

Plastic-bag coalition sues Manhattan

COURTS: Group argues that an EIR was required for the city to ban their product.

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As promised, a group of plastic retailers and manufacturers has sued Manhattan Beach for its recent ban on plastic bags.

The Save the Plastic Bag Coalition has asked a Los Angeles County Superior Court judge to toss out the prohibition on grounds that the city violated the California Environmental Quality Act by not fully analyzing the environmental effects of such a ban, according to papers filed recently.

The suit also asks a judge to declare the city has no power to ban plastic bags, even if it were to conduct a full environmental impact report.

"In order to afford the fullest possible environmental protection, an analysis of the ordinance's potential environmental impacts pursuant to CEQA is appropriate and necessary," the suit states.

The coalition - composed of about 10 plastic retailers and manufacturers - vowed in July to sue after the City Council approved the ban with hopes of reducing visual and environmental pollution it believes is caused by the ubiquitous plastic products.

"They said they were definitely going to sue," said City Attorney Bob Wadden, who had not yet seen the lawsuit Monday morning. "It would have been a surprise if they hadn't sued - a pleasant surprise."

In the suit, the coalition alleges Manhattan Beach did not fully analyze the ban's possible effects, and instead produced a "totally one-sided, anti-plastic bag

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advocacy document and not an objective or accurate assessment of the environmental impact of banning plastic bags."

"The whole basis is for years and years the anti-plastic bag activists have been saying anything they want about plastic bags and no one has been responding, and now they believe their own misinformation," said Stephen Joseph, an attorney representing the coalition.

The coalition argues that outlawing plastic bags would lead to a proliferation of paper bags, which members believe have more significant negative effects on the environment than their plastic counterparts.

But Manhattan Beach maintains it sufficiently analyzed the ban's possible environmental consequences, with city officials going so far as to delay its introduction until further study could be conducted.

Planning to file an exemption under CEQA, Manhattan Beach was ready to ban plastic bags in June, but halted progress when the coalition made a last-minute threat to sue should the city not study the possible negative environmental affects of a ban.

The coalition cited a 2008 Alameda County Superior Court decision invalidating a bag ban in the city of Oakland because it did not study the prohibition's environmental effects.

Hoping to avoid a similar situation - but believing a full-blown environmental impact report was unnecessary - Manhattan Beach performed an initial study that found no adverse effect on the environment.

But, in its suit, the coalition argues Manhattan should have done more than a cursory initial study.

Further, the suit alleges Manhattan Beach's staff report was flawed because it cites unfavorable conclusions about plastic bags based on a study conducted by a Swedish consulting group on behalf of a European paper bag producer.

"Respondents have abused their discretion and failed to act in a manner required by CEQA with respect to the ordinance, because they have failed to adequately address, analyze or otherwise consider the environmental impacts, necessary or foreseeable mitigation measures, or a reasonable range of alternatives to the ordinance," the suit states.

Manhattan Beach city officials were confident Monday that the initial study was sufficient and would hold up in court.

"I think we did comply with CEQA and I think we made a strong record," Wadden said. "I think it's a stretch to say we should be required to prepare an environmental impact report on something like this."

The city did more than its due diligence in researching and drafting its ban, evidenced by its decision in June to delay plans and reassess the prohibition's possible effects, Mayor Richard Montgomery said Monday.

"We've done everything if not more, and I firmly believe the evidence will support that," he said. "We watched what happened in the city of Oakland, and they didn't do their homework. It was a credit to our staff and council to step back and say `Let's not misfire. Let's cross the t's and dot the i's, and then move forward.'"

Last month, the coalition filed suit against Los Angeles County for its January adoption of a phased-in, voluntary ban on plastic bags.

In that suit, the group alleges that the county also violated CEQA by not fully analyzing the ban's possible effects on the environment.

The Los Angeles City Council late last month approved a policy pledging to ban plastic bags should the state not impose by 2010 a 25-cent fee on every shopper who requests the carriers.

Gardena is conducting an initial environmental study of a possible plastic bag ban and plans to report findings to its council within the next month or so, City Manager Mitch Lansdell said.

And other cities throughout the state have apparently contacted Manhattan Beach with questions about its ban and staff report, Montgomery said.

But if those cities move forward with prohibitions modeled after Manhattan Beach's staff report, they can expect a challenge from the coalition, Joseph said.

"We'll sue every single one, and only for the same reason: We want to see a proper environmental impact report," he said. "It's all we're asking for - a report where there is really well-researched, objective, independent information."

Joseph cautioned cities toying with plastic bag bans to wait for a legal outcome in Manhattan's case.

Montgomery said he was disappointed by the suit.

"It's unfortunate that the coalition has taken this stance, and even more so after the overwhelming support we've received not just from our residents but our community of local business owners," he said.

"They are all aware that the debate is not paper versus plastic," Montgomery added. "The goal is moving toward reusable bags. I'm more than disappointed that they think this is worthy of appearing in court over."

Lawsuit or not, Manhattan Beach plans to move forward with its ban, which gives food vendors and pharmacies six months - and other retailers a year - to phase out point-of-sale plastic bags, the mayor said.

Though it expects a high compliance rate, the city has planned an aggressive outreach program to educate residents and local businesses about the ban and plastic bag alternatives.

"Absolutely we will continue forward until if and when the courts rule differently," Montgomery said. "Our plan is full-speed ahead."

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