a leader in PACE related financing products.

Mr. Flores has extensive experience in the arena of public finance, and has substantial capabilities in a broad range of the capital markets including stocks, bonds, mutual funds, and options. He has helped public agencies throughout California raise revenue for local capital improvements and new housing developments.

Mr. Flores holds a Bachelor of Arts in Psychology and Computer Programming/Business Administration from the University of California, Los Angeles



9915 Mira Mesa Boulevard, Suite 130  
San Diego, California  
92131

Contact  
(877) 577-7373

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# Sustainability Task Force Agenda Report

Meeting Date: 12/5/11

DATE: November 30, 2011  
TO: SUSTAINABILITY TASK FORCE  
FROM: LINDA HERMAN, GENERAL SERVICES ADMINISTRATIVE MANAGER, 896-7241  
RE: CONSIDERATION OF POSSIBLE PLASTIC BAG BAN ORDINANCE

## **BACKGROUND:**

Globally, an estimated 500 billion to 1 trillion plastic bags are used each year, which equals to over 1 million bags used per minute. CalRecycle estimates that Californians use nearly 20 billion "single-use" plastic bags per year, discarding over 100 plastic bags per second. The Environmental Protection Agency (EPA) estimates that only 5% of the bags in California and nationally is recycled, the remainder ending up as either litter or waste in landfills. Furthermore the production and disposal of plastic bags cause significant environmental impacts including the use of millions of gallons of oil, widespread litter, contamination of land and waterways, and the deaths of thousands of marine animals through ingestion and entanglement.

As "Business From the Floor" at the Task Force's 11/7/11 meeting, a citizen requested that the Task Force discuss whether the City of Chico should adopt an ordinance banning plastic bags. The Task Force agendized this discussion for today's meeting.

## **DISCUSSION:**

### **Existing Plastic Bag Legislation/Ordinances:**

AB 2449 - Effective July 1, 2007, all grocery stores and pharmacies in California are required to take back and recycle plastic bags. The bill also requires the retailers to provide consumers with an opportunity to purchase reusable bags. This law affects approximately 7,000 stores statewide.

AB 1998 - To address the litter and environmental issues related to plastic bags, in 2010 Assemblywoman Julia Brownley introduced Assembly Bill 1998 (AB 1998) that would have provided for a statewide ban on single-use plastic bags. The Bill passed several legislative Committees and the Assembly, but failed at the Senate level. There is a possibility that Brownley may introduce another bill of similar form during the 2011-12 legislative session.

Local Plastic Bag Bans - Because AB 2449 prohibits local ordinances placing a fee on plastic bags, many jurisdictions have instead decided to adopt ordinances to ban them. To date, 14 jurisdictions in California have approved ordinances banning the use of plastic bags, and several communities, such as San Luis Obispo, City of Los Angeles, and San Diego County, are in the process of adopting such ordinances. Currently roughly 10%, or 1 in 10, California residents live under some form of a mandated plastic bag ban. Jurisdictions in other states, such as Maui and Bellingham Washington, have also adopted similar ordinances. A summary of the California jurisdictions with ordinances is attached as Attachment "1", and some samples of these ordinances can be found in Attachment "2".

Although there are nuances between the different ordinances, most contain the following provisions:

1. Targets "single-use" carry out plastic bags with handles and exempt plastic bags without handles used to:
  - a. Transport food, such as meat and produce;
  - b. Transport medication from pharmacies;
  - c. Segregate food or merchandise that could contaminate other food or merchandise while placed in the same bag.
2. Applies to all retail establishments, such as grocery stores, pharmacies and other retail stores, but usually exempt public eating establishments (i.e., restaurants, fast food), non-profits, and social organizations. Some jurisdictions have a phased implementation schedule, first targeting establishments with annual sales of \$2,000,000 or greater or retail space of a minimum of 10,000 sq. ft.

3. Requires establishment to provide reusable or recycled/recyclable paper bags only, provided the paper bags contain no old growth fiber, contain a minimum of 40% post-consumer recycled content, and is 100% recyclable and clearly labeled as such. Some jurisdictions have also provided minimum specifications for the reusable bags.
4. To further encourage the use of reusable bags and to help defray costs to the stores, the ordinances allow the establishment to charge a fee for the reusable and/or recycled paper bag. The fees for the paper bags are generally set at a minimum of \$0.10 per bag and some ordinances provide for a phased increase of up to \$0.25. However, most ordinances encourage or require the establishment to not charge a fee for paper bags for those customers who participate in the CA Special Supplemental Food Program for Women, Infants and Children (WIC) or the Supplemental Nutrition Assistance Program (SNAP - formerly called food stamps).
5. The violations for noncompliance generally range from \$100 for the first violation to \$500 for the third and subsequent violation. The ordinances also provide for an appeal process.
6. All of the jurisdictions have conducted or plan to conduct extensive public outreach and education efforts on the ordinances, including soliciting input from the retail establishments.

### **Legal Challenges:**

As noted in Attachment "1", the City of Manhattan Beach adopted a plastic bag ban ordinance in 2008. The "Save The Plastic Bag Coalition" (STPBC) challenged the ordinance and filed a lawsuit against the City. More information regarding the STPBC can be found on its website at [www.savetheplasticbag.com](http://www.savetheplasticbag.com). The basis for the lawsuit was that the CEQA review for the ordinance should have required an Environmental Impact Report (EIR) rather than the Negative Declaration that was prepared, citing that the use of paper bags, too, has environmental impacts which may exceed those generated from using plastic bags.

After three years of litigation and with the help of the non-profit environmental research and advocacy organization Californians Against Waste (CAW), the Court overturned several lower courts' ruling and upheld the ban on July 14, 2011. Based on the "substantial evidence and common sense," the court determined that the City of Manhattan's ordinance did not have a significant environmental effect and an EIR was not required. However, the court also said that its analysis of whether an EIR is necessary would be different for a ban on plastic bags by a larger governmental body [as it] might precipitate a more significant increase in paper bag consumption. Manhattan Beach has an estimated population of 35,000 and roughly 200 retail stores. Many jurisdictions have addressed the issue concerning the potential environmental impacts from the increased use of paper bags by providing for a fee for the bags as a disincentive for consumers, or by conducting EIRs.

