



County of San Mateo

Inter-Departmental Correspondence

Department: BOARD OF SUPERVISORS
DISTRICT 1
File #: 20-347

Board Meeting Date: 5/26/2020

Special Notice: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Supervisor Dave Pine, District 1
Supervisor Carole Groom, District 2

Subject: Emergency Regulation Temporarily Suspending, Countywide, Any Requirement That Retail Establishments Charge for Recycled Paper Bags or Reusable Bags

RECOMMENDATION:

Adopt Emergency Regulation 2020-003 of the County of San Mateo temporarily suspending, Countywide, any requirement that retail establishments charge for recycled paper bags or reusable bags.

BACKGROUND:

As of May 20, 2020, the number of reported confirmed COVID-19 cases in California is 81,795 with 1687 in San Mateo County. The number of actual cases is almost certainly much higher, and will continue to increase.

Meanwhile, the economic impacts of the COVID-19 pandemic have been historically devastating. In the past eight weeks, more than 4 million workers in California, and 36 million workers nationwide, have filed first time claims for unemployment benefits, resulting in unemployment rates not seen since the depths of the Great Depression.

The County has not been spared these impacts, which are compounded by a residential rental market that ranks as one of the most expensive in the nation. Indeed, many of the County's renters are rent-burdened, paying over 30% of their income on rent, and some paying over 50% of their income on rent. This leaves less money available for other necessities, such as healthcare and food, and, for many County residents, little, if any money, to for additional charges or fees of any kind.

A. County and State Emergencies and Shelter-in-Place Orders

On March 3, 2020, pursuant to Section 101080 of the California Health and Safety Code, the San Mateo County Health Officer (the "Health Officer") declared a local health emergency throughout the County related to COVID-19. The Board of Supervisors (the "Board") ratified and extended this

declaration of local health emergency, which remains in effect.

In addition, on March 3, 2020, pursuant to Section 8630 of the California Government Code and Chapter 2.46 of the San Mateo County Ordinance Code, the San Mateo County Director of Emergency Services proclaimed a local emergency throughout San Mateo County related to COVID-19. The Board ratified and extended the proclamation of local emergency, and this local emergency (“Local Emergency”) remains in effect.

On March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency related to COVID-19 effective throughout California (“State Emergency”).

On March 16, 2020, the Health Officer issued an order that, among other things, directs all individuals currently living within San Mateo County to shelter in their place of residence (“County Shelter-in-Place Order”), and authorizes individuals to leave their residences only for certain “Essential Activities,” Essential Governmental Functions,” or to operate “Essential Businesses,” all as defined in the County Shelter-in-Place Order.

On March 19, 2020, Governor Newsom issued Executive Order N-33-20, which imposed a statewide shelter-in-place order requiring individuals to remain in their places of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors or to access necessities such as food, prescriptions, and health care or other authorized activities (“Statewide Shelter-in-Place Order”).

On March 31, 2020, April 29, 2020, and May 15, 2020, the Health Officer issued revised County Shelter-in-Place Orders, extending the expiration date of the original County Shelter-in-Place Order due to evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area. Although the revised County Shelter-in-Place Order issued on May 15, 2020 allows for the limited resumption of some businesses and activities within the County, it requires that most businesses and activities remain restricted until further order of the Health Officer.

B. County and State Protections to Minimize Contact Exposure at Retail Establishments from Re-Usable Bags

It is critical to protect public health and safety and minimize the risk of COVID-19 exposure to workers engaged in essential activities, such as those handling and bagging groceries or other retail products. Contact exposure at retail establishments from re-usable bags from people’s homes could spread COVID-19, necessitating precautions to reduce the risk of exposure to COVID-19. Accordingly, in order to minimize unnecessary contact during the COVID-19 pandemic, the County Shelter-in-Place Orders, the most recent of which was issued on May 15, 2020, require grocery stores and other retailers to prohibit customers from bringing their own bags into retail establishments.

On April 22, 2020, Governor Newsom issued Executive Order N-54-50, which, in part, suspends California Public Resources Code section 42283 for a period of 60 days to the extent that it prohibits retail establishments from providing, without charge, reusable bags or recycled paper bags to customers at point of sale.

C. Need for Temporary Suspension, Countywide, of Any Requirement That Retail Establishments Charge for Recycled Paper Bags or Reusable Bags

In 2012, the County adopted Chapter 4.114 of the San Mateo County Ordinance Code (“Chapter 4.114”), which prohibits retail establishments from providing, without charge, reusable bags or recycled paper bags to customers at point of sale, and Chapter 4.114 presently requires that retail establishments charge a minimum of twenty-cents per bag.

With the exception of the Cities of Woodside, Hillsborough and Atherton, all cities and towns located in San Mateo County have adopted ordinance code provisions analogous to Chapter 4.114, which presently require that retail establishments charge a minimum of twenty-five cents for each reusable bag or recycled paper bag provided to customers. Of those cities and towns located in San Mateo County that have adopted ordinance code provisions analogous to Chapter 4.114, each city, with the exception of the Cities of Millbrae and Half Moon Bay, has consented to enforcement of the ordinance by the Environmental Health Services Division of San Mateo County Health (“EHS”).

