



PUBLIC WORKS DEPARTMENT
CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3354 www.cupertino.org

CITY COUNCIL STAFF REPORT

Meeting: January 15, 2013

Subject

Certification of the Regional Environmental Impact Report (EIR); Consideration of Two Ordinances (the Proposed Bag Ordinance and the Proposed Litter Enforcement Ordinance); Direction Regarding the Environmental Review for a Draft Expanded Polystyrene (EPS) Ordinance; and discussion of other potential litter reduction alternatives.

Recommended Actions

- Adopt a Resolution certifying the Final Program Environmental Impact Report (SCH#2012042013) and adopting associated California Environmental Quality Act (CEQA) Findings of Fact for the City of Cupertino's Reusable Bag Ordinance (see Attachment A).
- Conduct the first reading of an ordinance adding Chapter 9.17 to the Municipal Code to regulate the distribution of carryout bags by retail establishments in the City of Cupertino.
- Conduct the first reading of amendments to Chapter 9.18 to make littering in the City of Cupertino an infraction that carries a fine; and to require, as part of the City's project review process, the requirement to install public waste and recycling bins on private property at new and redeveloped commercial and retail sites within the City.
- Direct staff to hire a consultant to conduct the necessary CEQA review for an Expanded Polystyrene (EPS) foam foodware ban at restaurants.
- Direct staff to continue to explore additional litter reduction strategies that could be brought to the City Council for adoption.

Discussion

Bag Ordinance and EPS Study

On August 7, 2012, City Council held a litter plan study session and received an update on the regional Environmental Impact Review (EIR) process led by San Mateo County, which the City had joined as a responsible (participating) agency. The discussion from the study session led staff to draft a reusable bag ordinance, which is presented here for Council's consideration. The proposed draft ordinance is consistent with the scope of the regional EIR. All major provisions in the draft ordinance are also consistent with the provisions in the City of San Jose's ordinance, which was implemented on January 1, 2012. Based on the Council discussions at the August study session, staff also drafted an ordinance for Council's consideration that would make littering in the City of Cupertino an infraction with a fine.

As follow-up to the August study session, staff is also requesting direction from Council to hire a consultant to conduct the environmental (CEQA) review for a potential EPS foam foodware packaging ban at Cupertino restaurants. Staff is also in discussions to potentially collaborate and share costs with neighboring cities (e.g. Los Altos, Mountain View, San Jose and Sunnyvale) in hiring a consultant to conduct a regional CEQA review for an EPS foam foodware ban at restaurants within the participating jurisdictions.

Background on the Regional EIR and Bag Ordinance

In March 2012, Council directed staff to participate in the San Mateo County Health Department's (County's) EIR for a regional single-use carryout bag ban. In total, eighteen cities in San Mateo County and six cities in Santa Clara County (Campbell, Cupertino, Los Altos, Los Gatos, Milpitas, and Mountain View) comprised the Final Program EIR "Study Area". Some of the considerations guiding the Regional EIR were:

1. The use of single-use carryout bags by consumers at retail establishments is detrimental to the environment, public health and welfare.
2. Single-use carryout bags contribute to environmental problems, including litter in storm drains, creeks, the bay and the ocean.
3. Single-use carryout bags provided by retail establishments impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance.

Among the objectives guiding the Regional EIR were:

1. Reduce environmental impacts related to single-use plastic carryout bags, such as negative impacts to natural resources, water quality, and aquatic life;
2. Deter the use of paper bags; and

3. Promote a shift toward shopping with reusable bags.

For this regional effort, the County acted as the lead agency and paid for the preparation and finalization of the EIR. The 24 participating municipalities are responsible agencies, as each individual municipality has discretionary approval over the proposed ordinance within its respective jurisdiction. Accordingly, the City can rely on the County's EIR and analysis of environmental impacts when considering adoption of its ordinance, as long as the final ordinance is found to be consistent with the scope of the EIR.

