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TO: Andy LaBarre, Chair
Ways & Means Committee

THROUGH: Gregory Dill,
Interim County Administrator

FROM: Evan N. Pratt,
Water Resources Commissioner

DATE: May 4, 2016

SUBJECT: Carryout Bag Ordinance

BOARD ACTION REQUESTED:

Approval of county-wide Carryout Bag Ordinance.

BACKGROUND:

Part 115 of the Natural Resources and Environmental Protection Act grants Michigan counties authority for solid waste management within their geographic boundaries through the execution of respective county solid waste management plans, as approved by the Michigan Department of Environmental Quality (MDEQ). Washtenaw County's approved Solid Waste Management Plan calls for an aggressive program to increase waste diversion, with emphasis on commercial and residential source-reduction and recycling.

A conservative cost estimate for annual plastic bag end-of-life management costs is \$219,000 collectively for the two (2) Washtenaw County-based material recovery facilities (MRFs). Costs cited are directly due to damage caused to recycling equipment by plastic bags, decreased operations & labor efficiency from plastic bag clean-up, increased residual waste-to-landfill costs, and jeopardized commodity market values from excessive plastic bag contamination. Further, annual costs to Advanced Disposal's Arbor Hills Landfill (Washtenaw County's single operating landfill) exceed \$25,000 for plastic bag waste management on landfill and surrounding property. These plastic bag waste management costs impose negative effects on the local Washtenaw County recycling and waste economy serves as an obstruction to optimally implement the County's Solid Waste Management Plan.

At the October 8, 2015 Washtenaw County Board of Commissioners Working Session, the above-stated data, and more, were presented to the Board. As a result, the Board charged County staff to draft a Carryout Bag Ordinance so that the County may adopt a policy to combat the problems caused by excessive plastic bag waste in our community, as hundreds of other communities throughout the world have accomplished. The Washtenaw County Carryout Bag Ordinance now requires final Board approval.

DISCUSSION:

Senate Bill 853, currently pending in Michigan legislature, seeks to withhold local government authority to regulate “auxiliary containers,” a category within which carryout grocery bags falls. If SB853 is adopted by the State of Michigan, it would act to preempt a County bag ordinance. Washtenaw County seeks to retain its local authority to regulate the material in furtherance of its duty to optimally manage solid waste within its geographic boundaries, and to increase Washtenaw County’s recycling and waste economy to full extent possible.

If adopted, the Carryout Bag Ordinance states an effective date of Earth Day 2017 (April 22).

IMPACT ON HUMAN RESOURCES:

In the event that SB853 is not adopted as Michigan law, it is anticipated that implementation of this ordinance would require 0.5 to 1.0 FTE. Specifics to be determined at a future date, contingent upon Board of Commissioners approval.

IMPACT ON BUDGET:

In the event that SB853 is not adopted as Michigan law, it is anticipated that implementation of this ordinance would require additional personnel (as outlined above) and budget for initial program development and implementation. Specifics to be determined at a future date, contingent upon Board of Commissioners approval.

IMPACT ON INDIRECT COSTS:

No indirect costs.

IMPACT ON OTHER COUNTY DEPARTMENTS OR OUTSIDE AGENCIES:

It is anticipated that the Water Resources Commissioner’s office and the Board of Public Works will be involved in implementation of ordinance.

CONFORMITY TO COUNTY POLICIES:

The resolution conforms with all County policies.

ATTACHMENTS/APPENDICES:

- Resolution
- Proposed Carryout Bag Ordinance
- Informational Memorandum

A RESOLUTION ADOPTING CARRYOUT BAG ORDINANCE
FOR WASHTENAW COUNTY

WASHTENAW COUNTY BOARD OF COMMISSIONERS

May 18, 2016

WHEREAS, MCLA 46.11(j) authorizes a county to pass ordinances that relate to county affairs and do not contravene state law or interfere with the local affairs of a township, city, or village within the county; and

WHEREAS, Part 115 of the Natural Resources and Environmental Protection Act grants authority to all Michigan counties for solid waste management within their geographic boundaries through respective approved county solid waste management plans; and

WHEREAS, Washtenaw County's Solid Waste Management Plan calls for an aggressive program to increase waste diversion, emphasizing commercial and residential source-reduction and recycling; and