The Governor’s Executive Order N-54-20 does not apply to Chapter 4.114 because it was adopted prior to the State’s enactment of Public Resources Code section 42283 and, therefore, retail establishments countywide are still required to charge, and may still be charging, customers a minimum of twenty-five cents per bag for reusable bags and recycled paper bags.

In order to avoid the recyclable paper bag and reusable bag fees otherwise required under Chapter 4.114 and analogous ordinance code provisions of cities and towns located in San Mateo County, residents in the County may attempt to bring their own bags from home, which undermines the Health Officer’s prohibition on customers of retail establishments bringing reusable bags from home as a measure to prevent unnecessary contact during the COVID-19 pandemic.

In addition to jeopardizing public health, failure to immediately suspend Chapter 4.114 and analogous ordinance code provisions of cities and towns located in San Mateo County to the extent they prohibit retail establishments from providing without charge reusable bags or recycled paper bags to customers at point of sale, will worsen the already severe economic impacts of COVID-19 for many low-income residents.

The challenges of affording the high cost of living in the County have been exacerbated as a result of the Local Emergency and the issuance of the County and Statewide shelter-in-place orders to combat the COVID-19 emergency. Many County residents have experienced sudden and substantial income loss due to business and school closures, layoffs or reductions in work hours and extraordinary out-of-pocket medical expenses, making it extremely burdensome for them to pay any additional living expenses, however small.

Many County residents are struggling to pay for housing and other basic necessities, and may be especially harmed by the routine imposition of a charge for reusable bags or recyclable paper bags at retail establishments such as grocery stores when they are prohibited from bringing in their own reusable bags from home, owing to retail establishments implementing certain social distancing measures to reduce the risk of contact exposure to COVID-19 in compliance with Health Officer directives.

Given these consequences to public health and safety throughout the County - in both unincorporated and incorporated areas, the County finds and determines that an immediate

suspension of Chapter 4.114 and analogous ordinance provisions of cities and towns located in San Mateo County to the extent they prohibit retail establishments from providing without charge reusable bags or recycled paper bags to customers at point of sale until the date that retail establishments are no longer required, pursuant to Health Officer order or other authority, to prohibit customers from bringing their own bags into retail establishments, is necessary to curb the spread of COVID-19 across all areas of the County and contain the virus to the greatest extent possible and thereby serve the public peace, health and safety and welfare of residents.

In addition, EHS has received anecdotal information that some retailers in the County are presently not charging customers for recycled paper bags or reusable bags and this Emergency Regulation, if adopted, would clarify that retailers that make this accommodation for their customers will not be acting in violation of the County Ordinance or analogous city and town ordinances in doing so.

DISCUSSION:

A. Legal Authority for Emergency Regulation 2020-003

Section 8634 of the California Government Code provides that during a local emergency, the governing body of a political subdivision of the State, which includes the County of San Mateo, “may promulgate orders and regulations necessary to provide for the protection of life and property...” The law requires that such orders “shall be in writing and shall be given widespread publicity and notice.” (*Id.*) Chapter 2.46 of the County Ordinance Code tracks Section 8634 of the Government Code with respect to the adoption to emergency rules and regulations. Section 8558 of the Government Code defines “local emergency,” in part, to mean that “duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city...”

Construing the above and other relevant authorities, the California Attorney General has opined that when a county has declared a local emergency within its jurisdictional boundaries in an area that includes both the unincorporated area and incorporated territory, the county may adopt emergency rules and regulations pursuant to Section 8634 of the Government Code that will be effective in both unincorporated and incorporated areas. 62 Ops. Cal. Atty. Gen. 701 (1979).

Thus, the County has the authority to issue an emergency regulation that would apply throughout the entire geographic boundaries of the County, in both the unincorporated area and within incorporated cities and towns.

B. Nuts and Bolts of Emergency Regulation 2020-003

Emergency Regulation 2020-003 would temporarily suspend subsections C. and D. of Section 4.114.040 of Chapter 4.114, and analogous ordinance code provisions of cities and towns located in San Mateo County that mandate a minimum charge by retail establishments for the provision of reusable bags or recycled paper bags to customers.

Subsection C. of Section 4.114.040 of Chapter 4.114 provides that “[o]n or after January 1, 2015 a retail establishment may only make recycled paper bags or reusable bags available to customers if the retailer charges a minimum of twenty-five cents.”

Subsection D. of Section 4.114.040 of Chapter 4.114 provides that “[n]otwithstanding this section, no retail establishment may make available for sale a recycled paper bag or a reusable bag unless the

amount of the sale of such bag is separately itemized on the sale receipt.”

However, the Emergency Regulation does not prevent any retailer from charging for recyclable paper bags or reusable bags if the retailer chooses to do so.

The Emergency Regulation is Countywide, which means it applies in all cities and towns located within the County as well as in the unincorporated area. The Emergency Regulation would be effective until the date that retail establishments are no longer required, pursuant to Health Officer order or other authority, to prohibit customers from bringing their own bags into retail establishments.

FISCAL IMPACT:

Adoption of this Emergency Regulation 2020-003 will result in a temporary increased workload for EHS staff to notify the regulated community about this temporary change in enforcement and respond to public inquiries about the Emergency Regulation.