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**DATE:** March 23, 2016

**TO:** Waste Management Authority Board

**FROM:** Wendy Sommer, Executive Director

**BY:** Meri Soll, Senior Program Manager

**SUBJECT:** Reusable Bag Ordinance – Ordinance Expansion Language

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### **SUMMARY**

Staff has been providing regular updates on the Reusable Bag Ordinance's effectiveness and potential expansion. At the December 2015 meeting, the WMA Board unanimously selected the option to expand the ordinance to all retail stores and restaurants, with a phase-in approach for restaurants (timeframe to be determined) and an opt-out provision for member agencies. At the March 23 WMA meeting, staff will present draft ordinance language for review and discussion.

### **DISCUSSION**

Together with legal counsel and member agency staff (via the Technical Advisory Committee), staff developed proposed ordinance language for the expansion of the Reusable Bag Ordinance. Attachment A contains proposed amendments to include all Alameda County retail stores (an estimated 9,000 additional stores) and restaurants (an estimated 4,000 countywide). This attachment shows how the existing sections of the current ordinance could be revised, but it doesn't represent the ordinance in its entirety. Once there is consensus on the policy framework and proposed changes, staff will prepare formal ordinance amendments and distribute them to member agency staff and potentially affected businesses in advance of the amended ordinance's first reading, which is scheduled for September 2016.

Details regarding expansion timing and activities can be found in Attachment B. Agency staff will be available to provide presentations at city council and other meetings regarding ordinance language and expansion activities.

### **RECOMMENDATION**

Staff recommends that the WMA Board review the proposed reusable bag ordinance expansion language (Attachment A) and direct staff to prepare formal amendments to Ordinance 2012-02.

ATTACHMENT A: Operative Provisions of ACWMA Ordinance 2012-02 with Proposed 2016 Amendments

ATTACHMENT B: Reusable Bag Ordinance Expansion Schedule

**OPERATIVE PROVISIONS OF ACWMA ORDINANCE 2012-02**  
**WITH PROPOSED 2016 AMENDMENTS**

*[The following shows how the comprehensive policy framework for carryout bag regulation in Ordinance 2012-02 would be revised by the amendments now under discussion. Once there is consensus on the policy framework to be considered by the ACWMA Board, staff will prepare formal ordinance amendments reflecting that direction.]*

**ORDINANCE REGULATING THE USE OF CARRYOUT BAGS  
AND PROMOTING THE USE OF REUSABLE BAGS**

**SECTION 3** (Definitions)

The definitions set forth in this Section shall govern the application and interpretation of this ordinance.

- (a) “Alameda County” means all of the territory located within the incorporated and unincorporated areas of Alameda County.
- (b) “Authority” means the Alameda County Waste Management Authority created by the Joint Exercise of Powers Agreement for Waste Management (JPA).
- (c) “Authority Representative” means any agent of the Authority designated by the Enforcement Official to implement this Ordinance, including Member Agency employees, or private contractors hired for purposes of monitoring and enforcement.
- (d) “Covered Jurisdiction” means a Member Agency of the JPA that has not opted out of coverage under **Ordinance 2012-02 or Ordinance 2016-01** ~~this Ordinance~~ pursuant to Section 9 of this Ordinance. **“2012 Covered Jurisdiction” means a Member Agency. “2016 Covered Jurisdiction” means a Member Agency that has not opted out of coverage under Ordinance 2016-01.**
- (e) “Customer” means any Person obtaining goods from a Store.
- (f) “Enforcement Official” means the Executive Director of the Authority or his or her authorized designee.
- (g) “Executive Director” means the individual appointed by the Authority Board to act as head of staff and perform those duties specified by the Authority Rules of Procedure and by the Board.
- (h) “Member Agency” means a party to the JPA. Current member agencies are the County of Alameda, the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, Union City, and the Castro Valley and Oro Loma Sanitary Districts. The service areas for the purpose of Section ~~9~~**8** of this Ordinance are:

