

comments received will be incorporated in the Action Plan and forwarded to HUD by May 15, 2012. HUD reviews and approves the Action Plan prior to releasing CDBG funds.

Attachments:

- A. Community Advisory Commission Approved Minutes Excerpt from March 7, 2012 Meeting.
- B. Fiscal Year 2012-13 Draft Action Plan

Recommendations:

- 1. Open the public hearing, and after receiving comments, move to close the public hearing.
- 2. Approve the Community Development Block Grant funds for FY 2012-13.
- 3. Approve the One-Year Action Plan for FY 2012-13.

XIV. UNFINISHED BUSINESS

2. Receive a Report on the Single-use Carryout Bag Study, Direct Participation in an Environmental Impact Report, and Direct Preparation of an Ordinance to Restrict Distribution of Single-use Bags (Staff Contact: Kathleen Phalen, 586-3345)

Background: On September 21, 2010, the City Council referred an evaluation of restricting distribution of single-use carryout bags to the Recycling and Source Reduction Advisory Commission (RSRAC) and directed staff to seek consultant support to study the impact of a potential ban. At its April 26, 2011 meeting, RSRAC reviewed the study results and recommended that the City develop an ordinance to restrict the use of single-use carryout bags similar to an ordinance adopted by the City of San Jose.

The completed study is included in the Council agenda packet. It reviews the experiences of California cities that have restricted distribution of single-use bags, summarizes a statistically-reliable phone survey of 293 Milpitas residents, stakeholder interviews with managers of 25 Milpitas food and retail establishments, and representatives of special interest groups. The study concludes that it is feasible for the City to restrict distribution of single-use carryout bags, although there will be costs from, and opposition to, such action.

RSRAC reviewed the specific elements of the ordinance adopted by the City of San Jose, effective January 1, 2012, that bans distribution of single-use carryout plastic bags, except from restaurants, and limits paper bags to those with at least 40 percent recycled content. This ordinance allows merchants to charge a fee for each paper bag. RSRAC recommends that the City Council adopt an ordinance based on the San Jose ordinance to ban distribution of all plastic bags and all paper bags having less than 40% recycled content and allow merchants to charge customers 10 cents per paper bag, rising to 25 cents per paper bag in two years. San Jose's bag ban went into effect after a one year public outreach effort. Staff recommends that Milpitas allow a similar period for outreach to merchants and the community.

Staff previously prepared this item for Council consideration on October 4, 2011, but pulled it from the agenda due to the October 3, 2011 filing of *Schmeer, et al (Helix Poly) v. County of Los Angeles* in Los Angeles County Superior Court. The filing claimed that Los Angeles County's bag ordinance, which also allows merchants to charge fees for paper bags, created an unconstitutional tax under Proposition 26. On March 23, 2012, the Court upheld Los Angeles County's ordinance, finding that the fee is not a tax under Proposition 26 because the merchant retains the fee.

Alameda County adopted a single-use bag ordinance on January 25, 2012 that goes into effect January 1, 2013. This is the first countywide bag ordinance in the Bay Area and geographically places Milpitas between cities that restrict single-use bag distribution.

Restricting single-use bag distribution will help Milpitas meet its stormwater permit and litter control requirements at lower costs and reduce environmentally harmful trash in storm drains and creeks. Under a plan submitted to the State, adoption of a bag ban ordinance would provide the

City a trash-load reduction credit of 12 percent, or nearly a third of the 40 percent reduction the State requires by 2014.

Recently, San Mateo County offered cities in San Mateo and Santa Clara County the opportunity to participate in an Environmental Impact Report (EIR) studying land use impacts of single-use bag ordinances at no direct cost. San Mateo County does ask that participating cities support outreach through hosting scoping meetings and consider adoption of an ordinance similar to that of San Jose. Milpitas is tentatively slated to host a scoping meeting on May 3, 2012. Other nearby cities considering participation include Campbell, Cupertino, Los Altos and Mountain View as well as nearly all cities in San Mateo County.

While the recommended action does not have fiscal impact, based on the experience of San Jose, Milpitas staff expects that after ordinance adoption, public outreach and coordination with stakeholders may take substantial staff resources.

Fiscal Impact: None.

Recommendations:

1. Receive single use bag report.
 2. Direct staff to participate in the Environmental Impact Report led by San Mateo County, including hosting a scoping meeting.
 3. Direct staff to draft an ordinance that:
 - a. Bans distribution of single-use, point-of-purchase plastic bags,
 - b. Bans distribution of single-use, point-of-purchase paper bags with less than 40% recycled content, and
 - c. Allows merchants to charge a fee for single use point of purchase paper bags.
- 3. Receive a Report on the Expanded Polystyrene Food Service Take-out Containers Study, Approve Support Letter for Senate Bill 568, and Direct Participation in Regional Efforts to Ban Expanded Polystyrene Food Service Take-out Containers (Staff Contact: Kathleen Phalen, 586-3345)**

Background: On September 21, 2010, the City Council referred an evaluation restricting distribution of expanded polystyrene (EPS, also known as Styrofoam™) food containers to the Recycling and Source Reduction Advisory Commission (RSRAC) and directed staff to seek consultant support to study the impact of a potential ban. At its April 26, 2011 meeting the Commission voted unanimously to recommend the Council's approval of a draft letter supporting Senate Bill 568 (Lowenthal) and to wait for action at the State level before considering a local ban on EPS food containers. Staff presented the letter to the Council on May 17, 2011 and received direction to first present the Expanded Polystyrene Food Service Take-out Container Study before consideration of the support letter would be reviewed.

SB 568 would prohibit a food vendor, on and after January 1, 2016, from dispensing prepared food to a customer in EPS food containers and defines related terms. On September 12, 2011, the bill was placed on inactive status, but remains on the Assembly Floor and remains eligible to be voted upon this year.

Locally, the Cities of Fremont (as of January 1, 2011) and Palo Alto (as of April 22, 2010) restrict distribution of EPS food containers. On January 24, 2012, the San Jose City Council accepted a staff report recommending potential action to restrict distribution of EPS food containers. Rather than approve individual action, San Jose staff was directed to seek involvement of other agencies for efforts to restrict distribution of EPS food containers and to return to San Jose's Transportation and Environment Committee with a report in fall 2012. Regional activities could include developing environmental studies and model ordinances.

Fiscal Impact: None.

Recommendations: