

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:

from SALA lawyers at the Milpitas Senior Center.

Wanda Hale, the Long-term Care Ombudsman program manager, hoped for continued support as given over many years. It helped support seniors in nursing care homes.

Ann Marcourt, of Project Sentinel, thanked the City Council for many years of City support through the CDBG funds. She hoped to bring in federal funds for services.

Beverly Jackson of Rebuilding Together Silicon Valley, thanked the Council and said they would do more with less for low-income homeowners with repair work.

Emily Hennessy of Santa Clara Health Foundation, for the Healthy Kids program, requested funding as provided in the past, and asked to reconsider funding at \$5000 – a minimal amount that could fund five of the 144 Milpitas children in need of health care. Mayor Esteves wanted to fund \$5000 for this program and take it out of the two parks.

Anna Jones, a Live Oak Adult Day services program manager, helped seniors in Milpitas and those who could not go to Milpitas Senior Center. One center in San Jose was able to accept clients from Milpitas, with the average age of 80. She thanked the Council for its continued support.

Ben Kong, of EHC Lifebuilders, provided shelter and supportive services for homeless persons. Last year, his program helped 21 homeless Milpitas people through the Emergency Housing Consortium.

Paul Lerner, the property manager at Terrace Gardens, thanked Council for its ongoing fiscal support. 182 senior residents lived there, and funding would provide new stoves in the apartments and make them more energy efficient.

Linda Lambert, with Milpitas Family Literacy Program, helped 3, 4, and 5 year olds and their parents teaching them to get ready for reading and school.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Gomez/Vice Mayor McHugh

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to authorize the Community Development Block Grants to Milpitas community organizations via funding, as recommended by the Community Advisory Commission, and in addition to ask the CAC to review the Council adopted priorities for next year, and to approve the one-year Action Plan for FY 2012-13

Motion/Second: Councilmember Gomez/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 1 (McHugh)

Vice Mayor McHugh would register a “no” vote, and it had nothing to do with the 15 items recommended by CAC. He disagreed with the non-public services allocation proposed, and noted some facts in the draft Capital Improvement Program booklet.

UNFINISHED BUSINESS

2. Carry Out Plastic Bags

Assistant City Engineer Kathleen Phalen explained the request for City of Milpitas to join with other cities to participate in an Environmental Impact Report spearheaded by San Mateo County, to consider a future ban on plastic carry-out single use bags. According to a survey done in 2011, 54% of Milpitas residents supported a plastic bag ban.

Councilmember Gomez inquired about Milpitas businesses and acceptance of a ban by those, since he had received several letters of opposition.

Councilmember Polanski asked about cross-contamination. She referred to a lack of reduction of litter in San Francisco, one city with a current plastic bag ban.

Vice Mayor McHugh responded on contamination, that people could use plastic bags for fresh produce and meat products (as an exemption). He felt the Council could modify the staff recommendation for a potential ordinance to ban the bags, by first simply monitoring San Mateo County's progress after adoption of any ordinance.

Mayor Esteves asked about the ten cents charge per plastic bag, as recommended, and the basis for it. He felt the cost should be borne by the business, not the customer.

Councilmember Gomez wanted information about a statewide ban on these issues. Staff explained that the bills failed to get support in the state legislature. He asked if plastic bags were recyclable, and Ms. Phalen replied that they were hard to capture, and difficult to recycle.

Mayor Esteves asked how much time it would take for outreach and education on a ban. Staff responded, one year.

The Mayor next invited speakers from the audience.

Preeti Suri, owner of Subway franchises in Milpitas, validated Mr. Gomez's concerns about businesses being affected by such a ban, and perhaps sending customers to nearby shopping in other cities, such as Pacific Commons in Fremont.

Jamie McLeod, Santa Clara City Councilmember and Chair of County Recycling and Waste Reduction Commission, wanted to speak on both this item and the next one, so the Council allowed that. Noted some environmental concerns including impacts and runoff of plastic bags. There could be tiered and do-able approaches. On the polystyrene issue, it was suggested for food/beverage only. Her city discussed contracts with its solid waste contractor. She sought support for the staff recommendations on both issues.

