



Date: October 17, 2023

To: Mayor and City Council

From: Grace Hancock, Sustainability Manager
Jeff Brown, Community Health Administrator

Subject: Ordinance 2023-18: Amending Chapter 20 of the Edina City Code Concerning Merchant Carryout Bag Reduction

Information / Background:

Action Requested:

1. Approve Ordinance No. 2023-18 and grant second reading.
2. Direct staff at what level to enforce ordinance, if approved (proactive enforcement or on complaint)

Discussion:

Council asked the following questions at the October 3rd first reading of Ordinance 2023-18. Public Health and Sustainability staff compiled information to address these questions and facilitate a productive 2nd reading discussion:

- Is there a public health concern if a customer wants to transport takeout food using their own bag to avoid a fee?
 - There are inherent risks in transporting prepared food like food spillage, leakage, or touching very hot food and drink. However, since bags are not prohibited and shoppers can still pay a fee to receive a carryout bag, Public Health staff's opinion is that there is not a public health concern if a customer wants to transport carryout food in their own bag.
- Is there a public health concern related to excluding grocery produce bags from the carryout bag fee?
 - Most produce holds little risk in cross-contamination, even when purchased "loose," or purchased without packaging in a produce bag. However, produce bags are used for a wide array of grocery activities by customers, like to wrap raw meat products and protect from cross-contamination. For this reason, Public Health staff's opinion is that produce bags should continue to be excluded from a carryout bag fee. Continuing to exclude produce bags from the carryout bag fee would also keep Edina's proposed ordinance consistent with the City of Minneapolis', where many Edina customers also shop and many Edina businesses also operate.
- What potential issues do staff see with the proposed requirement that merchants offering plastic bags supply onsite plastic bag recycling, particularly with restaurants and the risk of recycling contamination through food residue on bags?

- Public Health staff's opinion is that there is a high risk of contamination in the plastic film recycling stream if restaurants are required to collect used plastic bags. If this provision is approved, staff recommends that restaurants be exempted.
- Beyond the contamination concern, Public Health staff's opinion is that the supply chain for plastic film (bag) recycling is not robust enough to support hundreds of small contracts, if all regulated merchants complied with this proposed requirement. Currently, there are only two contractors in the Twin Cities who can pick up plastic film and deliver it to film recycling plants.
- Staff recommend removing provision 3b related to offering plastic bag recycling due to supply chain constraints and risk of contamination. The ordinance proposal for this second reading has been updated to reflect this requirement.
- What are the financial impacts to City operations to fully implement and proactively enforce this ordinance proposal?
 - Estimated \$25,000 - The equivalent of 1 full-time staff person's work for 1 quarter would be required to launch an ordinance of this kind. Possible solutions include using existing staff time or hiring a consultant for the following activity:
 - Develop merchant roster for permit allocation, outreach and reporting
 - The estimated \$25,000 investment needed to develop a merchant roster for outreach and reporting would require a budget adjustment to allocate new funding from the general tax levy to Public Health.
 - Estimated \$120K - One new full time staff would be needed to fully implement and proactively enforce this ordinance proposal long-term. Activities would include:
 - Create new general business permit to operationalize proactive inspection and ordinance enforcement
 - Staff notes that a flat fee permit and associated administrative costs of compliance will likely impact smaller businesses disproportionately.
 - Follow up with merchants who have not complied with new permit requirement.
 - Inspect more than 400 businesses annually for compliance (majority of this FTE's time)
 - Manage penalty process for non-compliant merchants
 - Maintain merchant roster for outreach and reporting
 - Receive complaints from shoppers regarding non-compliant merchants
 - Answer merchant questions and provide resources to comply (resources to be developed as part of awareness campaign)
 - Manage annual Merchant report request by developing report template, notification, submittal and data analysis process.
 - Total cost for full implementation and proactive enforcement: \$145K in year one, \$120K ongoing.
- What are the financial impacts to City operations to administer this ordinance in a limited capacity, and avoid enforcement action except through educational resources shared on complaint?
 - At the first reading, Sustainability staff described the activities that City Operations would expect to undertake to administer, but not enforce, this ordinance. These activities include:
 - Estimated \$25,000 - The equivalent of 1 full-time staff person's work for 1 quarter would be required to launch an ordinance of this kind. Possible solutions include using existing staff time or hiring a consultant for the following activity:
 - Develop merchant roster for outreach and reporting
 - Estimated \$15K – 10% of existing staff's time would need to be permanently allocated away from organics recycling administration to this role. Activities would include:
 - Maintain merchant roster for outreach and reporting
 - Receive complaints from shoppers regarding non-compliant merchants and follow up with merchants to share educational materials