It is anticipated that a comparable ordinance will be considered within each of the municipalities participating in the Final Program EIR. This regional approach is expected to eliminate jurisdictional economic disadvantages and reduce customer confusion. To date, Belmont, Colma, Daly City, Foster City, Mountain View, Pacifica, Portola Valley and South San Francisco have adopted ordinances, and the cities of Half Moon Bay, Los Altos, Los Gatos, Menlo Park, San Bruno, San Carlos and Woodside along with Cupertino are taking steps to consider adoption in January 2013. Similar ordinances became effective in 2012 in the bordering cities of San Jose and Sunnyvale.

Cupertino's proposed ordinance resembles (in all key aspects) the model regional ordinance. Minor variations that would not affect the outcome of the final EIR may be considered, such as the implementation date of October 1, 2013 (other cities have selected April 22, 2013) or whether to implement the eventual increase of the minimum bag charge from ten cents to twenty-five cents (increasing on January 1, 2015, in the draft ordinance). As written, the ordinance would:

- (1) prohibit the free distribution of carryout bags distributed at the point of sale at approximately 275 retail establishments in Cupertino;
- (2) require retailers with the exception of restaurants and non-profits to charge customers ten cents for recycled paper bags and reusable bags at the point of sale;
- (3) increase the minimum charge for a carryout bag to \$0.25 on January 1, 2015;
- (4) exempt customers participating in Supplemental Food Programs from having to pay for a carryout bag;
- (5) allow retailers to provide protective plastic bags, without handles, intended to segregate produce, raw meat and prescription drugs, for their customers at no cost;
- (6) require retail establishments to keep a complete and accurate record of the purchase and sale of any carryout bags for a minimum of three years;

- (7) require enforcement on a complaint basis and through random compliance visits by City staff; and
- (8) take effect on October 1, 2013.

The transitional period between Council's adoption of a bag ordinance and its suggested effective date of October 1, 2013 would give stores time to comply and to locate reusable bags as alternatives for carryout purchases. Upon adoption of the ordinance, City staff will design and distribute educational kits to help remind local shoppers to bring their own bags. The City will provide reusable bags and reminder kits at events, and upon request will give a free reusable shopping bag to Cupertino residents who come to City Hall.

Public Outreach

Staff has conducted outreach through the Cupertino Scene; the *ReuseBags* page on the City's website; the Cupertino Courier; the World Journal and Sing Tao newspapers; and at informational stakeholder meetings held for retailers on January 8th and residents and shoppers on January 9th.

CEQA Findings - Environmental Impacts

The Final Program EIR examined the potential environmental impacts associated with the adoption of the proposed ordinance in the Study Area, which included the City of Cupertino. 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, which incorporates the Draft Program EIR by reference, as well as responses to comments received regarding the Draft Program EIR, was issued with a 10-day public review period from, August 31, 2012 to September 10, 2012. Because of the large size of the EIR documents, they are available on-line through the following web site links rather than attached to this report. A hard copy of each document is available for review in the City Clerk's Office at Cupertino City Hall.

Draft EIR:

http://smchealth.org/sites/default/files/docs/EHS/SanMateoCountySingleUseBagBanOrdinance_DEIR%5B1%5D.pdf

Final EIR:

<http://smchealth.org/sites/default/files/docs/EHS/SanmateoCountyReusableBagOrdinanceFinalProgramEIR.pdf>

The Final Program EIR estimates the volume of current plastic bag usage within the Study Area, which includes the City of Cupertino, at 552 million bags per year. With

the proposed ordinance in effect, it is anticipated that 95 percent of that volume would be replaced by a combination of paper (30 percent) and reusable (65 percent) bags, leaving 5 percent or 27.6 million plastic bags still used each year at retail establishments exempt from the ordinance. The Final EIR identifies and analyzes 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.

None of the impacts require mitigation because they are all either beneficial or less than significant.

