

# **CALISTOGA GREEN COMMITTEE**

## **AGENDA ITEM SUMMARY**

**TO:** Chair Chang and Members of the Green Committee  
**FROM:** Lynn Goldberg, Planning & Building Director  
**DATE:** May 2, 2014  
**SUBJECT:** **Potential Single-Use Carryout Bag Ordinance**

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### **Summary**

Staff is seeking input from the Green Committee on a draft ordinance related to single-use carryout bags.

### **Background**

A growing number of jurisdictions have banned the distribution of single-use plastic carryout bags. The City of Napa has spearheaded the drafting of a local ordinance, based on similar ordinances and input from representatives of all of Napa County's jurisdictions, and plans to consider its adoption in June.

### Green Committee Actions

The Calistoga Green Committee sought to avoid adoption of an ordinance due to the potentially-significant costs associated with the staff time required to draft and adopt it, and the follow-up monitoring that would be required. Responding to a request from the Committee, the City Council authorized the Green Committee to work with local merchants to voluntarily discontinue providing single-use plastic bags at check-out.

A subsequent survey of Calistoga businesses conducted by the Committee determined that only eight non-restaurant businesses distribute single-use plastic bags on a regular basis. Four of these were food markets that account for the majority of the distributed bags.

During the survey, Committee members urged business owners to discontinue the distribution of single-use plastic bags at check-out. All of the food markets subsequently discontinued the distribution of plastic bags and are now distributing paper bags.

The Council also authorized the Committee to distribute reusable bags to reduce the use of all disposable check-out bags – both plastic and paper. The Committee subsequently secured outside funding and purchased 1,000 reusable bags with a "Keep Calistoga Green" logo, most of which were distributed to customers at the food markets, along with tips on how to promote the use of reusable bags.

Since the distribution of the reusable bags, there has not been a noticeable increase in their use, and it appears that the plastic bags have simply been replaced with paper

bags. The merchants have been reluctant to charge for the paper bags without being mandated to do so by the City.

### State Legislation

The latest proposed state legislation that would regulate the use of single-use carryout bags (SB 270) would prohibit their distribution by any of the following retail establishments:

- Full-line, self-service retail stores with gross annual sales of \$2,000,000 or more that sells a line of dry groceries, canned goods, or nonfood items, and some perishable items.
- Stores that have at least 10,000 square feet of retail space that generates sales or use tax and has a pharmacy.
- Convenience food stores, foodmarts, and other entities that are engaged in the retail sale of a limited line of goods, generally including milk, bread, soda, and snack foods, and that hold a Type 20 or Type 21 (i.e., off-sale alcoholic beverage sales) license.
- Convenience food stores, foodmarts, and other entities that are engaged in the retail sale of goods intended to be consumed off the premises, and that hold a Type 20 or Type 21 license.

The legislation would also prohibit jurisdictions from adopting regulations related to reusable grocery bags, single-use carryout bags and recycled paper bags after September 1, 2014.

Given the minimal success of the reusable bag distribution, the impending adoption of Napa's ordinance (which will likely be followed in short order by the county's other jurisdictions) and the potential for state regulations that would pre-empt local control in the near future, staff believes that the City should proceed with adopting an ordinance regulating single-use carryout bags.

### **Proposed Ordinance**

In general, the proposed regulations would prohibit the distribution of single-use carryout bags by any retail establishment within the city limits, beginning January 1, 2015. Public eating establishments would be exempted from the regulations.

Recyclable paper bags could be provided by retailers, however, a charge of at least \$.10 would be required in order to minimize the distribution of single-use bags (whether plastic or paper) and promote the use of reusable bags. A retailer could choose to waive the charge for customers participating in a supplemental food program, such as WIC.

### **Discussion**

The proposed ordinance is based on the City of Napa's, with some minor formatting changes and additional requirements for what constitutes a reusable bag.

The Commission may wish to consider the following alternative provisions to the draft regulations:

- **Apply the regulations only to food markets, convenience stores and liquor stores.** This alternative would focus on the primary distributors of single-use plastic bags and avoid the need for the community's smaller businesses to change their bagging operations. However, this exemption would contradict the approach of implementing similar regulations throughout the county.
- **Include "public eating establishments" (e.g., restaurants, take-out food establishments) as merchants subject to the regulations.** The City of Napa had indicated that it will pursue applying the ban to restaurants as part of a second phase, along with polystyrene (i.e., Styrofoam) containers. However, the City could choose to include them in its ordinance. A variation on this alternative would be to subject only restaurants that are primarily take-out food establishments to the regulations, since sit-down restaurants distribute few bags.