- (1) The legal boundaries of each of the 14 incorporated municipalities within Alameda County.
  - (2) The unincorporated sections of the County.
- (i) "Nonprofit Charitable Reuse Organization" means a charitable organization recognized as having Section 501 (c)(3) status by the Internal Revenue Code of 1986, or a distinct operating unit or division of the 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.
  - (j) "Person" means an individual, firm, public or private corporation, limited liability company, partnership, industry or any other entity whatsoever.
  - (k) "Postconsumer recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
  - (l) "Primary Enforcement Representative" is the chief executive of a Covered Jurisdiction or a qualified designee who will coordinate with the Authority regarding implementation of the Ordinance. A qualified designee shall have at least two years of municipal code enforcement experience or have undergone at least the level one municipal code compliance training program of the California Association of Code Enforcement Officers, or equivalent training program approved by the Enforcement Official.
  - (m) "Public Eating Establishment" means a restaurant, take-out food establishment or other business **(including, but not limited to, food sales from vehicles or temporary facilities open to the public)** that receives 90% or more of its revenue from the sale of **prepared and ready-to-consume** foods and/or drinks **to the public** ~~prepared on the premises.~~
  - (n) "Recycled **Content** Paper Bag" means a paper bag provided by a Store to a Customer at the check stand, cash register, point of sale, or other location for the purpose of transporting food or merchandise out of the Store and that contains no oldgrowth fiber and a minimum of forty percent (40%) postconsumer recycled material; is one hundred percent (100%) recyclable and compostable, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; and has printed in a highly visible manner on the outside of the bag the words "Recyclable," the name and location of the manufacturer, and the percentage of post-consumer recycled content.
  - (o) "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: 1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175

feet; 2) has a minimum volume of 15 liters; 3) is machine washable or is made from a material that can be cleaned or disinfected; 4) does not contain lead, cadmium or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags; 5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and 6) if made of plastic, is a minimum of at least 2.25 mils thick.

- (p) “Single-Use Carryout Bag” means a bag other than a Reusable Bag provided at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of the Store. Single-Use Carryout Bags do not include bags that are integral to the packaging of the product, or bags without handles provided to the Customer (i) to transport produce, bulk food or meat from a produce, bulk food or meat department within a Store to the point of sale, (ii) to hold prescription medication dispensed from a pharmacy, or (iii) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Content Paper Bag; **these types of bags are referenced in this ordinance as “Produce or Product Bags.”**
- (q) “Store” means any of the following stores located within Covered Jurisdictions:
- (1) **Within 2012 Covered Jurisdictions a** A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;
  - (2) **Within 2012 Covered Jurisdictions a** A store of 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 (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or
  - (3) **Within 2012 Covered Jurisdictions a** A drug store, pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of goods that include milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.
  - (4) **Within 2016 Covered Jurisdictions on and after May 1, 2017 the stores listed in sections 3(q)(1), (2) and (3) above and any other commercial establishment operating from a permanent enclosed structure that sells perishable or nonperishable goods including, but not limited to, clothing, food and personal items directly to a customer; and**
  - (5) **Within 2016 Covered Jurisdictions on and after November 1, 2017 any Public Eating Establishment.**

SECTION 4 (Carryout Bag Restrictions)

- (a) No Store shall provide a Single-Use Carryout Bag or Reusable Bag to a Customer at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of the Store ~~after January 1, 2013~~ except as provided in this Section.
- (b) ~~On or before January 1, 2015,~~ a A Store may make available for sale to a Customer a Recycled Content Paper Bag or a Reusable Bag for a minimum price of ten cents (\$0.10).
- (c) **A Store that is a Public Eating Establishment may make available to a Customer a Recycled Content Paper Bag at no charge, or a Reusable Bag for a minimum price of ten cents (\$0.10).** ~~On or after January 1, 2015,~~ a Store may make available for sale to a Customer a Recycled Paper Bag or a Reusable Bag for a minimum price of twenty five cents (\$0.25). This restriction, however, shall not apply if the Authority finds, after January 1, 2014, that the Ordinance has achieved its goal to substantially reduce the environmental impacts of the use of Single-Use Carryout Bags, in which case the minimum ten cents (\$0.10) per bag price provided in Section 4(b) shall apply.
- (d) No Store may make available for sale a Recycled Content Paper Bag or Reusable Bag unless the amount of the sale of the Recycled Content Paper Bag and Reusable Bag is separately itemized on the sales receipt.
- (e) A Store may provide a Reusable Bag at no charge if it is distributed as part of an infrequent and limited time promotion. An infrequent and limited time promotion shall not exceed a total of 90 days in any consecutive 12 month period.
- (f) A Store may provide free Reusable Bags or free Recycled Content Paper Bags at the point of sale to a Customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code; **a Customer participating in CalFresh pursuant to Chapter 1 commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code;** and a Customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code, as necessary to carry the items purchased at the Store by each such Customer.