Final EIR Certification

The San Mateo County Board of Supervisors certified the Final Program EIR on October 23, 2012, and issued a Notice of Determination pursuant to the CEQA Public Resources Code, Section 21000 *et seq.* and the CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 *et seq.*

The Resolution proposed for Council's adoption includes the findings required under CEQA Guidelines Section 15096 and is provided in Attachment A.

Pursuant to Section 15096 of the CEQA Guidelines, the City of Cupertino may act as a responsible agency and consider and rely upon the Final Program EIR prepared and certified by the County on October 23, 2012, as the proposed ordinance is consistent

with San Mateo County's adopted ordinance, and is consistent with the scope of the Final Program EIR. The City may then proceed with consideration of the proposed ordinance through the local government process. Should Council make changes to the proposed ordinance, such changes may trigger the need for further CEQA review.

Litter Reduction Requirements

The Municipal Regional Stormwater NPDES Permit (MRP) requires municipal permittees to implement, maintain and report on control measures that demonstrate litter reduction from their jurisdiction to the waters of the State by 40% before July 2014, 70% before July 2017, and 100% before July 2022. The long-term litter plan to accomplish 70% and 100% reduction is due to the Water Board on February 1, 2014.

Regional guidance, developed collaboratively in December 2011 by the Bay Area Stormwater Management Agencies Association (BASMAA) with more than seventy municipalities that are subject to the MRP, established a tracking method to help jurisdictions calculate the percentage of reduction achieved by specific litter control measures. Water Board staff reviewed several of the initial short-term (40%) municipal plans and the tracking method (which assigned credits or percentage points to each control measure) and determined that the tracking method was not sufficient to accurately measure litter reduction.

Municipal representatives and Water Board staff met in August 2012 to discuss potential revisions to the guidance and the challenges of measuring litter control measure outcomes. A Steering Committee was formed and began meeting monthly to explore challenges and solutions pertaining to compliance and demonstrating the percentages of litter reduction achieved and reported annually to the Water Board leading up to the due dates for targeted percentages. As such, the effectiveness of litter control measures cannot be quantified in advance of Water Board direction and actual effectiveness within a jurisdiction cannot be demonstrated until the measures have been implemented, tested and evaluated. Under this challenging performance-based direction provided by the Water Board, there are no assurances that any measure adopted by a City Council will ultimately achieve the mandated reduction targets. Additionally, city councils are not able to make quantified policy "trade offs" such as equating measures like additional street sweeping versus bag or EPS bans.

However, the following statement was recently provided by Water Board staff to indicate their acknowledgement of the trash load reductions that are anticipated as a result of restricting the free distribution of bags and EPS:

“The Regional Municipal Stormwater Permit issued by the Regional Water Board in October 2009 requires municipalities to reduce trash loads by 40 percent by 2014, 70 percent by 2017, and 100 percent by 2022. The Board has not mandated specific control measures other than a minimum number of full trash capture devices and has not approved load reduction credits for specific types of control measures. However, the Board expects municipalities to determine which measures they will implement in a timely and measurable manner to attain the load reduction requirements. Although they (single use bag and foam foodware restrictions) are not mandated and do not have approved trash load reduction credits, the Regional Water Board staff have acknowledged plastic bags and foam foodware are prevalent, and persistent components of the trash load, and restrictions on their use will likely result in substantial trash load reductions.”

Bags and EPS are not the only types of litter found in creeks and in the streets. Thin, plastic carryout bags and Styrofoam cups and food containers became top targets for reduction because they are prevalent items collected at any land or creek cleanup event. Additionally, due to available alternative materials or practices, their consumption can be reduced without imposing severe or long-term economic impacts on businesses or the community. These two freely distributed packaging materials represent a unique threat to aquatic life, wildlife, water quality and natural resources and they are difficult and time-consuming to clean up. EPS breaks or crumbles making it nearly impossible for cleanup crews to gather and contain all the pieces. Floating pieces of Styrofoam appear to fish and birds as pieces of food, and thin plastic bags, weathered by sun and water, have a propensity to shred and tear into pieces after they become entangled in creek bank vegetation or half-buried in the silt, sand and rock bottoms of creeks.

