



DATE: May 5, 2020

CATEGORY: Consent

DEPT.: Public Works

TITLE: **Adopt a Resolution Establishing a Policy on the Temporary Suspension of Enforcement of Chapter 16, Article IV (Reusable Bag Ordinance) of the Mountain View City Code**

RECOMMENDATION

Adopt a Resolution Establishing a Policy on the Temporary Suspension of Enforcement of Chapter 16, Article IV (Reusable Bag Ordinance) of the Mountain View City Code, to be read in title only, further reading waived (Attachment 1 to the Council report).

BACKGROUND

On December 11, 2012, the City Council adopted Ordinance 10.12 regulating the provision of point-of-sale bags at covered retail establishments (more commonly referred to as the Reusable Bag Ordinance, hereinafter referred to as the Ordinance). The Ordinance prohibits retail establishments, including grocery and other stores selling food, from providing single-use, carry-out bags to customers unless those bags are recycled paper bags or reusable bags as defined by the Ordinance, and a minimum charge of \$0.10 per bag is charged to the customer.

In November 2016, California voters approved Proposition 67, which affirmed earlier adopted legislation with similar restrictions on carry-out bags, except applying to a smaller subset of retail establishments than the City's Ordinance does. The new State law did not supersede Mountain View's Ordinance.

As a result of COVID-19 prevention concerns, the California Division of Occupational Safety and Health (Cal/OSHA) issued guidance related to reusable bags that does not restrict grocers from allowing customers to bring them into stores but directed that such customers be required to bag their own purchases and to not be allowed to place bags on conveyors or counters. Many customers adjusted to this guidance by leaving their bags in the cart and placing purchases into the bags themselves.

Stricter limitations have since augmented the Cal/OSHA guidance. The March 31, 2020 order of the Health Officer of the County of Santa Clara regarding COVID-19

required essential businesses to implement social distancing protocols, including not permitting customers to bring their own bags, mugs, or other reusable items from home. The most recent order of the County's Health Officer, effective May 4, 2020, includes the same requirement that essential businesses implement the aforementioned social distancing protocols. This is a Santa Clara County specific restriction, not a Statewide directive.

On April 22, 2020, in response to questions and concerns raised to his office about customers bringing their own bags into stores, the Governor of California issued Executive Order N-54-20 suspending for a period of 60 days the State law provisions related to both charging for carry-out bags provided to customers and providing either paper or reusable bags when it was not possible for the store to provide a compliant bag. This means that stores can provide the thin, single-use plastic bags, more commonly known as T-shirt bags, when paper or reusable bags are unavailable. The Order does not apply in those cities that had adopted their own ordinance prior to 2015, which is the case for Mountain View.

On April 28, 2020, the City was forwarded a letter from the California League of Cities with a request from the California Grocers Association and the California Retailers Association that cities with their own ordinances suspend enforcement consistent with the Executive Order (Attachment 2).

ANALYSIS

City staff primarily enforces the Reusable Bag Ordinance on a complaint basis. No questions or complaints about bag charges have been received by staff since the County's March 31, 2020 order went into effect, and therefore, no enforcement actions have been taken. Staff is aware that many stores have not been charging for bags.

The Governor's Executive Order suspending the State law requirement in all cities except those with ordinances adopted prior to 2015 could potentially cause confusion for both retailers and customers. Therefore, staff recommends that the Council adopt a resolution suspending enforcement of the Ordinance in Mountain View during the time the State law provisions are suspended under Executive Order N-54-20 and any subsequent COVID-19 related orders from the State or Governor.

Staff is aware that some stores have occasionally run out of compliant bags (recycled paper or reusable). Until compliant bags can be obtained, some stores may be offering noncompliant bags. The attached resolution would suspend enforcement of both the requirement to charge for bags provided to customers and the prohibition of the use of

single-use, carry-out bags where it is not possible to provide reusable bags or recyclable paper bags. This is consistent with the Executive Order and actions in other cities.

An alternative approach would be to suspend enforcement of only the bag charge and require stores to provide only compliant bags. Stores that cannot obtain compliant bags could offer boxes or other means of conveyance. Or customers could leave the store with items unbagged in a cart and place them in their own bags upon exiting the store. However, staff recognizes that this may place additional stress on residents seeking to comply with social distancing requirements and the ability of stores to meet essential community needs. In addition, there would be challenges to enforce the prohibition of noncompliant bags. Consequently, staff has not recommended this approach.

FISCAL IMPACT – There is no fiscal impact.

ALTERNATIVES

1. Do not adopt the resolution.
2. Modify the resolution to suspend enforcement of only the bag charge and continue to require stores to provide only compliant bags.
3. Provide other direction to staff.

PUBLIC NOTICING – Agenda posting.

Prepared by:

Lori Topley
Solid Waste Program Manager

Dawn S. Cameron
Public Works Director

Approved by:

Audrey Seymour Ramberg
Assistant City Manager/
Chief Operating Officer

LT-DSC/TS/1/CAM
944-05-05-20CR
200238

Attachments: 1. Resolution
2. Letter from the California Grocers Association and California
Retailers Association

cc: SWPM