



DATE: July 16, 2015

TO: Waste Management Authority

FROM: Gary Wolff, Executive Director
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BY: Meri Soll, Senior Program Manager

SUBJECT: Reusable Bag Ordinance 2012-2:
Proposed Budget and Schedule for Potential Expansion

BACKGROUND

At the [May 14, 2015](#) Programs & Administration and Planning & Organization Committee meetings, staff provided the outcome of the process approved by the WMA Board in October, 2014 regarding potential expansion of the Reusable Bag Ordinance 2012-2. Only one of the two requirements of the approved process was met. However, both Committees felt that additional discussions regarding ordinance expansion were warranted and requested staff to develop a revised process for the Board to consider expansion.

DISCUSSION

Several Board members voiced concerns regarding first year and on-going costs for an expanded ordinance. The Alameda County Clean Water Program has committed \$180,000 in financial support to WMA for expanding the ordinance to all retail stores using a complaint based enforcement approach, contingent upon adoption of the ordinance. This additional financial support helps offset the first year costs but does not cover ongoing costs for expanded ordinance implementation.

In order to provide the Board with the most accurate information, staff recommends the following items be conducted prior to returning to the board with a final recommendation about actually expanding the ordinance:

1. *Contact municipalities with similar expanded store sets to learn more about their ordinance language, approach, enforcement, results, and lessons learned.*

There are many municipalities who now have ordinances that affect all retail stores as well as restaurants. To better understand the effectiveness of these ordinances, staff will reach out to these municipalities to learn a variety of ordinance parameters such as hard costs, labor budgets, enforcement, outreach activities, etc. This will help staff become familiar with the many nuances around ordinances that affect all retail and restaurants.

2. *Conduct a stakeholder engagement process.*

Engage in outreach activities to inform and solicit input from potentially affected stores on ordinance expansion parameters. Staff will reach out to member agency economic development staff to identify and contact key business stakeholders, including retail groups, downtown associations, and mall operators. To implement a comprehensive outreach program and limit staff labor, staff recommends hiring a consultant to implement this task.

3. *Purchase and compile databases of stores to ascertain true costs of expansion.*

Staff has developed cost estimates for expansion partially based on the number of stores that could be affected by an expanded ordinance. As with other Agency projects, staff utilized a business listing database (Hoovers) to estimate the number of potentially affected stores, which resulted in approximately 7,000 retail stores (not including restaurants). However, these numbers are for estimation purposes only as we recognize this database is not comprehensive enough in scope and therefore not an adequate data source to identify and notify affected stores under an expanded ordinance. (Note: The Alameda County Dept. of Environmental Health database was used to identify and notify stores currently affected by Ordinance 2012-2).

A variety of data sources show a range of retail stores numbering from as low as 6,000 to as high as 12,000. Staff has been struggling with locating a comprehensive, accurate source of contact data for all retail stores. We can utilize the Dept. of Environmental Health database for restaurants, but to identify and ascertain the true number of retail stores in Alameda County, the best source of data would be from the CA Board of Equalization (BOE) as they track all taxable sales by business type. Unfortunately, due to confidentiality clauses (CA Civil Code section 1798.69) they are not able to distribute any information on businesses with sole proprietorship classification – which is estimated at about 50% of the businesses identified as retail. Therefore, additional research, including working with each city business license departments to obtain retail store data, must be completed. Other activities include combining data into the same format to create one master list as well as dealing with sole proprietor confidentiality issues, all of which can be time intensive. We have not previously budgeted labor hours or funds for this activity and therefore staff has only made preliminary attempts at locating an appropriate source of data to assess the true number of retail stores in Alameda County.

Staff recommends utilizing a database consultant to assist with this task, in addition to staff time. A correct count of affected businesses will assist staff in developing an accurate budget for both first and ongoing costs.

4. Develop Ordinance parameters for Board review.

After activities 1 – 3 have been conducted, staff should have adequate information to propose ordinance language. This revised language will include updated definitions, requirements, opt out provisions, time frames and other pertinent language which will assist the Board to better assess the impacts of an expanded ordinance. Our goal is to bring revised language to the Board in March 2016.

5. Execute an MOU with the Alameda County Clean Water program.

The MOU will identify funding support parameters, schedule and distribution of the committed \$180,000 for support of an expanded Reusable Bag Ordinance.

6. Conduct CEQA analysis.

At the May Committee meetings, there was discussion around the inclusion of restaurants as part of the expanded store set. Staff did not include labor hours or costs associated with restaurants in the original \$200,000 cost estimate for expansion, as the Alameda County Clean Water program specifically excluded them. The EIR utilized for the current bag ordinance included environmental impacts on stores selling packaged food and all retail stores, but not restaurants. To provide as many options as possible for expansion opportunities, staff recommends amending the EIR utilized for the current bag ordinance to include restaurants. This will allow for expansion to restaurants if the Board wishes.

To conduct the above six (6) activities, staff estimates 170 hours will need to be reallocated from other projects as well as amending the FY 15/16 Reusable Bag Project 1250 by \$75,000. Funding would be pulled from Facility Fee fund balance (Projected ending fund balance currently at \$3.41 million). The number of hours transferred between projects is lower than previously presented (170 versus 575) as explained in the section on Staff Hours below. Actual hours required in FY15/16 could be significantly higher -- and thereby diminish our effectiveness in other projects -- if there are significant concerns expressed by retail stores or restaurants or our member agencies during Tasks 2 or 4. The staff time required for the 1st and 2nd readings in FY 16/17 could be modest or significant depending on the level of controversy involved.

