

Manhattan sued for plastic bag ban

Published August 21, 2008

by Danny Brown

Manhattan Beach might have thought it bagged itself a big one for the environment when it banned the use of plastic bags this summer, but now plastic bag retailers are fighting back and suing the city over its bag banning ordinance.

Savetheplasticbag.com—a coalition of plastic bag manufacturers and distributors—filed a suit with the Los Angeles Superior Court on Aug. 9, hoping to bring an end to the city's prohibition against plastic bags which takes effect this December.

In the suit the coalition argued Manhattan Beach defied the California Environmental Quality Act (CEQA) by failing to conduct an Environmental Impact Report (EIR) that addressed how the ban may or may not hurt the environment.

“It's amazing that people who are purportedly protecting the environment don't want to do an environmental impact report,” said Stephen L. Joseph, an attorney representing savetheplasticbag.com.

Manhattan Beach City Lawyer Bob Wadden said CEQA only requires an EIR if the project in question has a “significant impact on the environment,” otherwise alternative forms of environmental review are sufficient.

Mayor Richard Montgomery believed the suit wasn't merely a product of the city's decision not to conduct an environmental impact report.

“They didn't sue Malibu because they said it was too small,” he said. “But somehow the City of Manhattan Beach fits the bill for them and they feel they can stop a growing trend to ban plastic bags using us as the example.”

He estimated he's been contacted by 10 to 15 council members from other cities who expressed interested in enacting a similar ban since the Manhattan Beach City Council unanimously voted in July to ban plastic bags.

“I was asked about it so much that I should have started carrying the ordinance around on me,” he joked.

But if those cities follow Manhattan Beach's staff report, they'd better be ready for a legal battle, Joseph warned.

Savetheplasticbag.com is currently litigating against Los Angeles County for adopting a phase-in voluntary ban on plastic bags enacted last January, on the grounds that it also violated CEQA by not studying the ban's full environmental effects.

“If any counties or cities come forward with a ban on plastic bags without doing an environmental impact report we’ll file similar lawsuits,” Joseph said.

But Montgomery and the city lawyer believe the city’s report sufficiently analyzes the environmental impacts a ban would have.

“Our report was extensive to the point where it exceeds every requirement set forth by CEQA,” Montgomery said. “We even pushed it back a month before passing it to give our staff time to dot its I’s and cross its T’s.”

In June the City Council stalled passing its ordinance when an 11th-hour letter from Savetheplasticbag.com threatened to sue the city unless it revised its seven-page staff report and addressed the negative environmental impacts of banning plastic bags. In response, the city staff drafted a 489-page report.

When councilmembers unanimously ratified the ordinance a month later the group vowed to sue.

Savetheplasticbag.com claimed plastic bags have unfairly been the subject of vilification and the city’s report was “a totally one-sided anti-plastic bag advocacy document.”

To counter this bias, the suit said: “Petitioners... believe that EIRs will force governmental entities to make decisions about plastic bags based on the truth instead of myths, misinformation and exaggerations.”

Outlawing plastic bags would increase the number of paper bags, which it argued are more harmful to the environment.

Manhattan Beach recognized that paper bags generate waste and require more energy to manufacture and recycle in its staff report.

But Mayor Montgomery said the issue isn’t about paper versus plastic.

“My focus is on eliminating the number one source of litter in our community,” he said, adding that the ultimate goal is to get more people to move to reusable bags.

The city lawyer said that even if Manhattan Beach had conducted an EIR the coalition would have still sued:

“The coalition was going to sue the city no matter what the city did; this lawsuit has nothing to do with environment and everything to do with preserving the market for plastic bags. It is about money.”

Savetheplasticbag.com does not hide the fact that it would have sued even if Manhattan Beach had complied with CEQA.

In a second and much shorter clause of the lawsuit, the coalition asks the judge to

invalidate the prohibition on the grounds that the city does not have the power to ban plastic bags.

“A city should not have the power to ban a product just because it ends up as litter,” said Joseph. “That’s an extremely far reaching power. Then the city could ban any commercial product it wants to because it ends up as trash somewhere.”

“I believe a city has the authority and moral obligation to preserve and protect its own streets, beaches and oceans,” said Montgomery.

The ban gives city grocery stores, food vendors, restaurants, pharmacies and city facilities six months to transition from plastic bags, and it gives all other establishments a year.

“We’re not putting our necks out on the line in doing this,” Montgomery said. “We’ve had strong community support throughout the process and will continue full-speed ahead until we’re told by a court not to do so, which I feel will be highly unlikely.” ER