An update from the Environmental Services Department (ESD) per direction given at the meeting of the R&ED Committee on September 11, 2013.

STAFF RECOMMENDATIONS:
Staff recommends that ESD and the City Attorney’s Office move forward with finalizing the attached draft ordinance and preparing an environmental document. Upon completion, both documents will be presented to the
full City Council for action.

| SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION) |
|---------------------------------|---------------------------------|
| COUNCIL DISTRICT(S):            | All                             |
| COMMUNITY AREA(S):             | All                             |
| ENVIRONMENTAL IMPACT:          | N/A                             |
| CITY CLERK                     | N/A                             |
| INSTRUCTIONS:                  | N/A                             |
DATE: 10/10/2013
ORIGINATING DEPARTMENT: Environmental Services
SUBJECT: Plastic Bag Reduction Ordinance Update
COUNCIL DISTRICT(S): All
CONTACT/PHONE NUMBER: Meghan Cannis/858-492-5009

DESCRIPTIVE SUMMARY OF ITEM:
This report is an update on the recommendations made by the Rules and Economic Development (R&ED) Committee on September 11, 2013, on a plastic bag reduction ordinance.

STAFF RECOMMENDATION:
Staff recommends that ESD and the City Attorney’s Office move forward with finalizing the attached draft ordinance and preparing an environmental document. Upon completion, both documents will be presented to the full City Council for action.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

This report is an update on the recommendations made by the Rules and Economic Development (R&ED) Committee on September 11, 2013, on a plastic bag reduction ordinance. The report addresses direction given at that meeting, and subsequent actions taken, relating to acquiring additional stakeholder feedback; determining the best course of action for environmental review; and drafting ordinance language based on the recommendations of ESD, comments made at the September 11 meeting, and additional stakeholder feedback.

Direction is sought from the R&ED Committee to proceed with preparing an environmental document on a plastic bag reduction ordinance, to be presented along with ordinance language to the full City Council.

Please see the attached Report to the City Council.

FISCAL CONSIDERATIONS: N/A

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):
Rules & Economic Development Committee: 9/11/13

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:
Outreach is ongoing but recent stakeholder meetings included:

September 24, 2013 – Community Planners Committee
September 26, 2013 – Business Improvement District (BID) Council
September 27, 2013 – Stakeholder meeting hosted by Mayor’s Office
October 3, 2013 – Solid Waste Technical Advisory Committee
October 4, 2013 – San Diego Regional Chamber of Commerce

KEY STAKEHOLDERS AND PROJECTED IMPACTS: City residents, businesses, trade associations, and environmental groups as described in the report above.

Gonaver, Chris
Originating Department

Deputy Chief/Chief Operating Officer
DATE ISSUED: October 23, 2013                  REPORT NO: 13-080

ATTENTION: Rules and Economic Development Committee

SUBJECT: Plastic Bag Reduction Ordinance Update

REFERENCE: N/A

REQUESTED ACTION:

An update from the Environmental Services Department (ESD) per direction given at the meeting of the R&ED Committee on September 11, 2013.

STAFF RECOMMENDATION:

Staff recommends that ESD and the City Attorney’s Office move forward with finalizing the attached draft ordinance and preparing an environmental document. Upon completion, both documents will be presented to the full City Council for action.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

Introduction:

This report is an update on the recommendations made by the Rules and Economic Development (R&ED) Committee on September 11, 2013, on a plastic bag reduction ordinance. This report will address direction given at that meeting, and subsequent actions taken, relating to acquiring additional stakeholder feedback; determining the best course of action for environmental review; and drafting ordinance language based on the recommendations of ESD, comments made at the September 11 meeting, and additional stakeholder feedback.

Background:

At the September 11, 2013 R&ED Committee meeting, ESD recommended implementing a plastic bag reduction ordinance following the models of the City of Los Angeles, Los Angeles County, the recent proposed state bill (SB405), and many other California municipalities. Details on the proposed ordinance are described in the motion from the meeting (see below). Public comment was made at the meeting largely in favor of the ordinance, with a few people speaking in opposition. Comments in support of the ordinance mainly focused on the
environmental benefits of the ordinance and the proven track record of many similar ordinances in other jurisdictions. Comments in opposition included a request to exempt small markets and a concern over cross contamination. Other comments included support of the exemption of restaurants, and a presentation on the positive effects of bag ordinances in other jurisdictions.

A motion was made by Councilmember Emerald, seconded by Councilmember Alvarez, and voted in favor unanimously, requesting the following:

- ESD staff to work with the City Attorney’s Office to craft an ordinance reducing plastic bag use. This ordinance is to include recommendations provided to the Committee by ESD staff. ESD staff recommendations, as outlined in the staff’s presentation, include:
  o Stores subject to ordinance:
    ▪ Retail stores with annual sales of $2 million selling food and non-food goods, and a line of dry grocery, canned goods, or nonfood items and some perishable items
    ▪ Stores with at least 10,000 square feet of retail space with a pharmacy
    ▪ Drug stores, pharmacies, supermarkets, grocery stores, convenience food stores, foodmarts, or other entities selling a limited line of goods that includes milk, bread, soda, and snack foods
- Mandate charge of $0.10 per paper bag and at least $0.10 per reusable bag provided
- Exemptions for restaurants, non-profits, WIC and Supplemental Food Program recipients, produce/product bags
- Stores shall keep records, no requirements regarding reporting, and enforcement to be complaint-based
- Staff will include a focus on education/outreach and reusable bag distribution
- The Committee requested that staff explore including a provision that all retail stores with one-time use bags be subject to the ordinance, and suggested that a dollar amount threshold for reusable bags be considered
- ESD staff to begin appropriate environmental review
- ESD staff to present an informational item to the Community Planners Committee and the BID Council for feedback. Staff to conduct additional community outreach to groups such as the Neighborhood Market Association, and other key stakeholders, to be coordinated with the assistance of the Mayor’s Office
- ESD staff to return to the Committee with recommendations for enforcement
- ESD staff to return to the October 23, 2013 R&ED Committee meeting with a status report

Discussion:

Stakeholder process

On September 24, 2013, ESD made a presentation to the Community Planners Committee on the plastic bag reduction ordinance. Comments were made both in favor of and in opposition to the ordinance. The Committee opted not to take a position on the ordinance at that time, but would like to have input after a draft ordinance is developed.
On September 26, 2013 ESD made a presentation to the Business Improvement District (BID) Council. ESD responded to questions regarding how the ordinance would work, the types of bags to be covered versus exempted, and how the ordinance would be enforced. The BID Council was told that ESD is available to do presentations to any of the individual BIDs if requested.

On September 27, 2013, a stakeholder meeting was hosted by ESD, the Mayor’s Office, and Council District 1 that included the following stakeholders: the American Forest and Paper Association, AT&T, San Diego County Taxpayers Association, California Restaurant Association San Diego Chapter, San Diego Regional Chamber of Commerce, Neighborhood Market Association, Equinox Center, Sea World, Surfrider Foundation, and California Grocers Association.

Primary feedback included:
- Request that ordinance record keeping requirements allow at least a few days for stores to compile data upon request by the City
- Request that periodic reporting be required by stores to ensure compliance
- Request that there should not be a charge on paper bags because they are highly recyclable
- Request that stores be allowed not to charge for paper bags if they choose
- Statement that if there is no charge on paper bags, paper bag distribution and costs to stores would soar; and that not charging for paper bags would result in the CEQA analysis showing significant impacts which would increase the City’s legal risk
- Request that ESD study the sources of plastic bags in the community to ensure the ordinance targets the largest contributing stores
- Request that ESD begin giving out reusable bags as soon as possible to see if voluntary efforts would negate the need for an ordinance
- Statement that voluntary efforts both locally and in other jurisdictions have seen little to no results as compared to ordinances

There was also a discussion of types of outreach done in other cities prior to and after ordinances have passed. A number of ideas were presented such as bag giveaways, website information, parking lot signs, webinars for stores owners, and making signage available to stores.

Additional stakeholder meetings included a presentation at the local Solid Waste Technical Advisory Committee (October 3, 2013) and the San Diego Regional Chamber of Commerce (October 4, 2013).