The control measures, which were named in the initial guidance provided by BASMAA remain as the key litter control measures which Bay Area municipalities refer to when considering new infrastructure, programs, legislation or practices that will reduce trash and litter in their jurisdictions. The list of litter reduction measures includes: (1) source controls, such as anti-littering and illegal dumping enforcement, polystyrene foodware bans, plastic bag bans and participation in the regional Bay Area public education campaign called *Be the Street*; (2) interception measures, such as additional street sweeping, additional drain inlet cleaning, and installation of trash capture devices and curb inlet screens; and (3) litter removal measures, such as holding land and creek cleanup events. Water Board staff have acknowledged that effective approaches to litter reduction will not be the same for all jurisdictions, and they have encouraged municipalities to propose creative and appropriate litter controls that can demonstrate measurable litter reduction in their jurisdiction.

Proactive Measures and Additional Litter Reduction Alternatives

The City of Cupertino has begun to implement control measures that make sense for the community.

1. In October 2012, the City installed approximately 100 trash capture devices and hinged screens in approximately 50 curb inlets next to high priority litter areas (retail areas). The funding for this project was provided by a \$47,000 grant administered by the Association of Bay Area Governments (ABAG). The cost of ongoing City maintenance to prevent the devices from becoming clogged by leaves and other debris and flooding the streets during storms remains unknown. This installation met another *Clean Water Act* mandate required of the City; its minimum full trash capture requirement. The City has approximately 2,200 drain inlets. One option available to the City would be to install curb inlet screens in all of its retail areas (a rough estimate of 300 screens). The total installation cost might be close to \$120,000 (\$400 per installed screen); the ongoing maintenance costs of street sweeping and drain clearing cannot yet be determined (but would be substantial).
2. The City currently sweeps its streets, residential and commercial, twice a month. The baseline sweeping frequency for the San Francisco Bay region is weekly in retail areas and twice a month in residential areas. As a litter interception measure, the City could augment its sweeping frequency in coordination with adding inlet screens like those mentioned above, in all retail areas throughout the City. Additional sweeping could also be conducted independent of installing more hinged curb inlet screens. The litter reduction would not be as effective without the screens, but an increased street sweeping frequency—especially if it's done twice weekly in all retail areas—would likely intercept a significant amount of litter. Increasing sweeping in retail areas to a weekly cycle would cost approximately \$10,000 annually.
3. The City has recently purchased new public litter receptacles for the plaza next to City Hall and Community Hall. Adding public litter receptacles in high priority litter areas and maintaining them is another measure presented in the BASMAA guidance on litter reduction measures. Expanding this measure by installing public garbage and recycling receptacles in retail areas and adopting an ordinance to enforce a littering prohibition could gain the City a reduction in litter as a source control measure. These city-maintained receptacles would be in addition to the installation of public receptacles required of commercial and

retail development project owners, on private property, as proposed in the litter ordinance.

Littering Enforcement

An efficient and cost effective way to reduce litter in Cupertino's creeks and in the San Francisco Bay is to prevent it from occurring. Preventative measures such as adopting an anti-littering ordinance and limiting free distribution of packaging materials which are the most threatening to natural resources, water quality, and aquatic life, are among the most effective and least expensive control measures that a city can adopt. These measures engage the public in the effort to reduce consumption, contain, manage and reduce litter, and raise awareness about impacts to the ecosystem that are caused by certain types of litter.

Proposed Amendments to the Existing Anti-littering Ordinance

Proposed amendments to Chapter 9.18 (Stormwater Pollution Prevention and Watershed Protection) of the Cupertino Municipal Code are written to address litter management and anti-litter enforcement. A definition for litter is added to 9.18.020 (Definitions). The requirement for new commercial and retail development projects to provide installed outdoor trash-recycle-compost container sets is an expansion of the state law requiring trash containers in public places. Additionally, it reflects the expanded bin/container management source control measure named in the BASMAA litter reduction guidance. Section 9.18.215 (Litter Prevention and Enforcement) was added to make littering in the City of Cupertino a violation with a fine pursuant to the procedures set forth in Chapter 1.10 of the Municipal Code. Section A addresses littering violations. Section B requires property owners to maintain disposal or recycling receptacles in such a manner that will prevent litter from being scattered to public areas, including a requirement to prevent bins from overflowing and keeping lids closed. A final requirement of the property owner is to keep the perimeter, front and sidewalks of the property free of loose litter.