WHEREAS, annual plastic bag waste management costs exceed \$200,000 for the two publically-owned material recovery facilities (MRFs) based in Washtenaw County (Western Washtenaw Recycling Authority and Ann Arbor); and

WHEREAS, annual costs to Washtenaw's MRFs include regular damage to equipment, decreased operations & labor efficiencies, increased residual waste-to-landfill costs and jeopardized commodity market values; and

WHEREAS, Washtenaw's MRFs are unable to recycle any plastic bag waste received, accounting for approximately 80%-by-volume of residual waste-to-landfill; and

WHEREAS, plastic bag waste management costs thus act as a direct obstruction to Washtenaw County's residential and commercial recycling economy; and

WHEREAS, annual plastic bag management costs exceed \$25,000 for Advanced Disposal's Arbor Hills Landfill, the single operating landfill in Washtenaw County, serving to further obstruct Washtenaw County achieving its Solid Waste Management Plan goals; and

WHEREAS, if Senate Bill 853 is adopted by Michigan legislature, it would cause a Washtenaw County Carryout Bag Ordinance to contravene with state law, effectively rescinding county authority to pass policy regulating "auxiliary containers" including plastic bags; and

WHEREAS, Washtenaw County seeks to retain its local authority to regulate auxiliary containers in furtherance of its duty to optimally manage solid waste within its geographic boundaries; and

WHEREAS, communities across the nation and globe that adopt bag policies consistently demonstrate reduction in plastic bag consumption, litter and contamination in recycling & waste streams, plus increased recycling rates; and

WHEREAS, the Carryout Bag Ordinance states an effective date of Earth Day 2017 (April 22);
and

WHEREAS, this matter has been reviewed by Corporation Counsel, the Finance Department,
Human Resources, the County Administrator's Office and the Ways & Means Committee; and

WHEREAS, the county-wide Carryout Bag Ordinance is available through the Washtenaw
County Clerk's Office.

NOW THEREFORE, BE IT RESOLVED that the Washtenaw County Board of Commissioners
hereby adopts the Washtenaw County Carryout Bag Ordinance, attached to this resolution.

BE IT FURTHER BE RESOLVED that, in the event that SB853 is not adopted as Michigan law,
Washtenaw County will resume with its ordinance development process, continue with
stakeholder engagement, make any necessary revisions to the ordinance and will address the
compliance budget.

WASHTENAW COUNTY

CARRYOUT BAG ORDINANCE



Revised Ordinance Published – TBD

Date of Adoption by Board of Commissioners – TBD

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ARTICLE I. General

A. Intent & Authority

It is the intent of this Ordinance to further the Washtenaw County Solid Waste Management Plan, as mandated by the Michigan Department of Environmental Quality, MDEQ, requiring “utilization to the maximum extent possible the resources available in Washtenaw County, Michigan’s solid waste stream through source reduction, source separation, and other means of resource recovery.”

This Ordinance shall govern distribution of carryout bags in Washtenaw County and is hereby adopted by the Washtenaw County Board of Commissioners.

B. Designated County Enforcing Agency

The Office of the Washtenaw County Water Resources Commissioner will be the designated enforcing agency for the County.

ARTICLE II. Definitions

The following rules, terms, and phrases shall have the definitions given:

AUTHORIZED COUNTY OFFICIAL – personnel of Washtenaw County legally authorized to issue municipal civil infraction citations

BOARD OF COMMISSIONERS – Washtenaw County Board of Commissioners

CARRYOUT BAG ECO-FEE (ECO-FEE) – A fee assessed to each individual disposable carryout bag to be paid by customers at the time of purchase

DISPOSABLE CARRYOUT BAG – a bag made of any material, commonly plastic or paper, provided to a customer at the point of sale to carry out purchases, and which does not meet the criteria set for a reusable carryout bag as defined in this Ordinance; and shall meet the following requirements:

1. if made from paper, shall contain a minimum of forty percent (40%) post-consumer recycled content; and
2. if made from any material, shall display labeling in a highly visible manner for proper recycling or disposal requirements, information available through Washtenaw County.