The STPBC also filed lawsuits challenging ordinances in the counties of Marin and Santa Cruz on the basis that it preempts AB 2449. In September 2011, the CA Supreme Court denied the lawsuit in Marin County. Hilex Poly, the nation's largest plastic bag maker, filed a lawsuit against Los Angeles County's ordinance. As a new legal approach, the lawsuit argues that the provision of the ordinance requiring retailers to directly charge consumers the 10-cent cost of paper bags violates the terms of Proposition 26, the November 2010 initiative aimed at requiring a two-thirds vote for all 'taxes'. For the Task Force's information, the attached 2010 memorandum from the San Jose City Attorney (Attachment "3") addresses Proposition 26 and some other legal concerns.

### **RECOMMENDATION:**

Staff is recommending that the Task Force provide any suggestions or comments regarding the request, and to make a recommendation whether the City Council should consider adopting some form of a plastic bag ban ordinance.

### **ATTACHMENTS:**

- Attachment "1": Ordinance Summary
- Attachment "2": Sample Ordinances
- Attachment "3": City of San Jose

## Elements of a Successful Single-Use Bag Ordinance

- Prohibition on the distribution of single-use plastic carryout bags.
- Prohibition on the distribution of single-use paper bags with less than 40 percent postconsumer recycled content.
- End the wasteful and costly practice of hiding the price of carryout bags, by requiring retailers to charge not less than the actual average cost of providing recycled paper bags.
- Stores retain revenue, but required to report the amount charged and number of bags sold
- Store definition:
  - gross annual sales of \$2 million or more selling food and nonfood goods
  - at least 10,000 square feet of retail space with a licensed pharmacy
  - pharmacy, convenience store, or other retail store selling a limited line of food goods
- Ordinance can be customized to phase in stores, restaurants, clothing retailers, nonprofits, farmers markets, etc., with different implementation dates based on store size/category
- Exemptions for protective/produce type bags, WIC/lower income
- Defines reusable bags as: Handled bag specifically designed and manufactured for multiple reuse and:
  - made of cloth or other machine washable fabric, and/or made of durable plastic that is at least 2.25 mils thick
  - meets lead and other heavy metal safety requirements as specified for packaging under state Toxics in Packaging law (Health & Safety Code Sections 25214.11-25214.26)
  - Several California companies are leading the globe in the manufacture of durable, reusable bags made from recycled materials. As this market becomes more fully developed, jurisdictions may want to consider policies and incentives to promote the use of California manufactured reusable bags with the highest level of post-consumer recycled material.

### Single-Use Bag Ordinances in CA (updated October 2011)

Local Jurisdiction	Description	Effective	CEQA/Strategy	Other Elements
San Francisco	plastic ban	2007/2008	Exemption	Allows compostable bags, ban includes large supermarkets and pharmacies
Oakland	plastic ban	n/a	Exemption	Allows compostable plastic bags
Fairfax	plastic ban	2008	Voter Initiative	Ban includes all retail
Malibu	plastic ban	2008/2009	Exemption	Ban includes all retail and restaurants
Manhattan Beach	plastic ban	2012	Neg Dec	Ban includes all retail and restaurants
Palo Alto	plastic ban	2009	Neg Dec	Ban includes large supermarkets only
Los Angeles County	plastic ban, 10 c fee paper	2011/2012	EIR	
San Jose	plastic ban, 10/25 c fee paper	2012	EIR	Ban includes all retail except nonprofit, Limited exemption for WIC/low income
Marin County	plastic ban, 5 c fee paper	2012	Exemption	Limited free giveaway of reusable bags
Santa Monica	plastic ban, 10 c fee paper	2011/2011	EIR	Ban includes retail and famers markets
Calabasas	plastic ban, 10 c fee paper	2011/2012	used LAC EIR	
Santa Clara County	plastic ban, 15 c fee paper	2012	Neg Dec	Ban includes all retail except nonprofit, Limited exemption for WIC/low income
Long Beach	plastic ban, 10 c fee paper	2011/2012	used LAC EIR	Ban includes farmers markets
Santa Cruz County	plastic ban, 10/25 c fee paper	2012	Mit Neg Dec	Ban includes all retail and restaurants (but they can give paper bags for free)



**ORDINANCE NO. 3553**  
**ORDINANCE OF THE MARIN COUNTY BOARD OF SUPERVISORS**  
**REGULATING RETAIL ESTABLISHMENTS PROVISION OF SINGLE-USE CARRY-OUT**  
**BAGS**

THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS.

**WHEREAS**, the use of all single-use shopping bags (plastic, paper, biodegradable) have severe environmental impacts, including greenhouse gas (GHG) emissions, litter, harm to wildlife, ground level ozone formation, atmospheric acidification, water consumption and solid waste generation; and

**WHEREAS**, there are approximately forty (40) retail establishments or stores as defined herein in the unincorporated portion of Marin County, most of which provide single-use, disposable carry-out bags to their customers; and

**WHEREAS**, many of these single-use carry-out bags are made from plastic or other material that does not readily decompose; and

**WHEREAS**, approximately Nineteen Billion (19,000,000,000) single-use plastic bags are used annually in California but less than 5% are recycled; and

**WHEREAS**, numerous studies have documented the prevalence of single-use plastic carry-out bags littering the environment, blocking storm drains and fouling beaches; and

**WHEREAS**, the County of Marin's taxpayers must bear the brunt of the clean-up costs of this litter; and

**WHEREAS**, plastic bags are a significant source of marine debris and are hazardous to marine animals and birds which often confuse single-use plastic carry-out bags for a source of food resulting in injury and death to birds and marine animals; and