SECTION 5 (Permitted Bags)

Nothing in this Ordinance prohibits Customers from using bags of any type that they bring to the Store themselves or from carrying away goods that are not placed in a bag.

SECTION 6 (Exemptions)

This Ordinance does not apply to:

- (a) ~~Single-Use Carryout Bags or Reusable Bags~~ **Produce and Product bags** distributed to Customers by food providers for the purpose of safeguarding public health and safety during the transportation of take-out foods and drinks prepared on the food provider's premises but intended for consumption at or away from the food provider's premises.
- (b) Single-Use Carryout Bags or Reusable Bags used by ~~Public Eating Establishments or~~ Nonprofit Charitable Reuse Organizations.
- (c) **Stores operating in a certified farmers' market registered in accordance with Section 47020 of the California Food and Agricultural Code.**

SECTION 7 (Recordkeeping and Inspection)

- ~~(a) Every Store shall keep complete and accurate records of the number of Recycled Paper Bags and the number of Reusable Bags purchased and sold each month at the Store during the period commencing July 1, 2012 and ending December 31, 2013. The store shall also keep complete and accurate records of the days on which free Reusable Bags are distributed pursuant to section 4(e) of this Ordinance. All records required by this Ordinance shall be available for inspection within 7 days of the Authority's request at no cost to the Authority during regular business hours by any Authority Representative authorized to enforce this Ordinance. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Store address.~~
- ~~(b) The provision of false information including incomplete records or documents to the Authority shall be a violation of this Ordinance.~~
- ~~(c) Authority Representatives are authorized to conduct any other inspections reasonably necessary to further the goals of this Ordinance, subject to applicable laws.~~

SECTION 87 (Enforcement and Phasing)

- (a) An enforcement action shall not be taken in any Covered Jurisdiction without written approval from the Primary Enforcement Representative of that Covered Jurisdiction. The Primary Enforcement Representative shall provide approval or disapproval of a proposed enforcement action in a timely manner.
- (b) Violation of any provision of this Ordinance shall constitute grounds for assessment of a notice of violation and fine by an Authority Representative in accordance with Government Code § 53069.4 or as the code shall subsequently be amended or

reorganized. Where an enforcement action is necessary to enforce this Ordinance, the Enforcement Official will typically issue a notice of violation as authorized in this subsection prior to taking the actions authorized pursuant to sections 78(c) or 78(d) of this Ordinance. A separate notice of violation and fine may be imposed for each day on which a violation occurs. The fine shall not exceed the amounts detailed for misdemeanors in Section 78(d) of this Ordinance. The notice of violation shall list the specific violation and fine amount and describe how to pay the fine and how to request an administrative hearing to contest the notice of violation. The fine must be paid within 30 days of the notice of violation and must be deposited prior to any requested hearing. A hearing, by a hearing officer, will be held only if it is requested within 30 days of the notice of violation. Evidence may be presented at the hearing. If it is determined that no violation occurred, the amount of the fine shall be refunded within 30 days. The Authority shall serve the final order on the Person subject to the notice of violation by first class, overnight or certified mail.

- (c) Violation of any provision of this Ordinance may be enforced by a civil action including an action for injunctive relief.
- (d) Violation of any provision of this Ordinance shall constitute a misdemeanor punishable by a fine not to exceed \$500 for the first violation, a fine not to exceed \$750 for the second violation within one year and a fine not to exceed \$1000 for each additional violation within one year. Violation of any provision of this Ordinance may also be enforced as an infraction punishable by a fine not to exceed \$100 for the first violation, a fine not to exceed \$200 for the second violation within one year and a fine not to exceed \$500 for each additional violation within one year. There shall be a separate offense for each day on which a violation occurs.
- (e) Enforcement pursuant to this Ordinance may be undertaken by the Authority through its Executive Director, counsel, or any Authority Representative. In any enforcement action, the Authority shall be entitled to recover its attorneys' fees and costs from any Person who violates this Ordinance. **Authority Representatives are authorized to conduct any inspections reasonably necessary to further the goals of this Ordinance, subject to applicable laws.**
- (f) **Notwithstanding the foregoing inspection and enforcement authorization** ~~Enforcement of this ordinance~~ **the amendments to this ordinance adopted by Ordinance 2016-01** shall be phased on the following schedule. Prior to ~~January 1, 2013~~, **the date that a type of establishment will be considered a Store, those establishments** ~~Stores~~ will be notified and public education and outreach activities will take place. ~~Warnings and enforcement~~ **Enforcement** actions will be taken as needed **beginning November 1, 2017 for Stores described in Section 3(q)(4) and beginning May 1, 2018 for Stores described in Section 3(q)(5)** ~~January 1, 2013.~~

