



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

CITY COUNCIL STAFF REPORT

Meeting: March 5, 2013

Subject

Approve the Addendum to the Final Program Environmental Impact Report (EIR); and Adopt a Resolution explaining CEQA Findings of Fact regarding Single-Use Carryout Bags. Conduct second readings of a Single-Use Carryout Bag Ordinance and a Litter Enforcement Ordinance.

Recommended Action

- Adopt a Resolution approving the Addendum to the Final Program Environmental Impact Report (EIR), adopting associated California Environmental Quality Act (CEQA) Findings of Fact for the EIR Addendum, and restating the CEQA Findings of Fact adopted for the EIR for the City of Cupertino's Ordinance, Regulation of Single-Use Carryout Bags.
- Conduct the second reading of an ordinance adding Chapter 9.17 to the Municipal Code to regulate the distribution of single-use carryout bags by retail establishments in the City of Cupertino.
- Conduct the second reading of an ordinance amending Chapter 9.18 of the Municipal Code adopting a litter ordinance for the City of Cupertino.

Discussion

On January 15, 2013 the City Council considered options related to litter and waste reduction consisting of 1) an ordinance regulating the distribution of single-use carryout bags by retail establishments in the City of Cupertino; and 2) an amendment to the municipal code (Chapter 9.18) making littering in the City of Cupertino an infraction carrying a fine and including the requirement for redeveloped private commercial sites in the City to install public waste and recycle bins.

After receiving public comments at the public hearing on the litter reduction package, the City Council conducted the first reading of Chapter 9.18 related to litter enforcement and waste and recycle bin requirements.

The City Council also conducted the first reading of the Regulation of Single-Use Carryout Bags Ordinance with the following modifications:

- Change wording in Section 9.17.110(J) from “millimeters” to “mils”.
- Cap the required minimum charge for recycled paper bags at ten cents and eliminate a future increase to twenty five cents per bag.
- Allow retailers to distribute *reusable* bags, as defined in the ordinance, without a required charge.
- Remove the requirement of record keeping by retailers.

San Mateo County acted as the lead agency in preparing and certifying the EIR for the draft ordinance initially proposed by staff. That EIR analyzed the environmental effects of a reusable bag ordinance in a study area of 24 jurisdictions in San Mateo and Santa Clara Counties. As one of the jurisdictions studied, the City of Cupertino is a “responsible agency” under CEQA because it has discretionary approval over the proposed ordinance within its jurisdiction. The City acted as a responsible agency during the County EIR process and accordingly may rely on that EIR when considering adoption of its own ordinance.

As discussed in the attached findings, CEQA Guidelines allow an addendum to a previously adopted Final EIR when “only minor technical changes or additions are necessary” and when the new information does not involve new significant environmental effects beyond those identified in an adopted Final EIR. Because the Council requested the minor modifications noted above to the form ordinance analyzed in the EIR, the City opted to prepare an addendum to the EIR.

Staff contracted with Rincon Consultants, Inc., the consulting agency used to prepare the Regional Program EIR, to prepare an addendum to the EIR to analyze these proposed changes and review the City’s Findings of Fact to ensure that the minor modifications made to Cupertino’s ordinance are consistent with CEQA and the Final Program EIR. The consultant concluded that the minor modifications do not change the analysis or impacts identified in the Program EIR. In particular, the Addendum explains that the City’s minor changes do not involve new significant environmental effects because the EIR did not assume a charge for reusable bags and that the analysis was based on a ten-cent charge per bag. The full rationale and the facts for this conclusion are provided in the body of the attached Addendum.

As noted in earlier reports, copies of the DEIR and FEIR have been available online through the County website since approximately October 2012. Because of the large size of the documents, the Council has been provided with the web site links in their

electronic Council packets. In addition, hard copies of the DEIR and FEIR have been available for review in the City Clerk's Office at Cupertino City Hall since January 3, 2013. Copies of the DEIR, FEIR, and Addendum were also placed in the Cupertino Public Library on February 19, 2013.

Sustainability Impact

Adoption and implementation of the ordinances is intended to reduce waste, improve water quality, reduce negative impacts to aquatic life, 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 the 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.

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- Addendum to Final Program EIR
- B- Resolution Restating CEQA Findings of Fact for EIR and Approving Addendum and Findings of Fact
- C- Bag Ordinance adding Chapter 9.17 to the Cupertino Municipal Code
- D- Redline Bag Ordinance
- E- Ordinance Amending Chapter 9.18 of the Cupertino Municipal Code