Staff Hours:

Project Lead staff will need to reallocate 170 hours from the following projects:

| <u>Project</u> | <u>Hours</u> | <u>Impact</u> |
|----------------------------|--------------|---|
| Grants to Nonprofit (RB) | 70 hours | Reduction in outreach activities and site visits, delay in contracts execution and future grants funding criteria |
| C&D Debris Recycling (WMA) | 30 hours | Delay in C&D facility certification program |
| Revolving Loan Fund (RB) | 70 hours | Reduction in outreach to potential loan recipients |

Out of the hours above, 140 hours (\$27,500) are currently funded out of the Recycling Board budget. If reallocated, this amount will be paid for by the WMA. This change will not affect the core budget. Additional staff hours associated with the above activities will come from General Administration (3110) and General Planning (3410) projects, using FY 15/16 project hours, and staff will utilize hours already in the FY 15/16 Reusable Bag Project (1250) as there will be some overlap between maintenance and expansion activities regarding updating database and municipality coordination.

Hard Costs:

| <u>Description</u> | <u>Amount</u> |
|---|-----------------|
| Legal review for: MOU, Revised Ordinance Language, CEQA | \$15,000 |
| Stakeholder Outreach Consultant | \$25,000 |
| Database Consultant | \$20,000 |
| CEQA review/EIR Amendment Consultant | <u>\$15,000</u> |
| Total | \$75,000 |

\$55,000 of the hard costs identified above was not included in the original \$200,000 expansion budget estimate. Consultants for CEQA, stakeholder outreach, and legal costs were omitted from the original estimated budget as staff did not plan to include restaurants as an expansion option, and staff were planning to do all of the stakeholder outreach themselves. Given the potentially larger affected store set, and concerns about staff time available, the revised estimate includes more time for consultant and legal work.

Once the above activities have been conducted, staff will develop a revised comprehensive project budget for expansion of the ordinance using more updated data regarding number of stores and best practices. Data will include budget and labor hour options for expansion to all retail stores as well as all retail and restaurants. A schedule to conduct the above six items as well as the remaining items to expand the ordinance is attached.

(Note that the FY 16/17 budget proposal will need to include dollars and staff hours for schedule items 10-22 prior to consideration of adoption of an ordinance amendment. However, if the expansion is not adopted, the budget for items 12-20 will not be needed.)

RECOMMENDATION

Staff recommends that the WMA consider a budget adjustment to add \$75,000 from Facility Fee fund balance to Reusable Bag Project 1250 (FY 15/16), and reallocate 170 hours of staff time to the Reusable Bag Project, for implementation of the schedule in Attachment A.

[ATTACHMENT A](#) - SCHEDULE FOR EXPANSION

ATTACHMENT A – REVISED EXPANSION SCHEDULE

| TASK | TIMING |
|---|-------------------------------|
| Decision by the Board regarding budget amendment to include funding \$75,000 and reallocating 170 staff hours to complete items 1 – 9 during the time period of August 2015 thru June 2016. Details of the proposed schedule are provided below for the Board to consider Reusable Bag Ordinance expansion. | July 22, 2015 |
| 1 Coordinate with cities outside our County with similar expanded store set(s). Review approaches/results/lessons learned to develop expansion considerations | August - September 2015 |
| 2 Comprehensive countywide stakeholder engagement | September- November 2015 |
| 3 Compile database of affected stores | August - December 2015 |
| 4 Complete MOU with Alameda County Clean Water Program relating to financial commitments to support expansion if expanded to larger set of stores. | December, 2015 |
| 5 Develop ordinance parameters and options | January-February 2016 |
| 6 Results of additional research/stakeholder process presented to the Board. Options for Ordinance language presented and reviewed by WMA Board | March 2016 |
| 7 Provide Draft Ordinance, project budget, scope and recommendation to WMA | April 2016 |
| Note: FY 16/17 budget proposal will need to include \$ and staff hours for items 10-22 prior to consideration of adoption of an ordinance amendment. However, if the expansion is not adopted, the budget for items 12-20 will not be needed. | |
| 8 Draft Ordinance language used to conduct CEQA analysis/EIR Amendment. If applicable, amend EIR to include restaurants (2-3 month time frame). If just retail, will still need an addendum memo from consultant stating ok to use 2012 EIR for all retail expansion (1 month time frame) | May – July 2016 |
| 9 WMA representatives and member agency staff consult with elected colleagues. | May - July 2016 |
| 10 1st reading and CEQA findings if desirable in advance of ordinance decision | September 2016 |
| 11 2nd reading and Consideration of Adoption, CEQA finding if not at first reading | October 2016 |
| 12 Revise and reprint outreach materials | November 2016 |
| 13 Outreach to public and stores | November 2016 – March 2017 |
| 14 Develop master database of all affected stores | December 2016 – March 2017 |
| 15 Collect baseline data for pre ordinance metrics (parking lot surveys, purchasing data, creek audits, etc) | December 2016 - March 2017 |
| 16 First mailing to notify affected stores with materials and message to use up non compliant bags | November, 2016 |
| 17 Second mailing to affected stores - remind to use up bags, purchase compliant bags | January, 2017 |
| 18 Third mailing to affected stores – final reminder | March, 2017 |
| 19 Ordinance Effective | Earth Day, April, 2017 |
| 20 Respond to hotline calls, provide technical assistance (prior to enforcement action) | April – October 2017 |
| 21 Ordinance Enforcement Begins(based on complaints) | October 2017 |
| 22 <i>Ongoing activities:</i> | |
| Update affected store database, ongoing enforcement, new store inspections, complaint follow ups, respond to hotline calls, update compliant bag listings, effectiveness studies | On going |