**WHEREAS**, of all single-use bags, single-use plastic bags have the greatest impacts on litter and marine life; and

**WHEREAS**, the use of single-use paper bags result in greater (GHG) emissions, atmospheric acidification, water consumption, and ozone production than single-use plastic bags; and

**WHEREAS**, from an overall environmental and economic perspective, the best alternative to single-use plastic and paper carry-out bags is a shift to reusable bags; and

**WHEREAS**, there are several alternatives to single-use carry-out bags readily available in the County of Marin; and

**WHEREAS**, an important goal of the County is to procure and use sustainable products and services; and

**WHEREAS**, it is the County's desire to conserve resources, reduce the amount of GHG emissions, waste, litter and marine pollution and to protect the public health and welfare including wildlife, all of which increase the quality of life for the County's residents and visitors; and

**WHEREAS**, studies document that banning plastic bags and placing a mandatory charge on paper bags will dramatically reduce the use of both types of bags.

SECTION 2. Chapter 5.46 is hereby added to Title 5 of the Marin County Code to read as follows:

## **CHAPTER 5.46 DISPOSABLE BAG REDUCTION ORDINANCE**

### **SECTION 5.46.010. DEFINITIONS**

For purposes of this chapter, the following definitions shall apply:

- (a) "Director" means the Marin County Agricultural Commissioner, or his/her designee.
- (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 carry-out 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), the paper carry-out bag 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) Is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400.
  - (4) Has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the minimum percentage of post-consumer content.
- (d) "Reusable grocery bag" on and after January 1, 2012, means a bag that meets the requirements of Section 5.46.030.
- (e) (1) "Single-use carry-out 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 reusable grocery bag that meets the requirements of 5.46.030.
- (2) A single-use carry-out 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 California Business and Professions Code to a customer purchasing a prescription medication.



(B) A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag or reusable bag.

(f) "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.

#### **SECTION 5.46.020. CARRY-OUT BAG REGULATION**

(a) On and after January 1, 2012, a store shall not provide a single-use carry-out bag to a customer at the point of sale, except as provided in this section.

(b) (1) A store shall make reusable bags available for purchase by a customer.

(2) (A) A store may provide reusable bags to customers at no cost, until December 31, 2012.

(B) On and after January 1, 2013, a store may provide reusable bags to customers at no cost only when combined with a time-limited store promotional program.

(C) Notwithstanding any other law, on and after January 1, 2012, a store 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 California 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 California Welfare and Institutions Code, with a reusable bag or a recycled paper bag at no cost at the point of sale.

(D) On and after January 1, 2012, a store may provide to a customer a recycled paper bag upon request but shall charge the consumer, except as provided in subdivision (C), a reasonable cost, but not less than five cents.

#### **SECTION 5.46.030. REUSABLE GROCERY BAGS**

(a) On and after January 1, 2012, a reusable grocery bag provided by a store shall meet all of the following requirements:

(1) Be designed and manufactured to withstand repeated uses over a period of time.

(2) Be made from a material that can be cleaned and disinfected.

- (3) Shall not contain lead, cadmium, or any other heavy metal in toxic amounts.

**SECTION 5.46.040. RECOGNITION OF STATEWIDE IMPORTANCE**

The County of Marin recognizes carry-out bag regulation as a matter of statewide interest and concern and is best applied uniformly throughout the state. In the absence of statewide regulation the County of Marin believes it is in the best interest of the County of Marin to regulate carry-out bags.

**SECTION 5.46.050. ENFORCEMENT AND NOTICE OF VIOLATIONS**

- (a) The Agricultural Commissioner, or his or her designee, shall have primary responsibility for enforcement of this Chapter. The Agricultural Commissioner is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this Chapter, including, but not limited to, inspecting any store's premises to verify compliance.
- (b) Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction.
- (c) The County may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- (d) The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in this Chapter shall preclude any person from pursuing any other remedies provided by law.

**SECTION 5.46.060. PENALTIES FOR VIOLATIONS**

- (a) Violations of this ordinance shall be punishable as follows:

**Plastic Bag Compliance Fee Matrix**

Violations	Scanner Number		
	1-3	4-9	10 or more
First	Written Warning Notice		
Second	\$135.00	\$200.00	\$220.00
Thrd	\$185.00	\$250.00	\$270.00
Fourth	\$270.00	\$400.00	\$440.00
Fifth	Administrative Civil Penalty or Referral to DA		

- (1) Each violation of this Chapter shall be considered a separate offense.

SECTION 3. Any provision of the Marin County Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this 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 the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE. This ordinance shall be and is hereby declared to be in full force and effect as of January 1, 2012 from and after the date of its passage and shall be published once before the expiration of fifteen (15) days after its passage, with the names of the supervisors voting for and against the same in the *Marin Independent Journal*, a newspaper of general circulation published in the County of Marin.

**PASSED AND ADOPTED** at a regular meeting of the Board of Supervisors of the County of Marin held on this 25th day of January, 2011, by the following vote:

AYES: SUPERVISORS Judy Arnold, Charles McGlashan, Steve Kinsey,  
Susan L. Adams

NOES: NONE

ABSENT: SUPERVISOR Harold C. Brown, Jr.

  
\_\_\_\_\_  
PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

  
\_\_\_\_\_  
CLERK

**ORDINANCE No. NS - 517.77**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CLARA  
ADDING CHAPTER XVII TO DIVISION B11  
OF THE COUNTY OF SANTA CLARA ORDINANCE CODE  
RELATING TO PROHIBITION OF SINGLE-USE CARRYOUT BAGS**

**Summary**

This ordinance prohibits the free distribution of paper and plastic single-use carryout bags at retail establishments within unincorporated Santa Clara County.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ORDAINS  
AS FOLLOWS:**

Division B11 of Title B of the Ordinance Code of the County of Santa Clara is amended by adding a new Chapter XVII to be numbered and titled and to read as follows:

**CHAPTER XVII. SINGLE-USE CARRYOUT BAG BAN**

**Section B11-508. Findings and Intent.**

The Board of Supervisors of the County of Santa Clara does hereby find the following:

- a) The use of Single-use Carryout Bags by consumers at Retail Establishments is detrimental to the environment, public health and welfare.
- b) The manufacture and distribution of Single-use Carryout Bags requires utilization of natural resources and results in the generation of Greenhouse Gas Emissions.
- c) Single-use Carryout Bags contribute to environmental problems, including litter on roadways and in aquatic environments.
- d) Single-use Carryout Bags provided by Retail Establishments impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance.