**Environmental Review**

The proposed ordinance is subject to review pursuant to the California Environmental Quality Act. The Environmental Services Department will retain the services of a consultant to assist with environmental document preparation. The Environmental Document will be prepared according to the City standards, as administered by the City’s Environmental Analysis Section.
Draft ordinance

After considering the feedback from the R&ED Committee and stakeholders, ESD recommends a plastic bag reduction ordinance similar to that brought forward on September 11 that follows the models in the City and County of Los Angeles. It was determined that an ordinance covering all retail stores would not be supported by stakeholders at this time. ESD proposes to evaluate the effectiveness of the ordinance 24 months after implementation, and bring forward any updates that may be appropriate at that time. ESD is working with the City Attorney’s Office in drafting ordinance language.

Conclusion:

ESD’s proposed plastic bag reduction ordinance is a conservative approach with proven effectiveness and acceptance in a number of California jurisdictions.

During the environmental review process, ESD will begin education and outreach on plastic bag reduction and reusable bag use and begin distributing reusable bags community-wide, concentrating distribution in low-income areas, which will supplement current efforts of other groups such as Surfrider Foundation and the City’s Transportation and Stormwater Department who are already distributing reusable bags in the community.

FISCAL CONSIDERATIONS:

N/A

EQUAL OPPORTUNITY CONTRACTING INFORMATION (if applicable)

N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS:

ESD sought feedback on crafting a plastic bag reduction ordinance at the September 11, 2013 Rules and Economic Development meeting.
COMMUNITY PARTICIPATION AND OUTREACH EFFORTS:

Outreach is ongoing but recent stakeholder meetings included:

September 24, 2013 – Community Planners Committee
September 26, 2013 – Business Improvement District (BID) Council
September 27, 2013 – Stakeholder meeting hosted by Mayor’s Office
October 3, 2013 – Solid Waste Technical Advisory Committee
October 4, 2013 – San Diego Regional Chamber of Commerce

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

City residents, businesses, trade associations, and environmental groups as described in the report above.

Chris Gonaver, Director
Environmental Services Department

Scott Chadwick
Assistant Chief Operating Officer
STRIKEOUT ORDINANCE

OLD LANGUAGE: Struck-Out
NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____________ (NEW SERIES)

DATE OF FINAL PASSAGE ____________


Division 8: Carryout Bag Reduction

§66.0801 Purpose and Intent

The purpose of this Division is to regulate the use of plastic single-use carryout bags and paper single-use carryout bags and promote the use of reusable bags and recyclable bags within the City. These regulations are intended to protect the public health, safety, and welfare of the citizens of San Diego and to protect the environment by reducing plastic single-use carryout bags and paper single-use carryout bags that would otherwise fill our landfills, litter the City's landscape and waterways, and endanger the health of humans, fish, and wildlife.

§66.0802 Definitions

All defined terms in this Division appear in italics. For purposes of this Division, the following definitions apply:
City has the same meaning as in San Diego Municipal Code section 66.0102.

Customer means any person purchasing goods from a store.

Department means the City Environmental Services Department or its successor.

Director has the same meaning as in San Diego Municipal Code section 66.0102.

Disposal has the same meaning as in San Diego Municipal Code section 66.0102.

Enforcement official has the same meaning as in San Diego Municipal Code section 11.0210.

Paper single-use carryout bag means any bag made predominantly of paper materials which is provided to a customer at the point of sale. The term paper materials includes virgin, recycled, or recyclable paper material. Paper single-use carryout bag does not include reusable bags, produce bags, or product bags.

Person has the same meaning as in San Diego Municipal Code section 66.0102.

Plastic single-use carryout bag means any bag made predominantly of plastic derived from petroleum, natural gas, or a biologically-based source such as corn or other plant sources, which is provided to a customer at the point of sale. The term plastic single-use carryout bag includes compostable and biodegradable bags, but does not include reusable bags, produce bags, or product bags.

Post-consumer recycled material means a material that would otherwise be destined for disposal, having completed its intended end use and product life cycle. The term post-consumer recycled material does not include materials and
by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

*Produce bag* or *product bag* means any bag without handles provided to a customer to:

(a) carry produce, meats, or other food items (including bulk food) to the point of sale inside a *store*;

(b) hold prescription medication dispensed from a pharmacy;

(c) protect food or merchandise from being damaged or contaminated by other food or merchandise when items are placed together in a *reusable bag* or a *recyclable paper single-use carry out bag*; or

(d) a bag without handles that is designed to be placed over articles of clothing on a hanger.