#### **Attachment**

Draft Single-Use Carryout Bag Ordinance

## **Proposed Addition to Calistoga Municipal Code Title 19, Environmental Protection**

### **Chapter 19.12 Single-Use Carryout Bag Reduction**

#### **19.12.010 Purpose and Intent**

The purposes of this Chapter are to:

- A. Reduce waste and pollution by prohibiting the distribution of plastic single-use carryout bags.
- B. Protect the environment by minimizing the use of any type of single-use carryout bags by requiring retail stores to charge customers for paper bags, thereby providing an incentive for customers to bring their own bags.

#### **19.12.020 Definitions**

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

- A. "Customer" means any person obtaining Merchandise from a Retail Establishment.
- B. "Merchandise" means any consumer goods as that term is defined by California Civil Code Section 1791(a), and clothing and consumables, as those terms are defined by California Civil Code Sections 1791(c) and (d), respectively. Merchandise does not include Prepared Food.
- C. "Post-consumer Recycled Material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Post-consumer Recycled Material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
- D. "Public Eating Establishment" means a restaurant, take-out food establishment, or any other business that receives ninety percent (90%) or more of its revenue from the sale of Prepared Food to be eaten on or off its premises and is located within or doing business within the city limits of the City of Calistoga. "Prepared Food" means food or beverages that are prepared on the premises by cooking, chopping, slicing, mixing, freezing or squeezing, and that require no further preparation to be consumed.
- E. "Recyclable Paper Bag" means a paper bag that contains no old growth fiber and a minimum of forty percent (40%) Post-consumer Recycled Material, is accepted for curbside recycling in Calistoga, and has printed on the outside of the bag the word "Recyclable," the name and location of the manufacturer, and the percentage of Post-consumer Recycled content.
- F. "Retail Establishment" means any commercial establishment that sells Merchandise at retail directly to the Customer, and is located within or doing business within the city limits of the City of Calistoga. Retail Establishment does not include Public Eating Establishments.
- G. "Reusable Bag" means a bag that meets all of the following requirements:
  - 1. If plastic, is at least 2.25 mils (thousandths of an inch) thick.

2. Has one or more handles.
  3. Has a minimum lifetime capability of 125 or more uses carrying 22 or more pounds over a distance of at least 175 feet.
  4. Is at least 15 liters in volume.
  5. Is machine washable or made from a material that can be cleaned and disinfected.
  6. Meets the standards of the California Toxics in Packaging Prevention Act, as amended, or any successor legislation.
- H. "Single-Use Carryout Bag" means a bag provided by a Retail Establishment to a Customer at a checkout stand, cash register, point of sale or other point of departure, for the purpose of transporting merchandise out of the establishment; provided that "Single-Use Carryout Bag" specifically excludes:
1. Reusable Bags
  2. Recyclable Paper Bags
  3. Any bag used to:
    - a. Transport bulk food from a department within a store to the point of sale;
    - b. Segregate merchandise that could damage, be damaged or contaminate other merchandise when placed together in a Reusable Bag or Recycled Paper Bag; or
    - c. Contain or wrap frozen goods.

**19.12.030 Single-Use Carryout Bags Prohibited**

- A. On and after January 1, 2015, no Retail Establishment shall provide a Single-Use Carryout Bag to a Customer.
- B. Nothing in this Chapter shall prohibit Customers from using their own bags or containers of any type for the transport of Merchandise from a Retail Establishment. An Establishment shall not require a customer to purchase or accept a Recyclable Paper Bag or Reusable Bag as a condition of sale.

**19.12.040 Recyclable Paper Bag Charge**

- A. Except as provided in Subsection (C.) below, on and after January 1, 2015, no Retail Establishment shall provide a Recyclable Paper Bag to a Customer for the purpose of transporting Merchandise out of the establishment unless:
  1. The establishment charges the Customer an amount of ten cents (\$0.10) or more per bag; and
  2. The amount of the charge for each Recycled Paper Bag is separately itemized on the sales receipt provided by the establishment to the Customer.
- B. The Retail Establishment shall retain the proceeds from the collection of this charge.

C. A Retail Establishment may provide one or more Reusable Bags or Recyclable Paper Bags at no cost to a Customer who is participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code, or a Customer who is participating in the Supplemental Food Program pursuant to Chapter 10 of Part 3 of Division 9 of the Welfare and Institutions Code.

**19.12.050 Enforcement**

The Planning & Building Director shall have primary responsibility for enforcement of this Chapter. The Director is authorized to make necessary and reasonable rules and regulations with respect to the enforcement of this Chapter, consistent with the provisions of this Chapter.

It is a violation of this Code, subject to enforcement, punishment and prosecution pursuant to Chapter 1.08 of this Code, for any Retail Establishment to violate or fail to comply with any provision of this Chapter.