This chapter is adopted (1) to require Retail Establishments to discontinue the subsidy of Single-use Carryout Bags to consumers and (2) to encourage Retail Establishments to educate their staff to promote Reusable Bags as the best option for checkout bags and (3) to encourage consumers to make informed decisions regarding Single-use Carryout Bag reduction and reuse options.

**Section B11-509. Definitions.**

For the purposes of this Ordinance, the following words shall have the following meanings:

- a) "Administrator" means the Director of the Department of Agriculture and Environmental Management and his or her designee.

- b) "Public Eating Establishment" means a restaurant, take-out food establishment, or any other business that receives 90% or more of its revenue from the sale of prepared food to be eaten on or off its premises.
- c) "Recycled Paper Bag" means a paper bag provided at the point of sale, for the purpose of transporting food or merchandise out of the Retail Establishment that contains no old growth fiber and a minimum of forty percent (40%) post-consumer recycled content; is one hundred percent (100%) recyclable; and has printed in a highly visible manner on the outside of the bag the words "Reusable" and "Recyclable," the name and location (country) of the manufacturer, and the percentage of post-consumer recycled content.
- d) "Retail Establishment" means an establishment that is open to the public and devoted to the retail sale of a commodity or commodities and provides Single-use Carryout Bags to its customers as a result of the sale of a product. Public Eating Establishments are excluded from this definition.
- e) "Reusable Bag" means the following:
  - 1) Until December 31, 2012 a Reusable Bag shall be:
    - (i) Made of cloth or other machine-washable fabric that has handles, or a durable plastic bag that is at least 2.25 mil thick with handles and is specifically designed and manufactured for multiple reuse.
    - (ii) No Reusable Bag shall 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.
  - 2) Beginning January 1, 2013, a Reusable Bag shall be:
    - (i) Designed and manufactured to withstand a minimum of 100 uses. For purposes of this paragraph, "uses" means the capability of carrying a minimum of 22 pounds 100 times over a distance of at least 175 feet.
    - (ii) Made from a material that can be cleaned and disinfected.
    - (iii) Have 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 the following information:
      - a) The name of the manufacturer.
      - b) The location (country) where the bag was manufactured.
      - c) A recycling symbol or end-of-life management instructions.
      - d) The percentage of postconsumer recycled material, if any.
    - (iv) 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.
- f) "Single-use Carryout Bag" means a bag other than a Reusable Bag provided at the point of sale for the purpose of transporting food or merchandise out of the Retail

Establishment. Single-use Carryout Bags do not include bags without handles provided to the Customer intended (1) to transport produce, bulk food or meat from a produce, bulk food or meat department within a Retail Establishment; (2) to hold prescription medication dispensed from a pharmacy; or (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Paper Bag or as exempted in Section B11-512.

**Section B11-510. Restrictions on Single-use Carryout Bags at Retail Establishments.**

- a) Retail Establishments are prohibited from providing Single-use Carryout Bags to customers at point of sale except as exempted in Section B11-512.
- b) Retail Establishments may provide only Reusable Bags and/or Recycled Paper Bags to customers at point of sale.
- c) Nothing in this chapter shall preclude Retail Establishments from making Reusable Bags available to customers free of charge until December 31, 2012. Beginning January 1, 2013, Reusable Bags may only be provided free of charge as part of a time-limited store promotion.
- d) Nothing in this chapter shall preclude retail establishments from making Recycled Paper Bags available for sale at the Retail Establishment's cost but no less than \$0.15 to be retained by the Retail Establishment. Retail Establishments are prohibited from providing free Recycled Paper Bags to customers except as exempted in Section B11-512.

**Section B11-511. Compliance Date.**

All Retail Establishments shall comply with this Ordinance by January 1, 2012.

**Section B11-512. Exemptions.**

This Ordinance does not apply to:

- a) Plastic or paper bags used by Public Eating Establishments, non-profit organizations and social organizations;
- b) Bags used to protect delivered newspapers;
- c) Notwithstanding any other law, on and after January 1, 2012 a Retail Establishment may provide customers participating in the California Special Supplemental Food Program for Women, Infants, and Children (WIC) and customers participating in the Supplemental Nutrition Assistance Program (SNAP – formerly food stamps) with Reusable Bags or Recycled Paper Bags at no cost at point of sale until December 31, 2014.

**Section B11-513. Severability.**

If any provision or clause of this chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of the Chapter, and clauses of this chapter are declared to be severable.

**Section B11-514. Compliance Monitoring.**

- a) Compliance with this chapter shall be monitored by the Administrator. The Administrator may designate any number of additional persons to monitor and facilitate compliance with this chapter.
- b) The Administrator or other person designated to enforce the provisions of this chapter shall periodically check each Retail Establishment to determine if the Retail Establishment is complying with all sections of this Ordinance. Nothing in this paragraph shall create a right of action in any Retail Establishment or other person against the County or its agents.

**Section B11-515. Recordkeeping and Verification.**

Every Retail Establishment shall keep complete and accurate records or documents of the purchase of any Recycled Paper Bag by the Retail Establishment, for a minimum period of three (3) years from the date of purchase, which record shall be available for inspection at no cost to the County during regular business hours by any County employee authorized to enforce this chapter. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Retail Establishment address. The provision of false information to the County, including incomplete records, shall be a violation of this Section.