The following disposable carryout bags are exempt from the provisions of this Ordinance:

- a) any bag used inside a retail grocery to:
 - i. package bulk items, such as fruit, vegetables, nuts, grain or candy; or
 - ii. contain or wrap frozen foods, meat, or fish, whether or not the items are prepackaged;or

- iii. contain unwrapped prepared foods or bakery goods; or
- b) any bag used by a customer or pharmacist to contain prescription drugs; or
- c) any bag used by a retail grocery to prevent moisture damage, such as transportation of soups, sauces, salad dressing, and other liquids; or
- d) A newspaper bag, door-hanger bag, laundry-dry cleaning bag, or bags sold in a package intended for use as a garbage, pet waste or yard waste bags

MUNICIPAL CIVIL INFRACTION – an act or omission that is prohibited by this Ordinance, and for which civil sanctions including without limitation, fines, damages, expenses and costs may be ordered as authorized by Chapter 87 of Act No. 236 of the Public Acts of 1961, as amended

MUNICIPAL CIVIL INFRACTION BUREAU – means the Washtenaw County Office of the Water Resources Commissioner, as established by this Ordinance

MUNICIPAL CIVIL INFRACTION CITATION – Means a written complaint or citation prepared by an authorized County official, directing a person to appear at District Court regarding the occurrence or existence of a municipal civil infraction violation by the person cited

MUNICIPAL CIVIL INFRACTION NOTICE – means a written notice, other than a citation, prepared by an authorized County official, directing a person to appear at the Office of the Water Resources Commissioner to pay the fines and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the County

RETAIL GROCERY – any operation subject to inspection by Michigan Department of Agriculture Food Law requirements, that sells or offers to sell food to consumers for off-premises consumption, as defined by the Michigan Department of Agriculture & Rural Development Food and Dairy Division, Food Law – Act 92 of 2000, as amended

REUSABLE CARRYOUT BAG – a bag with handles that is specifically designed and manufactured to withstand repeated reuse and meets the following requirements:

1. capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet;
2. has a minimum volume of 15 liters;
3. is machine-washable or made from a material that can be cleaned and disinfected regularly; and
4. if made from plastic, has a minimum thickness of 4Mil.

WATER RESOURCES COMMISSIONER – Washtenaw County Water Resources Commissioner or authorized representative of the Water Resources Commissioner's Office

ARTICLE III. Carryout Bag Requirements, Fees, Exemptions and Waivers

A. Application

Effective April 22, 2017, except as provided under Exemptions, this Ordinance shall apply to all retail grocery stores in Washtenaw County.

Voluntary compliance with this Ordinance is encouraged for retail establishments not currently subject to this ordinance; however notification regarding intent to participate must be made.

B. Carryout Bag Eco-Fee Requirement

Retail grocers shall assess a ten-cent (\$0.10) eco-fee for each disposable carryout bag provided to the customer at purchase. The eco-fee shall be charged to a customer making a purchase whether the purchase is in person, through the internet, by telephone, by facsimile, electronically, or by any other means.

The retail grocery shall indicate on the customer transaction receipt the number of disposable carryout bags provided, and the associated eco-fee total. No retail grocery shall rebate or otherwise reimburse a customer any portion of eco-fees assessed.

C. Exempt Customers

A customer showing valid proof as a current beneficiary of any United States government federal welfare program, or any local Washtenaw County welfare assistance program, or any State of Michigan welfare assistance program shall be provided reusable or disposable carryout bags free of eco-fee; provided that the bags meet the respective specifications set forth in this Ordinance.

D. Eco-Fee Waiver Process

A retail grocery may apply for exemption status from one or more of the requirements of this Ordinance from the Water Resources Commissioner for up to a one-year period by showing that compliance with the requirements of this Ordinance would cause undue financial hardship or subject that business to a disproportionate economic impact due to circumstances unique to the retail grocery.

A written request for exemption shall include all information necessary for the Water Resources Commissioner to make its decision, including but not limited to documentation showing the factual support for the exemption requested. The applicant may be required to provide additional information to allow the County to determine facts regarding the exemption request; and

The County may by resolution establish a fee for exemption requests sufficient to cover the administration costs for processing the exemption request.

ARTICLE IV. Washtenaw County Product Stewardship Fund

The Washtenaw County Product Stewardship Fund (Stewardship Fund) is created within the County Treasury to further the Washtenaw County Solid Waste Management Plan. The County Treasurer may receive monies or other funds from any source for deposit into the Stewardship Fund. The County Treasurer shall direct the investment of the Stewardship Fund assets. The County Treasurer shall credit to the interest and earnings from fund investments. All carryout bag eco-fees and fines received as a result of a violation of this Ordinance shall be deposited by the County Treasurer into the Stewardship Fund.