Bill Ferguson, Rivera St. resident, supported the plastic bag ban and quoted several statistics. He mentioned litter and danger of the bags to animals.

Dean Peterson, Environmental Health Director for San Mateo County, spoke on behalf of the Board of Supervisors and thanked Milpitas for considering joining his county in the EIR. He urged they go as regional as possible, which would aid citizens and businesses.

Javier Gonzalez, Director of Local Government Affairs for the California Restaurant Association, sent a letter to Council previously. He discussed cleanliness of use of plastic bags and that a ban would be difficult during down economic time and hurt business.

Rob Means, 1421 Yellowstone resident, spoke in favor of the plastic bag ban. He referred the Council to a video "The Story of Stuff" about material that goes to landfill.

Carol Kassab, Milpitas Chamber of Commerce, represented more than 200 local businesses and opposed the proposed plastic bag ban. She urged recycling of plastic bags, not banning the bags outright. She viewed it as punishment of businesses.

Ajay Tallam, a Milpitas resident, was excited this issue was brought back to City Council. It seemed like an easy thing to do, to be part of the EIR and a proposed ordinance, then go ahead. He commented that bag bans would be effective all surrounding Milpitas, once Fremont/Alameda County goes into effect on January 1, as was already in San Jose.

Councilmember Giordano stated she opposed moving forward with anything of this nature, due to opposition of California Restaurant Association, opposition from Chamber and to keep Milpitas as business friendly. She was an advocate of less government, and that would then have to monitor if restrictions were put in effect. It would be more staff work to keep track of this.

Vice Mayor McHugh felt that single use bags were a real problem. He supported the staff recommendation but to change the third one to monitor the San Mateo County ordinance. A regional approach was a good idea, to reduce the waste strain and impacts of bags.

Mayor Esteves said this was a serious environmental issue, with a good opportunity to join San Mateo County on its EIR. He did not support the third item in the staff's recommendation and was ok with monitoring it. He wished to make sure any ban would be cost neutral and not to add costs for local small businesses.

Motion: 1) to receive the single use bag report, 2) to direct staff to participate in the Environmental Impact Report led by San Mateo County, including hosting a scoping meeting on May 3, and 3) to monitor and evaluate model ordinance by San Mateo County

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano, Gomez)

Mayor Esteves announced the City Council would take a break at 9:51 PM and then they reconvened at 10:04 PM.

Mayor Esteves asked to move agenda Item No. 9 (Draft CIP review) to the next meeting and the Council concurred with his request.

3. Polystyrene Container

Assistant City Engineer Kathleen Phalen referred to work done by the City's Recycling and Source Reduction Advisory Commission and staff to bring the study on these food containers to the City Council. There was now a request for support for legislation in the state Senate on a proposed ban on "clam-shell" polystyrene containers for to-go food.

Mayor Esteves and City Councilmembers asked variety of questions to staff on the recommendation.

Carol Kassab, CEO Milpitas Chamber of Commerce, stated the Chamber was opposed to SB 568, especially for its restaurant members.

Javier Gonzalez, of the California Restaurant Association, handed out a chart of price comparisons for the cost of alternative (non-polystyrene) containers for take-out food. He and his agency opposed SB 568.

Rob Means, 1421 Yellowstone resident, felt it was noteworthy that 70% of residents supported a ban on these containers, and he wanted them to be leaders on doing something about this issue. He urged no more use of EPS containers at City of Milpitas.

Ajay Tallum, Milpitas resident, said this was simple and straightforward. He supported the idea to ask the City to ban EPS containers at the City government. Fremont Chamber did issue support for this legislation. A statewide ban makes it simpler for all.

Ryan Kenny, American Chemistry Council, agreed with all that litter was a problem. If banning one type of litter, it would just create litter of another type. It should be one standard for a variety of food service containers. Cities had not done studies to prove that a ban on polystyrene would reduce litter. San Jose, Morgan Hill, and Santa Clara did not ban this type of container recently.