**Section B11-516. Penalties for a Violation by a Retail Establishment.**

- a) In addition to any other penalty authorized by law, an administrative fine shall be imposed if any court of competent jurisdiction determines, or the Administrator finds based on a preponderance of the evidence, after the Retail Establishment is afforded notice and an opportunity to be heard, that the Retail Establishment, or any of the Retail Establishment's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter, has pled guilty, "no contest" or its equivalent to such a violation, or has admitted to such a violation.
- b) Amount of Fine. Each such violation shall be subject to an administrative fine as follows:
  - 1. A fine not to exceed \$100.00 for a first violation within one year;
  - 2. A fine not to exceed \$200.00 for a second violation within one year; and
  - 3. A fine not to exceed \$500.00 for each additional violation within one year.
- c) Waiver of Penalties for First Violation. The Administrator may waive any penalties for a Retail Establishment's first violation of any requirement, condition or prohibition of this chapter, if the Retail Establishment admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the Administrator's waiver of penalties for a first violation, the violation will be considered in determining the penalties for any future violation.
- d) Corrections Period. The Administrator shall have discretion to allow a Retail Establishment a period of time to correct any violation of any requirement, condition or prohibition of this chapter. If a Retail Establishment's violation is corrected within the time allowed for correction, no penalty shall be imposed under this section.

- e) Appeals. Any penalties imposed under this section may be appealed pursuant to Section B11-517 of this chapter.

**Section B11-517. Appeals.**

- a) A decision to impose penalties for a violation of this chapter can be appealed to a hearing officer, subject to the following requirements and procedures. The hearing officer shall be the Administrator, his or her designee, or another individual selected by the County.
- b) All appeals must be in writing, state the grounds asserted for relief and the relief sought, and be filed with the Administrator or his or her designee within 10 calendar days of receipt of notice of the appealed action. If such an appeal is made, it shall stay enforcement of the appealed action.
- c) No later than 15 calendar days after receipt of the appeal, the hearing officer shall set an appeal hearing at the earliest practicable time and shall give notice of the hearing to the parties at least 10 calendar days before the date of the hearing.
- d) Neither the provisions of the Administration Procedure Act (Government Code Section 11500 et seq.) nor the formal rules of evidence in civil or criminal judicial proceedings shall apply to such hearing. At the hearing, the hearing officer may admit any evidence, including witnesses, relevant to the determination of the matter. A record of the hearing shall be made by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.
- e) The hearing officer may continue the hearing from time to time, in his or her sole discretion, to allow for orderly completion of the hearing.
- f) After the conclusion of the hearing, the hearing officer shall issue a written decision, which shall be supported by substantial evidence. Notice of the written decision, including findings of facts, conclusions of law, and notification of the time period in which judicial review may be sought pursuant to Code of Civil Procedure Section 1094.6, shall be served upon all parties no later than 20 calendar days following the date on which the hearing closed. Any decision rendered by the hearing officer shall be a final administrative decision.

**Section B11-518. Enforcement.**

- a) Any violation of this chapter is hereby declared to be a public nuisance.
- b) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- c) Violations of this chapter may be remedied by a civil action brought by the County, including but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief. For the purposes of the civil remedies provided in this chapter, each day on which a violation of this chapter occurs, shall constitute a separate violation of this chapter.
- d) The District Attorney shall have discretion to prosecute violations of this chapter as infractions or misdemeanors.



- e) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

**Section B11-519. Effective Date.**

This chapter shall become operable 30 days after this ordinance receives final approval from the Board of Supervisors.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**


**ABSTAIN:**

\_\_\_\_\_  
DAVE CORTESE, President  
Board of Supervisors

**ATTEST:**

\_\_\_\_\_  
MARIA MARINOS  
Clerk of the Board of Supervisors

**APPROVED AS TO FORM AND LEGALITY:**

 3-22-2011  
\_\_\_\_\_  
MARK BERNAL  
Deputy County Counsel

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

**ORDINANCE ADDING CHAPTER 5.48 TO SANTA CRUZ COUNTY CODE  
RELATING TO THE REDUCTION OF SINGLE-USE PLASTIC  
AND PAPER CARRYOUT BAGS**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

**SECTION I**

Chapter 5.48 of the Santa Cruz County Code is enacted to read as follows:

**BAG REDUCTION ORDINANCE**

**Sections:**

**5.48.010 Purpose and Findings.**

**5.48.015 Definitions.**

**5.48.020 Ban on Plastic Carryout Bags and Store Charge for Other Single-Use Carry Out Bags.**

**5.48.025 Implementation.**

**5.48.030 Exemptions Allowing Single Use Bags.**

**5.48.035 Enforcement.**

**5.48.040 Violations.**

**5.48.045 Severability.**

**5.48.050 Effective Date.**

**5.48.055 No Conflict With Federal or State Law.**

**5.48.060 Preemption.**

**5.48.010 Findings and intent.**

- A. It is the intent of the County of Santa Cruz, in enacting Chapter 5.48 to eliminate the common use of plastic single-use carryout bags, encourage the use of reusable bags by consumers and retailers, and to reduce the consumption of single-use bags in general.
- B. Whereas the County of Santa Cruz has an obligation to protect the environment, the economy, and public health. The County of Santa Cruz has a 75 percent waste reduction goal, which is to be reached by waste reduction, reuse, recycling, and composting. The County of Santa Cruz makes the following findings:
  - 1. Globally, an estimated 500 billion to 1 trillion petroleum-based plastic bags are used each year, which equals over 1 million per minute, the production and use of which uses over 12 million barrels of oil. The California Integrated Waste Management Board estimates that Californians use nearly 20 billion single-use plastic bags per year and discard over 100 hundred plastic bags per second. Further the Environmental Protection Agency estimates that only 5 percent of the plastic bags in California and nationwide are currently recycled.
  - 2. The production and disposal of plastic bags causes significant environmental impacts, including contamination of the environment, the deaths of thousands of marine animals through ingestion and entanglement, widespread litter and debasement of the urban environment, and increased waste disposal costs.