**SECTION 98** (Local Regulation and Opt-Out and Opt-In Provisions)

- (a) Local Regulation. Nothing in this Ordinance shall be construed to prohibit any Member Agency from enacting and enforcing ordinances and regulations regarding

the distribution of Single-Use Carryout Bags and Reusable Bags, including more stringent requirements than those in this Ordinance.

- (b) Opt-Out Provision. Any Member Agency by a resolution of its governing body prior to ~~March 2, 2012 may choose to exclude its service area from this Ordinance~~ **December 9, 2016 may choose to exclude its service area from the amendments to Ordinance 2012-02 adopted by Ordinance 2016-01 adopted September 28, 2016.**
- (c) Opt-In Provision. Any Member Agency that chooses to exclude its service area may request of the Authority by a resolution of its governing board to be re- included in coverage of the Ordinance at any subsequent time. Such coverage under the Ordinance, however, shall not occur unless it is accepted in writing by the Enforcement Official or the Authority Board, and shall become effective only on the date specified in such written acceptance. Such acceptance shall not be unreasonably withheld or delayed.
- (d) Dispute Resolution. In the event of a dispute between the Authority and a Covered Jurisdiction regarding the implementation of this Ordinance, either party may request a meeting, in which case the Enforcement Official and the Primary Enforcement Representative for the Covered Jurisdiction (or other designee of the chief executive of the Covered Jurisdiction) shall meet to discuss implementation of the Ordinance. After such meeting, the parties may agree to enter into mediation to resolve any disputes between the parties related to implementation of the Ordinance. In addition, after meeting to seek to resolve any disputes between the parties and possible mediation, the Authority Board or the governing body of the Covered Jurisdiction, with at least 30 days public notice, may by resolution choose to exclude the service area of the Covered Jurisdiction from this Ordinance.

**Attachment B**

**REUSABLE BAG ORDINANCE EXPANSION**  
**SCHEDULE**

<b>Timing</b>	<b>Activity</b>
<b><i>FY 15/16</i></b>	
March 2016	Draft amended ordinance language presented to WMA
April 2016	Budget presentation*
April - June 2016	CEQA analysis and update conducted
April – July 2016	WMA representatives, city and agency staff consult with elected colleagues
<i>* Note that the FY 16/17 budget proposal will need to include dollars and staff hours for expansion activities prior to consideration of adoption of an ordinance amendment. However, if the expansion is not adopted, the budgeted costs will not be needed.</i>	
<b><i>FY 16/17</i></b>	
September 2016	1 <sup>st</sup> reading of ordinance
October 2016	2 <sup>nd</sup> reading of ordinance/adoption
December 6, 2016	Deadline for Member Agencies to opt out (via resolution of governing body)
December 2016	If adopted, outreach to stores commences
Dec. 2016 - March 2017	Store observation surveys conducted
April 2017 – Earth Day	Ordinance becomes effective at newly affected retail stores
April 2017 (+ 6 months)	Technical assistance begins (for 6 months)
<b><i>FY 17/18</i></b>	
July 2017-September 2017	Technical assistance continues
October 2017	Complaint based enforcement activities at retail stores begins (6 months post effective date)
November 2017	Ordinance becomes effective at restaurants
December 2017	Store observation surveys conducted to assess effectiveness
June 2017	Complaint based enforcement activities begin for restaurants (6 months post effective date)
<b><i>FY 18/19</i></b>	
July 2018 - June 2019	Complaint based enforcement continues.
December 2018	Store observation surveys conducted to assess effectiveness