Monies in the Stewardship Fund at the close of the fiscal year shall remain in the fund and shall not lapse to the County General Fund.

ARTICLE V. Retention, Remittance and Transfer of Eco-Fee

Retail grocers shall retain twenty-percent (20%) of eco-fees generated and shall remit the remaining eighty-percent (80%) of eco-fees generated to the Washtenaw County Product Stewardship Fund.

A. Retention

The amount retained shall not be classified as revenue for the purposes of calculating sales tax. Eco-fees retained by a retail grocery are intended solely to:

1. Develop and provide educational resources to customers, the public and employees about:
 - a) Carryout bag Ordinance,
 - b) Ecological benefits of reusable bags, and
 - c) Proper end-of-life management and recycling of carryout bags; and
2. Train staff in the implementation and administration of this Ordinance; and
3. Improve or alter infrastructure to allow for the implementation, collection and/or administration of this Ordinance; and
4. Improve infrastructure to increase plastic bag recycling; and
5. Collect, account for and remit the eco-fee to the County.

B. Remittance

The Retail grocery shall transfer and the County shall collect all due eco-fees, which shall be deposited into the Washtenaw County Product Stewardship Fund.

C. Reporting Requirements

All retail grocery stores must report to the Water Resources Commissioner, on a quarterly basis, the total number of disposal paper and disposal plastic carryout bags provided, the total amount of monies collected for providing the disposable carryout bags, and a summary of any efforts undertaken to

promote the use of reusable bags by customers in the prior quarter. The County shall provide the reporting form necessary for retail grocers to demonstrate compliance with the provisions of this Ordinance.

For the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, all quarterly reports must be submitted no later than 30 days after the end of each quarter. If the reporting required in this Ordinance is not submitted in a timely fashion by the retail grocer, such store shall be subject to the fines set forth in Article VIII.

ARTICLE VI. Fees

Eco-fees shall be considered and established via resolution by the Washtenaw County Board of Commissioners as necessary to assure that adequate revenues are generated to operate the program.

ARTICLE VII. Enforcement

A. Notice of Violation

If a Retail grocery is in violation of one or more parts of this Ordinance, the Water Resources Commissioner shall issue a warning notice to the Retail grocery for the initial violation. The notice shall contain a description of the violation and what must be done to remedy the violation. The Retail grocery shall have five (5) calendar days from the receipt of the notice in which to implement and maintain compliant measures in conformance with this Ordinance.

If determined that an additional violation has occurred after a warning notice has been issued for initial violation, the Water Resources Commissioner shall issue a notice to impose a fine against the Retail grocery. All fees shall be paid in accordance with the current fee schedule approved by the Washtenaw County Board of Commissioners.

B. Civil Infraction

A retail grocery found in violation this ordinance is responsible for a municipal civil infraction and may be ordered to pay a civil fine.

ARTICLE VIII. Adoption of a Schedule of Fines for Violations

A. Fines to be established by County Board Resolution

The County Board of Commissioners shall by Resolution adopt a schedule of fines for violations of this Ordinance, which may be amended by subsequent Resolution. The initial schedule of fines is set forth in Sections B - C, below for both municipal civil infraction citations and municipal civil infraction violation notices.

B. Fines for Municipal Civil Infraction Violation Notices

A Retail grocery found in violation of any provision of this Ordinance receives a municipal civil infraction violation notice, and upon accepting admission of responsibility, shall pay an initial fine at the Municipal Civil Infractions Bureau of \$100.00.

1. In the case that this responsible party commits another offense, on any site, within one (1) year of the date of the initial infraction, the civil fine at the Municipal Civil Infractions Bureau shall be \$200.00.
2. In the case that this responsible party commits another offense within one year of the date of the second offense, the civil fine at the Municipal Civil Infractions Bureau shall be \$500.00. This shall be known as the third offense. All subsequent offenses shall be subject to a civil fine of \$500.00.
3. If an admission of responsibility is not made and the civil fine prescribed by this Ordinance for the violation is not paid at the Municipal Civil Infractions Bureau, a municipal civil infraction citation may be filed with the District Court in accordance with State law.
4. No more than one (1) violation shall be imposed upon a Retail grocery within a seven (7) day calendar period.