3. Most plastic carryout bags do not biodegrade, but instead persist in the environment for hundreds of years; rather than breaking down, they slowly break up through abrasion, tearing, and photo degradation into toxic plastic bits that contaminate soil and water, while entering the food web when animals inadvertently ingest these materials. Toxic substances present in plastics are known to cause death or reproductive failure in fish, shellfish, wildlife, and in the humans ingesting the fish.
4. Plastic bits absorb dangerous compounds such as dichlorodiphenyldichloroethylene (DDE), polychlorinated biphenyls (PCB), and other toxic materials present in ocean water. Plastics have been found to concentrate these toxic chemicals at levels of up to 1 million times the levels found in seawater. Plastic bits have displaced plankton in the Pacific Gyre.
5. The U.S. Marine Mammal Commission estimates that 267 marine species have been reported entangled in or having ingested marine debris. Plastic can constrict the animals' movements or block their digestive system, killing the animals through starvation, exhaustion, or infection from deep wounds caused by tightening material.
6. According to Save Our Shores, a Santa Cruz based marine conservation non-profit that conducts beach, river, and inland cleanups in the coastal regions of Santa Cruz, San Mateo, and Monterey Counties; from June 2007 to May 2011 they conducted over 400 cleanups where volunteers removed a total of 26,000 plastic bags. Unchecked, this material would have likely entered the marine environment of the Monterey Bay National Marine Sanctuary.
7. Plastic bags returned to supermarkets may be recycled into plastic lumber; however, a very low percentage of bags are actually returned. Recycling bags into lumber does not reduce the impact of making new plastic carryout bags.
8. Compostable plastic carryout bags, as currently manufactured, do not solve the problems of wildlife damage, litter, or resource use addressed by this ordinance. Compostable carryout bags are designed to remain intact until placed in a professional compost facility, so they do not degrade quickly as litter or in a marine environment. Producing compostable bags consumes nearly as much fossil fuel as noncompostable bags. Mixing compostable bags with regular plastic bags prevents recycling or composting either of them. Therefore, there is no exemption in this ordinance for compostable carryout bags.
9. According to Californians Against Waste, Californians pay up to \$200 per household each year in State and Federal taxes to clean up litter and waste associated with single-use bags, on top of the \$40 per household per year in hidden grocery costs to offset the expense of the nearly 1,000 "free" bags received from grocers.
10. Reusable bags are readily available from numerous sources and vendors. Many grocery and other retail establishments throughout the County of Santa Cruz already offer reusable bags for sale at a price as low as 25 cents.
11. This ordinance recognizes that there are energy and environmental consequences of using paper bags. While paper bags do not have the end-of-use impacts of plastic bags, they may use comparable or more energy and resources to manufacture. For this reason, a store charge on paper bags is indicated, as an incentive to reduce their use and encourage reusable bags. Paper bags that contain a minimum of 40 percent post consumer recycled content have fewer negative impacts than virgin paper bags.

12. Paper shopping bags with 40 percent post consumer recycled content are easily available, and such bags are in wide use by County of Santa Cruz merchants.
13. State law currently prohibits local jurisdictions from placing fees on single-use checkout plastic bags. Therefore, several California Cities have adopted or are pursuing a ban as the most effective remaining means to eliminate the impacts these plastic bags cause. State law does not prohibit jurisdictions from placing a store charge on paper bags.

**5.48.015 Definitions.**

- A. For the purposes of this Chapter, the following definitions apply:
1. "Carryout bags" means bags provided by retailers to customers at the point of sale to hold customers' purchases. "Carryout bags" do not include bags used to contain loose items prior to checkout, such as meat, produce, and bulk goods, and does not include prepackaged products.
  2. "Single-use plastic bag" or "single-use plastic carryout bag" means a single-use carryout bag of any size that is made from plastic and provided at the point of sale to customers by a retail establishment. Single-use plastic bags include both compostable and non-compostable carryout bags.
  3. "Single-use paper bag" means a checkout bag provided by a retail establishment at the point of sale that is made from paper and is not a reusable bag.
  4. "Recyclable" means material that can be sorted, cleansed, and reconstituted using the County's 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 destroying sold waste.
  5. "Reusable bag" means any bag with handles that is specifically designed and manufactured for multiple reuse, and is either 1) made of cloth or other washable woven fabric, or 2) made of durable material that is at least 2.25 mils thick. A "reusable bag" may be made of recyclable plastic such as high density polyethylene (HDPE), low density polyethylene (LDPE), or polypropylene.
  6. "Retail establishment" or "retail store" means all sales outlets, stores, shops, restaurants, vehicles, or other places of business located within the County of Santa Cruz, which operate primarily to sell or convey goods, including "to-go" food, directly to the ultimate consumer.
  7. "Exempted uses" means those point-of-purchase or delivery sales, which have received an exemption under Section 5.48.030 that allows the use of single-use bags.
  8. "Prepared food" means foods or beverages which are prepared on vendor's premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed. "Prepared food" does not include any raw uncooked meat product or fruits and vegetables, which are not chopped, squeezed, or mixed.
  9. "Take-out food" means prepared food or beverages requiring no further preparation to be consumed, and which are generally purchased in order to be consumed off restaurant or retail food vendor's premises.

**5.48.020 Ban on plastic bags and store charge for single-use carryout bags and plastic reusable bags.**

- A. No retail establishment shall provide plastic carryout bags to customers at the point of sale, except as permitted in this chapter.
- B. Single-use paper carryout bags provided to customers shall contain a minimum of 40 percent post consumer recycled paper fiber, and be recyclable in the County of Santa Cruz's curbside recycling program.

