



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: 14-234, **Version:** 1

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

RECOMMENDATION:

It is recommended that the Board of Supervisors:

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

SUMMARY:

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

DISCUSSION:

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

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

Separately from the CEQA issue, preemption of local ordinances by state law has become more of a possibility. In June 2013 Senate Bill 405 fell 3 votes short of passage on the senate floor. On January 23, 2014, the bill's author, along with previously opposed senators, announced a compromise bill, SB270. Given the increased

support for SB270 produced by compromise and the support of CSAC, along with the support of some statewide environmental groups, passage of the SB270 is considered likely enough that the implications should be considered at this time. Of primary importance for consideration is the preemption clause in the bill (Article 5) which states that local public agencies cannot enforce ordinances adopted on or after September 1, 2014, unless expressly authorized. The full text of the draft bill is attached as Attachment 1.

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

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

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

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

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

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

- Benefits of Option 2: Significantly less expensive than Option 1; provides customized help for cities; participants maintain local control as compared to potential state law; allows each city to select their fee amount; may allow County to adopt its ordinance prior to September 1, 2014.
- Drawbacks of Option 2: some cities may choose to wait for State legislation; possibility of different charges within the neighboring jurisdictions.

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

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

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

OTHER AGENCY INVOLVEMENT:

The Environmental Health Bureau has been working with the Resource Management Agency on the development of the ordinance and the EIR process. Staff has also been coordinating with the cities located within the County. Due to late submission of this Board Report, the CAO Budget and Analysis Division was not provided adequate time to fully review for potential fiscal, organizational, policy, or other implications to the County of Monterey. Text of the Proposed Senate Bill 270 is on file with the Clerk of the Board as Attachment 1.

FINANCING:

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

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Attachment:

Text of the Proposed Senate Bill 270 is on file with the Clerk of the Board as Attachment 1