C. Fines for Municipal Civil Infraction Citations

A retail grocery who fails to make an admission of responsibility and pay the civil fine as defined above, is issued a municipal civil infraction citation and is found responsible at the district court for a municipal civil infraction citation, shall pay a civil fine as provided by law.

Article IX. Establishment of Municipal Civil Infractions Violations Bureau for Disposition of Violations of the Act, the Rules or this Ordinance

The Municipal Civil Infractions Violations Bureau, for disposition of violation notices issued under this Ordinance, shall be located at the Washtenaw County Water Resources Commissioner's Office, 705 N. Zeeb Rd., Ann Arbor, MI 48107.

ARTICLE X. Right of Appeals

The right of an appeal or the authority to interpret this Ordinance shall be provided to the Water Resources Commissioner. All requests for an appeal of any action related to this Ordinance must be filed within fourteen (14) days of that action. All requests shall be made in writing and include the article number of this Ordinance and reason for the appeal.

ARTICLE XI. Effective Date

This revised ordinance shall take effect when notice of adoption is published in a newspaper of general circulation within the County.



MEMORANDUM

*Statement of Background & Intent for ordinance to reduce plastic bag waste
from Washtenaw County, MI's waste stream & environment.*

April 26, 2016

Harmful Solid Waste Management Impacts of Plastic Carryout Bags in Washtenaw County

- More than 36yd³ per day of plastic bag waste is received at the 2 in-County material recovery facilities (MRFs)
- MRFs cannot recycle plastic bags; All are landfilled, accounting for 80% of residual waste
- Annual cost to MRFs for plastic bag management exceeds \$200K, due to: damage to equipment, decreased operations & labor efficiency, increased residual waste-to-landfill costs, decreased commodity values
- At Arbor Hills Landfill (the only landfill in Washtenaw), plastic bag litter accounts for 50% of litter-by-volume
- Annual management cost to Arbor Hills exceeds \$25K, due to: litter pick-up, extra equipment needed to contain plastic bag waste from blowing as litter into surrounding communities
- Plastic bag waste acts as a litter nuisance along roadways, waterways and the overall environment
- Total bag distribution in Washtenaw County unknown, due to private entities utilizing their right to keep such proprietarily protected information confidential from the public
- Of total bags distributed, anywhere from <1% to 14% is collected for recycling at in-store drop-offs

Authority & Support for Washtenaw County to Adopt Ordinance to Mitigate Bag Waste Management Problems

- Corporation Counsel indicates MCLA 46.11(j) authorizes a county to pass ordinances that relate to county affairs and do not contravene state law or interfere with the local affairs of a township, city or village within the county
- Part 115 of the Natural Resources and Environmental Protection Act grants authority to all Michigan counties for Solid Waste Management within their geographic boundaries through respective County Solid Waste Plans
- Washtenaw County's Solid Waste Management Plan calls for an aggressive program to increase waste diversion, emphasizing commercial and residential source reduction and recycling
- Plastic bag management costs act as an obstruction to Washtenaw's commercial & residential recycling economy
- Hundreds of cities, counties, states & countries throughout Asia, Africa, Europe and North America have successfully adopted bag laws, including 225 US communities
- A growing number of Washtenaw County-based councils, boards, consortiums and residents have issued declarations of support for Washtenaw County to adopt a policy solution for the problem in the County, [view letters of support here](#)

Ordinance considers Eco-Fee, long-term Product Stewardship Policy Solution to Waste Management

- 10-cent eco-fee for each disposable bag (paper & plastic) provided to customer, to incentivize reusable bag use
- Retail grocery stores retain a percentage of eco-fee to offset administrative, labor, infrastructure-building, educational and other associated costs
- County uses eco-fee monies for solid waste management programs for plastic bags and product stewardship
- At least a 6-month delay between policy adoption and effective date of 2017 Earth Day (April 22, 2017)
- Retail grocery stores may apply for exemption
- Quarterly remittance and reporting required to monitor ordinance success
- Communities that adopt fee-based policies consistently demonstrate reduction in plastic bag consumption, litter, and contamination in recycling and waste streams, plus increased recycling rates
- Retail grocery stores report positive impacts: reduced property litter, increased reusable bag sales, decreased disposable bag costs, more opportunities for education and outreach, furthers internal sustainability policies & goals, and reflects community values

View [Board of Commissioner's 10/8/2015 Working Session video](#) with background information details.