- C. During the period of time starting on the date that this chapter takes effect and continuing for one year thereafter, retail establishments shall charge a minimum 10-cent fee for each single-use paper checkout bag provided to customers at the point of sale. At the completion of the initial one-year period established by this subdivision, the charge shall increase to a minimum 25 cents per bag provided. Retail establishments shall keep annual records of paper bag distribution to be made available to the Director of Public Works or designee upon request. The records shall be evaluated annually for the first five years by the County to ensure the effectiveness of the ordinance. If it is determined that single-use paper bag or plastic reusable bag use has increased beyond anticipated levels, the Board of Supervisors shall consider increasing the store charge to improve the effectiveness of the ordinance.
- D. The charge imposed pursuant to this section shall not be applied to customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, the State Department of Social Services Food Stamp program, or other government-subsidized purchase programs for low-income residents.
- E. Notwithstanding the fee to be charged in Section 5.48.020(C) on single-use paper carryout bags and notwithstanding the definition of "retail establishment" or "retail store" in Section 5.48.015, single-use paper carryout bags may be distributed by food vendors for the transportation of prepared take-out food intended for consumption off the food vendor's premises without charging a fee.
- F. The ban on single-use plastic bags and the charge on single-use paper bags would not apply to plastic or paper bags used to protect produce, meat, or otherwise used to protect items as they are put into a carryout bag at checkout. Other examples include: paper bags to protect bottles, plastic bags around ice cream or other wet items, paper bags used to weigh candy, paper pharmacy bags or paper bags to protect greeting cards.
- G. Retail establishments are strongly encouraged to make reusable bags available for sale to customers at a reasonable price. Reusable bags which meet the requirements of this ordinance may be distributed without charge during the limited-duration promotional events.
- H. Retail establishments shall indicate on the customer transaction receipt the number of carryout bags provided, and the total amount charged for those bags.
- I. County of Santa Cruz contractors and special events promoters, and their vendors, shall not provide single-use plastic carryout bags to participants while performing under a County of Santa Cruz contract or permit.

#### **5.48.025 Implementation.**

- A. Sixty days before this ordinance takes effect, the County of Santa Cruz shall post, mail or deliver a copy of it to retail establishments within the unincorporated County of Santa Cruz.
- B. The County of Santa Cruz will distribute to each store a reproducible placard designed to inform shoppers of the County of Santa Cruz policy for carryout bags.

#### **5.48.030 Exemptions allowing single use bags.**

- A. The Director of Public Works, or the director's designee, may exempt a retail establishment from the requirement set forth in Section 5.48.020 of this chapter for a one-year period upon the retail establishment showing, in writing, that this chapter would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The decision to grant or deny an exemption shall be in writing, and the Director's or the director's designee's decision shall be final.

- B. An exemption application shall include all information necessary for the Director of Public Works or the director's designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption.
- C. The Director of Public Works or director's designee may approve the exemption application in whole or in part, with or without conditions.

**5.48.035 Enforcement.**

Enforcement of this ordinance shall be as follows:

- A. The Director of Public Works, or designee, shall have primary responsibility for enforcement of this ordinance and shall have authority to issue citations for violation of this chapter. The Director, or designee, is authorized to establish regulations or administrative procedures to ensure compliance with this chapter.
- B. A person or entity violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction.
- C. The County of Santa Cruz may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulation or administrative procedure authorized by it.
- D. The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.
- E. The Director of Public Works, or designee may inspect any retail establishment's premises to verify compliance with this ordinance.

**5.48.040 Violations.**

Violations of this ordinance shall be enforced as follows:

- A. Violation of this chapter is hereby declared to be a public nuisance. Any violation described in the preceding paragraph shall be subject to abatement by the County of Santa Cruz, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by injunction, upon a showing of violation.
- B. Upon a first violation by a retail establishment, the Director of Public Works, or designee, shall mail a written warning to the retail establishment. The warning shall recite the violation, and advise that future violations may result in fines.
- C. Upon a second or subsequent violation by a retail establishment, the following penalties will apply:
  - 1. A fine not exceeding one hundred dollars (\$100) for the first violation that occurs 30 days or more after the first warning.
  - 2. A fine not exceeding two hundred dollars (\$200) for the second violation that occurs 60 days or more after the first warning.
  - 3. A fine not exceeding five hundred dollars (\$500) for the third violation that occurs 90 days or more after the first warning.
  - 4. A fine not exceeding five hundred dollars (\$500) for every 30 day period not in compliance, that occurs 90 days or more after the first warning.
- D. Special events promoters and their vendors who violate this ordinance in connection with commercial or non-commercial special events shall be assessed fines as follows:
  - 1. A fine not exceeding two hundred dollars (\$200) for an event of 1 to 200 persons.
  - 2. A fine not exceeding four hundred dollars (\$400) for an event of 201 to 400 persons.
  - 3. A fine not exceeding six hundred dollars (\$600) for an event of 401 to 600 persons.
  - 4. A fine not exceeding one thousand dollars (\$1,000) for an event of 601 or more persons.
- E. Remedies and fines under this section are cumulative.

**5.48.045 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The County of Santa Cruz hereby declares that it would have passed this title, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional.

**5.48.050 Effective date.**

This ordinance shall become effective six (6) months after the date of final passage by the County of Santa Cruz Board of Supervisors.

**5.48.055 No conflict with Federal or State law.**

Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any Federal or State law.

**5.48.060 Preemption.**

The provisions of this chapter shall be null and void if State or Federal legislation, or administrative regulation, takes effect with the same or substantially similar provisions as contained in this chapter. The Board of Supervisors shall determine whether or not identical or substantially similar Statewide legislation has been enacted or regulations issued.

**SECTION II**

This ordinance shall take effect and be in force six months from the date of adoption.


