



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kerrie Romanow

**SUBJECT:** SEE BELOW

**DATE:** May 4, 2020

Approved

Date

5/7/2020

**SUBJECT: RATIFICATION OF THE DECLARATION SUSPENDING ENFORCEMENT OF SINGLE USE CARRY OUT BAG REGULATIONS IN THE SAN JOSE MUNICIPAL CODE**

## **RECOMMENDATION**

Adopt a resolution confirming and ratifying the Declaration issued by the Director of Emergency Services Suspending Enforcement of the Single Use Carry Out Bag Ordinance in the San José Municipal Code.

## **OUTCOME**

Continued suspension of enforcement of the Single-Use Carry Out Bag regulations through June 21, 2020 will align with the State's 60-day suspension which began on April 22, 2020 and will provide clarity for essential businesses in implementing the County of Santa Clara Health Officer's Social Distancing Protocol.

## **BACKGROUND**

On March 10, 2020, the City Council ratified the Director of Emergency Service's Proclamation of Local Emergency due to the outbreak of novel coronavirus (COVID-19) in San José. In the event of a proclamation of local emergency, California Government Code Section 8634 and San José Municipal Code Section 8.08.250 empower the Director of Emergency Services (hereafter, "the Director") to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency, provided that such rules and regulations are ratified at the earliest practicable time by the City Council.

On April 30, 2020, pursuant to the powers outlined above, the Director issued a declaration suspending enforcement of San José Municipal Code Section 9.10.2020 to the extent that it

prohibits retail establishments from (a) providing without charge reusable bags or recycled paper bags to customers at point of sale, or (b) providing single-use carryout bags to customers at point of sale where it is not possible to provide reusable bags or recycled paper bags. The purpose of this item is to bring forward that declaration for ratification by the City Council.

## **ANALYSIS**

The City is a leader in taking action for the protection of the environment. In 2010, the City Council adopted San José Municipal Code Section 9.10.2020, its Single-Use Carry Out Bag Ordinance, which prohibits the use of single use carry out bags. It further provides that a retailer may make available recycled bags for a ten-cent charge. Four years later, in 2014, the California legislature passed a statewide ban in Public Resources Code Section 42283, however, the City's Ordinance remains in place and an important tool for environmental protection.

In response to the COVID-19 pandemic, on March 31, 2020, the Health Officer of Santa Clara County issued an Order directing all individuals to continue to shelter in place. It further required all essential businesses to implement a Social Distancing Protocol. That Protocol mandated that essential businesses take measures to protect unnecessary contact including, "not permitting customers to bring their own bags, mugs or other reusable items from home". On April 29, 2020, the Health Officer issued a revised order with amended protocols, still prohibiting customers from bringing their own bags into essential businesses. (Santa Clara County Health Officer Shelter in Place Order ¶16(h), Appendix "A".)

At the state level, on April 22, 2020, the Governor issued Executive Order N-54-20 suspending the statewide bag ban:

Public Resources Code section 42283 is suspended for a period of 60 days to the extent that it prohibits retail establishments from (a) providing without charge reusable grocery bags or recycled paper bags to customers at point of sale, or (b) where it is not possible to provide reusable grocery bags or recycled paper bags, providing single-use carryout bags to customers at point of sale.

(Executive Order N-54-20, ¶12.)

By its own terms, Executive Order N-54-20 does not apply to the City's Ordinance nor does it apply to any emergency rules adopted by jurisdictions or health departments. As a result, essential businesses do not have the clarity necessary to comply the County's mandatory Social Distancing Protocol. The City has received communications from residents expressing concerns that while they are not allowed to bring their own reusable bags to the store, they are still being charged for bags. Staff have become aware that some grocery stores are charging customers for reusable bags, and others are not. The City also received a letter from the California Grocers Association and the California Retailers Association addressed to the California League of Cities (Attachment A) requesting local governments to temporarily suspend their bag ordinances for the

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safety of consumers and residents. The letter encourages local governments to return to full implementation of bag ordinances as soon as it is safe to do so.

To provide clarity and consistency for retailers and customers in implementing County health order protocols, the Director suspended enforcement of single use carry out bag restrictions in the San José Municipal Code.

### **CONCLUSION**

By ratifying the Director's declaration, the City Council will continue suspension of enforcement of the Section 9.10.2020 through July 21, 2020, thus aligning with the State's 60-day bag ban suspension which began on April 22, 2020.

### **EVALUATION AND FOLLOW-UP**

Suspension of enforcement of the Single-Use Carry Out Bag Regulations will remain in effect through June 21, 2020, or such time as it is terminated by either the Director of Emergency Services, the City Council, or the termination of the local state of emergency, whichever comes first.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals because it facilitates the County's Social Distancing Protocols during the pandemic.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the May 12, 2020 Council Meeting.

### **COORDINATION**

This memorandum has been coordinated with the City Manager's Office of Emergency Management and the City Attorney's Office.

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**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**CEQA**

Statutorily Exempt, Section 15269, Emergency Projects Undertaken for specific actions necessary to prevent or mitigate an emergency.

/s/  
KERRIE ROMANOW  
Director, Environmental Services

For questions, please contact Sharon Newton, Deputy Director, at (408) 793-5351.

Attachment: California Grocers Association and California Retailers Association Letter

## ATTACHMENT A

Ms. Carolyn Coleman  
Executive Director  
California League of Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814



Dear Ms. Coleman,

On behalf of California grocers and retailers, we write with a request to communicate with your membership a policy request regarding carryout bags. The issue is to ensure consistency with the suspension of carryout bag law in order to protect our employees and customers.

On April 23, Governor Newsom released an executive order that includes a temporary suspension of the state carryout bag law for stores identified in Public Resources Code section 42283. The order does not apply to local jurisdictions with ordinances grandfathered by state law, which are ordinances in effect before January 1, 2015.

For the safety of our employees and consumers the grocery and retail industry are asking all local governments to mirror the Governor's order and to temporarily suspend their carryout bag law for at least 60-days.

Before the State Order, several counties have prevented customers from bringing any reusable item, including bags, into stores. The reasoning is both state and local public health officials are working to limit the potential for further contamination of high-use areas in stores, like checkout stations, for the health of employees and consumers.

Unfortunately, a simple prohibition on consumers bringing reusable bags for use leaves businesses under mandates requiring they continue to charge for bags with no other no-cost bag options for consumers. It is also becoming increasingly more difficult to source California specific bags due reduced manufacturing and overburdened supply chains. To avoid a scenario where consumers only have forced-to-pay options to use carryout bags we respectfully ask for full suspension of the ordinances.

We hope you will agree taking every reasonable effort identified by state and local public health officials to limit the spread of COVID-19 should be taken. In order to support increased safety of employees and customers please consider sharing with your membership our request that cities with grandfathered carryout bag ordinances should suspend their carryout bag law for at least 60-days.

We want to be clear that CGA and CRA strongly encourage a return to full implementation of state and local carryout bag laws as soon as determined to be appropriate by public health officials and the state.

Thank you for your consideration and we look forward to continuing to work cooperatively with California cities.

Sincerely,



Tim James  
California Grocers Association



Steve McCarthy  
California Retailers Association