- Answer merchant questions and provide resources to comply (resources to be developed as part of awareness campaign)
 - Manage annual Merchant report request by developing report template, notification, submittal and data analysis process.
- Total cost for limited ordinance administration: \$40K in year one, \$15K ongoing.
- The estimated \$25,000 investment needed to develop a merchant roster for outreach and reporting would require a budget adjustment to allocate new funding from the general tax levy to Public Health.
- Public Health staff's opinion is that administering this ordinance in this limited capacity is feasible with current staff resources. Edina's Organics Recycling Coordinator could be temporarily reassigned to help implement this program, but would need to expand job duties to include this program on a permanent basis.
- Does the City have a legal pathway to recover some or all of the fee revenue accrued by merchants?
 - No. Additional legal review resulted in the following findings:
 - Fee revenue cannot be collected from everyone in the city or it will be deemed a tax; new taxes must be approved by the State Legislature.
 - The City can issue new licenses to regulated entities at a cost to these regulated entities, but it cannot withhold these licenses for non-compliance since doing so would violate the State's "ban on bag bans." Retailers must be allowed to offer bags and could not be stopped by revocation of their City license related to this requirement, otherwise the City's action would violate state law.
 - Nor is it advisable for the City to increase the cost of existing licenses on existing entities that might offer bags, since that would only affect restaurants (which are licensed by the City), but not retail or grocery stores (which are not licensed by the City).
 - The only legal pathway for the City to cover the cost of this ordinance proposal is to raise the tax levy to cover the cost of administration.
- What difference could this ordinance contribute to progress on Edina's climate action goals?
 - Expected benefit: other communities have seen demonstrable reductions in contamination rates for curbside recycling when a bag fee has been implemented.
 - When carryout bags are free, people "wish-cycle" with their carryout bags.
 - Potential benefits:
 - Small behavior changes can lead to larger ones. On its own, a bag fee has limited impact on greenhouse gas reductions or solid waste reductions, but there is qualitative evidence in other communities that a small behavior change can lead to more material changes like increased recycling and organics recycling rates, and lower consumption of single-use goods.
 - When people are aware that they are paying extra for a plastic bag, it inherently has more utility, and they are more likely to repurpose it for things like trash can liners and dog poop pickup. This reduces the need to purchase this specialized type of bag separately.
 - Microplastics are a contaminant of emerging concern in Minnesota; it's logical to expect that reduced carryout bag use would reduce microplastics in Minnesota waterways to some degree.
 - Unlikely benefits: A bag fee, on its own, will not reduce solid waste in Edina, since customers can still opt to purchase a carryout bag.

Conclusion

The Council has three options before it this evening:

- Option 1 (full enforcement) – Approve Ordinance 2023-18 and agree to fund full implementation and proactive enforcement of ordinance requirements via a general tax levy increase, estimated at \$145K in year 1, \$120K ongoing.
- Option 2 (limited administration) - Approve Ordinance 2023-18 and allow a mid-term budget adjustment to fund one-time \$25K ordinance launch costs.
- Option 3 – Do not approve Ordinance 2023-18, and do not require that merchants collect a pass-through fee of \$0.05 for carryout bags.

Appendix:

- Ordinance 2023-18 (excluding initial “3b” proposal)
- Summer 2023 public input summary, from businesses