PASSED AND ADOPTED this 13th day of September, 2011, by the Board of Supervisors of the County of Santa Cruz by the following vote:

- AYES: SUPERVISORS
- NOES: SUPERVISORS
- ABSENT: SUPERVISORS
- ABSTAIN: SUPERVISORS

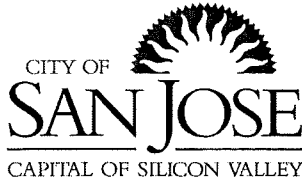
\_\_\_\_\_  
Chair of the Board of Supervisors

ATTEST: \_\_\_\_\_  
Clerk of the Board

Approved as to form:

  
\_\_\_\_\_  
e of County Counsel

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# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** SINGLE-USE CARRYOUT BAG

**DATE:** December 2, 2010

## INTRODUCTION

On December 14, 2010, the City Council will consider a proposed ordinance to ban single-use carryout bags, and require a minimum store charge for the sale of recycled paper bags. The minimum price of twenty-five cents (25¢) is proposed but would be deferred for the first two years in favor of a reduced charge of ten cents (10¢). Proceeds from the sale are retained by the retailer without any limitations on the use of these funds. Customers can avoid purchasing a carryout paper bag by bringing in their own reusable bag. This memorandum briefly discusses the basis for the City's ability to promote the general welfare through economic regulation.

## ANALYSIS

### Minimum Pricing – Not a Tax nor a Fee

The City, pursuant to its taxing power, can seek majority vote of the electorate to pass a "general tax" to raise revenue for general governmental purposes, or a "special tax" for specific purposes with approval from two-thirds of the electorate. Alternatively, the City may exercise its police powers to adopt a fee to pay for regulatory programs that address problems of public health, safety, and welfare. These fees, known as regulatory fees, are imposed on the individual or entity whose behavior is the source of the harm being regulated, or who receives a direct and distinct benefit.

On November 2, 2010, the voters approved Proposition 26, which redefined any levy, charge, or exaction as a tax, unless expressly within certain exceptions. According to the findings and declaration of purpose, the purpose of Proposition 26 is to limit the Legislature and local government from adopting "new taxes as 'fees' in order to extract even more revenue from California taxpayers." Moreover, the paragraph in the initiative, which discusses the burden of proving when a levy, charge, or other exaction is not a tax, refers to the amounts raised in the context of funding a governmental activity. A more detailed analysis of the impact of Proposition 26 was recently issued to the City Council.

In this instance, the minimum charge for the sale of recycled paper bags is neither a tax nor a regulatory fee impacted by Proposition 26 because it does not **result in revenue**



**to the state or local government** to pay for the cost of public programs or projects necessary to regulate the activity of the business or person. Rather, like the sale of any other product, the retail establishment retains the revenue from the sale without any requirement that the retailers pay for governmental activity.

#### Minimum Pricing – Legitimate Exercise of Police Power

The police power to regulate business affected with a public interest may extend to control and regulation of prices for commodities if the regulation is reasonably related to a proper legislative purpose, and not arbitrary or discriminatory. *Nebbia v. New York* (1934) 291 U.S. 502. In *Nebbia*, the United States Supreme Court sustained minimum pricing requirements for the milk industry to remedy oversupply and destructive competition which threatened the industry, and health of consumers. Milk is an important industry in many states and due to an oversupply, farmers received less money for the milk than the cost of production. This raised concerns that a prolonged failure to receive a reasonable return would result in a relaxation of health standards for a product which is prone to contamination, and ultimately economic loss to the state. Currently, most states including California still have minimum pricing requirements for milk because many of the characteristics of milk, marketing of milk and related economic conditions that justified the government's intervention in the 1930's remain the same.

Price regulation, however, has its limits and cannot be justified if it primarily promotes a small class of the population, rather than the health and welfare of the general public. See *State Board of Dry Cleaners v. Thrift-D-Lux Cleaners, Inc.* (1953) 40 Cal.2d 436 (minimum pricing for dry cleaning services did not have any real or substantial relationship to the public health or safety and only enhanced the status of the industry). In this case, the conservation of natural resources, diversion of waste from the landfill, and prevention of litter are all legitimate governmental interests that benefit the general public. These interests are advanced by a reduction in the use of single-use carryout bags in favor of reusable bags. The proposed ordinance would also shift the cost of a recycled paper bag only on consumers that choose to purchase one as oppose to hiding this cost in the price of merchandise which would be paid for by all customers including those who bring reusable bags.

#### Minimum Pricing – Environmental Impact Report

The proposed ordinance is purposefully structured to minimize the likelihood of consumers switching to paper bags by requiring retail establishments to charge a minimum price. According to the Environmental Impact Report (File No. PP09-193) ("EIR"), in jurisdictions where retailers were either charged or required to impose a charge for plastic bags, including Ireland, Denmark, and Washington D.C., fees were effective in discouraging use of single-use plastic bags. The EIR assumes that a comparable fee on recycled paper bags would have a similar deterrent effect. The

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minimum price of twenty-five cents (25¢) is proposed but would be deferred for the first two years in favor of a reduced charge of ten cents (10¢). The EIR notes that should consumers be willing to purchase a bag before they transition to reusable bags, there may be a short-term increase in paper bag use until the maximum minimum charge of 25¢ is in effect. The environmental impact from the manufacture of an increased number of paper bags might include increased water use, water pollution, tree removal, and green house gas emission. However, the EIR concludes that a minimum charge of 25¢ should ultimately reduce the consumer's use of such bags to substantially fewer paper bags than are currently used in San Jose. A more detailed discussion of the environmental impacts of single-use carryout bags, including paper bags, is provided in the EIR.

The City Council may adopt, reject, or adopt with amendments the proposed ordinance. It should be noted, however, that adoption with amendments to the minimum charge, to either not have a minimum charge, lower the minimum charge, or defer the implementation of the maximum minimum charge of 25¢, would require a deferral so that these options can be analyzed in the EIR for potential environmental impacts.

RICHARD DOYLE  
City Attorney

By



Rosa Tsongtaarii  
Deputy City Attorney

cc: Debra Figone

For questions please contact Rosa Tsongtaarii, Deputy City Attorney, at 535-1985.