

Mendocino Solid Waste Management Authority

A joint powers public agency

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December 16, 2013

To: Linda Ruffing, Fort Bragg City Manager

From: Mike Sweeney

RE: Adding restaurants to City's plastic bag ban

On December 10, 2013, the First Appellate District of the State Court of Appeal upheld San Francisco's regulation of restaurant takeout bags and also found that local bag ordinances qualify for categorical exemption under CEQA.

If the City Council wants to add restaurants to the plastic bag ban, it can now be done with minimal risk of legal challenge under the plastic bag industry's theory that state law preempts local control.

The plastic bag industry's threat was successful in preventing many local jurisdictions from including restaurants in their plastic bag bans. However, there are now three jurisdictions that have restaurant plastic bag bans in place: San Francisco, Palo Alto, and Santa Cruz County.

Santa Cruz County was first, with restaurants added to the local ordinance on March 20, 2012. The Santa Cruz official in charge of implementation told me that the restaurant ban has worked smoothly with no fines levied.

There are good reasons to believe that it is entirely practical and safe for restaurants to give up plastic takeout bags. Most of the fast food chains have already done so, at least in northern California, including McDonald's, Burger King, and Starbucks. The plastic restaurant bags still found on the roadsides or in the creeks come from Taco Bell, Subway, and miscellaneous independent restaurants.

The plastic bag industry has objected that hot liquids in some takeout orders should be contained by a plastic, rather than a paper, takeout bag. The answer to this claim is that liquids should be securely held in their own cup, bowl or tray, not by the carryout bag. If McDonald's and Starbucks can successfully put takeout liquid containers into paper bags, so can any restaurant. While a paper bag may not provide as much "back up" containment as plastic, it does hold back leaks well enough to alert the customer to the need to check the lid on the cup or bowl.

Santa Cruz and Palo Alto provide one concession to the different circumstances of takeout restaurants compared to other stores: the minimum 10-cent charge per paper bag is waived. This was done in recognition of the reality that (1) restaurant takeout customers are less likely to be carrying their reusable shopping bags with them, (2) leaks of takeout food into reusable bags may discourage their future use, and (3) customer attempts to avoid paying the 10-cent bag fee could result in unfortunate dropping of food order items, particularly in situations like items being handed out of a drive-up window.

I recommend following the same policy and waiving the 10-cent paper bag charge for restaurants.

I have drafted an amendment to the City's carryout bag ordinance which would add restaurants ("Public Eating Establishments") 180 days after ordinance adoption.

Please let me know if I can provide any additional information.

enclosure