*Recyclable* has the same meaning as in San Diego Municipal Code section 66.0102.

*Recyclable paper single-use carryout bag* means a *paper single-use carryout bag* that meets all of the following requirements:

(a) is one hundred percent *recyclable* overall and contains a minimum of forty percent (40%) *post-consumer recycled material*;

(b) has all of the following information printed on the bag:

(1) name of the bag manufacturer,

(2) the country of bag manufacture, and

(3) the percentage of *post-consumer recycled material* used to make the bag.
Recycling has the same meaning as in San Diego Municipal Code section 66.0102.

Reusable bag means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements:

(a) has a minimum useful life of 125 uses which, for purposes of this Division, means the capacity to carry at least 22 pounds over a distance of at least 175 feet at least 125 times;

(b) has a minimum volume of 15 liters;

(c) is machine washable or is made of a material that can be cleaned or disinfected with commonly available household cleaners;

(d) does not contain lead in an amount greater than 89 parts per million (ppm) nor contain total heavy metals (lead, hexavalent chromium, cadmium, and mercury) in an amount greater than 99 ppm, unless lower heavy metal limits are imposed by applicable state or federal law, in which case the lower limits shall apply;

(e) has all of the following information printed on the bag or printed on a tag permanently affixed to the bag:

(1) the name of the bag manufacturer,

(2) the country of bag manufacture,

(3) a statement that the bag does not contain lead or total heavy metals in amounts greater than those set forth above in this definition,

(4) the percentage of post-consumer recycled material, if any, used to
make the bag, and

(5) the bag care and washing instructions; and

(f) if made predominantly of plastic derived from petroleum, natural gas, or a biologically-based source, such as corn or other plant sources, is at least 2.25 mils thick.

Store means any of the following retail establishments located within the City:

(a) a full-line, self-service retail establishment with gross annual sales of two million dollars ($2,000,000.00) or more that offers for sale a line of dry groceries, canned goods, or non-food items and some perishable items;

(b) a retail establishment, having at least 10,000 square feet of retail space, that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (California Revenue & Taxation Code sections 7200, et seq., as may be amended) and that has a pharmacy licensed pursuant to the Pharmacy Law (California Business & Professions Code sections 4000, et seq., as may be amended); or

(c) a drug store, pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods, including those retail establishments with a Type 20 or 21 license issued by the California Department of Alcoholic Beverage Control.

§66.0803 Prohibited Carryout Bags
(a) No store shall provide to any customer a plastic single-use carryout bag for the purpose of carrying away goods or other materials from the point of sale, except as otherwise provided in this Division.

(b) No store shall provide to any customer a paper single-use carryout bag for the purpose of carrying away goods or other materials from the point of sale, except as otherwise provided in this Division.

§66.0804 Permitted Carryout Bags

(a) All stores shall provide or make available to customers only recyclable paper single-use carryout bags or reusable bags for the purpose of carrying away goods or other materials from the point of sale, subject to the requirements of this Division.

(b) Nothing in this Division precludes a customer from carrying away goods or other materials from the point of sale using bags that the customer brings to the store nor from carrying away goods or other materials from the point of sale without using bags.

§66.0805 Regulation of Recyclable Paper Single-Use Carryout Bags

(a) A store that provides recyclable paper single-use carryout bags to customers shall charge the customer ten cents ($0.10) for each bag provided, except as otherwise provided in this Division.

(b) No store shall rebate, credit, or reimburse a customer for any portion of the ten cents ($0.10) per bag charge required in San Diego Municipal Code section 66.0805(a), except as otherwise provided in this Division.
(c) All stores shall provide or make available to every customer a receipt which states the number of recyclable paper single-use carryout bags provided to the customer and the total amount charged to the customer for those bags.