Without the public's participation, the City and ultimately the City's General Fund will bear all of the cost of compliance with the new *Clean Water Act* mandates. The cost for Cupertino to comply with water quality mandates prior to adopting new litter control measures currently exceeds the storm drainage fee revenue for water quality compliance by more than \$100,000 per year. The cost of a dime to receive a new shopping bag is anticipated to be low enough not to cause financial hardship and high enough to cause shoppers to pause before accepting a new bag unless it is necessary.

San Francisco Bay regional municipalities have, for approximately ten years, tried educational measures to reduce litter. In the last decade creek cleanups have become

popular, regional media campaigns have been developed, City staff have partnered with teachers to provide creek education and municipal staff have attended local events to discuss litter solutions directly with community members. Yet, when the new Municipal Regional Stormwater Permit was adopted in October 2009, the collaborative efforts of municipal staff to educate rather than regulate had fallen short of being able to change behaviors. Although the City's public education and outreach on litter reduction will continue to expand and improve, cities no longer have the option to demonstrate that litter can be reduced and eradicated by educational outreach alone.

Cities are now under mandates and deadlines to prevent, intercept and remove litter from any place where it might reach a natural water body. Rather than requiring the cities and municipal taxpayers to bear the burden and cost of litter eradication, it will be important for city governments to lead their communities in a collaborative effort. The ten-cent charge for bags and developing the habit of bringing bags to the store is one way that the community can help conserve, preserve and protect the natural resources that benefit the community at large while helping all of the local municipalities comply with litter reduction and water quality mandates. In Cupertino the litter that enters local creeks is washed downstream during rainstorms to the creeks in the neighboring cities of Sunnyvale and Mountain View. Both of these cities have adopted a bag ordinance.

Sustainability Impact

Adoption and implementation of the ordinance is intended to improve water quality, reduce negative impacts to aquatic life, reduce waste, conserve natural resources, and reduce greenhouse gas emissions.

Fiscal Impact

- The one-time cost for implementation of a reusable bag ordinance is estimated at \$10,000 to \$14,000 to cover education and outreach to assist businesses and shoppers with the transition.
- Ongoing costs of a litter ordinance cannot be determined, but will include staff-time for enforcement. It is anticipated that littering citations would only be issued in conjunction with the daily routine of code enforcement officers or the City's stormwater illicit discharge detection and elimination (IDDE) inspectors.
- The cost of installing public garbage, recycling and food-waste bins for customers on private property at new commercial and retail projects and the maintenance thereof, will be the responsibility of the project developer and the private commercial property owner. The responsibility of maintaining a litter-free area surrounding all commercial and retail sites will be the responsibility of the private property owner.

- The cost to hire a consultant to conduct the environmental CEQA review to allow City Council to adopt an EPS ban at local restaurants is estimated to be between \$7,000 and \$11,000. The lower end of this range reflects an estimate for the possibility of a cost-sharing agreement to conduct a regional environmental review between the City of Cupertino and neighboring cities.

Prepared by: Cheri Donnelly, Environmental Programs Manager

Reviewed by: Timm Borden, Director of Public Works

Approved for Submission by: David Brandt, City Manager

Attachments:

- A- CEQA Finding of Facts
- B- Draft Resolution Certifying the Final Program EIR
- C- Draft Ordinance No. 9.17
- D- Amendment to Ordinance 9.18
- E- Redline Amendment to Ordinance 9.18
- F- Public Comments on Proposed Bag Ordinance