(d) All stores shall retain all monies collected from customers pursuant to San Diego Municipal Code section 66.0805(a) and shall use such monies solely and exclusively for one or more of the following purposes:

(1) to defray the costs associated with complying with this Division;
(2) to defray the actual costs of providing recyclable paper single-use carryout bags to customers; and
(3) to defray the costs associated with the store's educational materials and educational campaign, if any, promoting the use of reusable bags.

(e) All stores shall keep complete and accurate records or documents of the following information for a period of three years from the date the bags were provided to the customer:

(1) the total number of recyclable paper single-use carryout bags provided to customers; and
(2) the total amount of monies collected for providing those recyclable paper single-use carryout bags to customers.

(f) All stores shall make the records and documents (paper or electronic) described in San Diego Municipal Code section 66.0805(e) available for inspection, upon 72 hours advance notice, by any City representative.
authorized to administer or enforce this Division, during regular business hours and at no cost to the City. All stores shall permit the City to reproduce any of those records or documents at the City’s cost and discretion. Unless an alternative location or method of review is mutually agreed upon by the store and the City, all stores shall make such records and documents available in an accessible location and condition at the store location. The store owner or a responsible agent, officer, or representative of the store shall confirm in writing that the records and documents made available to the City under San Diego Municipal Code section 66.0805(f) are complete and accurate.

§66.0806 Use of Reusable Bags

(a) All stores shall provide or make available reusable bags to customers for a minimum of ten cents ($0.10) per bag.

(b) Notwithstanding San Diego Municipal Code section 66.0806(a), a store may provide or make available a reusable bag to a customer at no charge if the reusable bag is distributed as part of an infrequent and limited time promotion. An infrequent and limited time promotion shall not exceed a total of 90 calendar days in any consecutive twelve month period.

(c) All stores are encouraged to educate store staff to promote reusable bags and to post signs encouraging customers to use and maintain reusable bags.

§66.0807 Exemptions

-PAGE 8 OF 11-
(a) Stores that provide recyclable paper single-use carryout bags pursuant to San Diego Municipal Code section 66.0805 shall provide such bags or reusable bags or both, at the store's option, free of charge to any customer participating in either the California Special Supplemental Food Program for Women, Infants, and Children (California Health & Safety Code § 123275, et. seq., as may be amended) or the Supplemental Food Program (California Welfare & Institutions Code §§ 15500, et seq., as may be amended).

(b) This Division shall not apply to a charitable organization, as defined in section 501(c)(3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of such a charitable organization, that reuses and recycles donated goods or materials and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.

§66.0808 Enforcement

(a) Authority. The Director is authorized to act as follows:

(1) to administer and enforce the provisions of this Division;

(2) to adopt rules and regulations for the administration and enforcement of this Division; and

(3) to exercise all enforcement powers as provided in Chapter 1 of the San Diego Municipal Code.

(b) Remedies. It is unlawful to violate any provision or requirement of this Division. The failure to comply with any requirement of this Division
constitutes a violation of this Division. Each instance of a violation of this Division is a separate offense. Violations of the provisions or requirements of this Division may be prosecuted as misdemeanors subject to the penalties provided in San Diego Municipal Code section 12.0201. The Director or designee may seek injunctive relief or civil penalties in the Superior Court pursuant to San Diego Municipal Code section 12.0202 or may pursue any administrative remedy provided in San Diego Municipal Code Chapter 1, Article 2, Divisions 3 through 10 inclusive.

(e) Administrative fines and penalties. Administrative fines and penalties collected for violations of any provision or requirement of this Division shall be deposited in the Recycling Enterprise Fund and used solely and exclusively for purposes of administering and enforcing the provisions and requirements of this Division.

(d) Remedies Cumulative. Remedies under San Diego Municipal Code section 66.0808 are in addition to and do not supersede or limit any and all other remedies, civil or criminal, available at law. The remedies provided for in this Division shall be cumulative and not exclusive.

(e) Strict liability. Violations of any provisions or requirements of this Division shall be treated as strict liability offenses regardless of intent.

§66.0809 Compliance Date

All stores defined under categories (a) and (b) listed under the definition of store in this Division shall comply with this Division beginning on __________________.
All stores defined under category (c) listed under the definition of store in this Division shall comply with this Division beginning on _________________.

GCL:bas
10/15/2013
Or.Dept: ESD