

Dpt 86 Yoda

STEPHEN L. JOSEPH (SBN 189234)

P.O. Box 221
Tiburon, California 94920-0221
Telephone: (415) 577-6660
Facsimile: (415) 869-5380
E-mail: sljoseph@earthlink.net

AFSHIN DAVID YOUSSEFYEH (SBN 185994)

LIZA YOUSSEFYEH (SBN 192945)

ADY Law Group
1875 Century Park East, Suite 1490
Los Angeles, California 90067
Telephone: (310) 601-3640
Facsimile: (310) 388-3907
E-mail: ady@adylaw.com

Attorneys for Petitioner
SAVE THE PLASTIC BAG COALITION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

**CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court**

AUG 17 2008

John A. Clarke, Executive Officer/Clerk

[Signature]
BY **SHAUNYA WESLEY**, Deputy

BS116362

SAVE THE PLASTIC BAG COALITION,
an unincorporated association,

Petitioner,

v.

CITY OF MANHATTAN BEACH, a
municipal corporation; CITY COUNCIL OF
MANHATTAN BEACH, collectively and in
their official capacities; and DOES 1-20,
inclusive,

Respondents.

) Case No. ~~BS115845~~ **N.S.**
)
) **VERIFIED PETITION FOR WRIT OF**
) **MANDATE UNDER THE CALIFORNIA**
) **ENVIRONMENTAL QUALITY ACT AND**
) **REQUEST FOR DECLARATORY RELIEF**

) Code Civ. Proc. §§ 1085, 1060;
) Pub. Res. Code § 21168.5
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 3 Tiburon, California 94920-0221
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15 Attorneys for Petitioner
 16 **SAVE THE PLASTIC BAG COALITION**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 **SAVE THE PLASTIC BAG COALITION,**
 17 an unincorporated association,

18 Petitioner,

19 v.

20 **CITY OF MANHATTAN BEACH,** a
 21 municipal corporation; **CITY COUNCIL OF**
 22 **MANHATTAN BEACH,** collectively and in
 23 their official capacities; and **DOES 1-20,**
 24 inclusive,

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)
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1 Petitioner, SAVE THE PLASTIC BAG COALITION, an unincorporated association,
2 alleges as follows:

3 **PARTIES AND JURISDICTION**

4 1. This is an action seeking a writ of mandate to set aside, void, annul, and
5 terminate the implementation and enforcement of Ordinance No. 2115 (the "Ordinance") that
6 was adopted by Respondents CITY OF MANHATTAN BEACH (the "City") and CITY
7 COUNCIL OF MANHATTAN BEACH (the "Council") on July 15, 2008.

8 2. A true and correct copy of the Ordinance is attached as Exhibit A hereto and
9 incorporated herein by reference.

10 3. The Ordinance prohibits all retailers, grocery stores, food vendors, restaurants,
11 pharmacies, and City facilities in Manhattan Beach from providing plastic carry-out bags
12 (hereinafter "plastic bags") to customers at the point of sale. The Ordinance takes effect six
13 months from its effective date.

14 4. Respondents violated the California Environmental Quality Act ("CEQA") by
15 failing and refusing to prepare an Environment Impact Report ("EIR") prior to adopting the
16 Ordinance. Pub. Res. Code § 21000, *et seq.*

17 5. SAVE THE PLASTIC BAG COALITION is an unincorporated association. Its
18 members include, but are not limited to, plastic bag manufacturers and distributors directly and
19 indirectly affected and prejudiced by the Ordinance. Some of the member companies sell and
20 distribute plastic bags to retailers, restaurants, and other businesses in Manhattan Beach. On
21 behalf of its member companies and the retailers, restaurants, and residents of Manhattan
22 Beach, Petitioner challenges the City's adoption of the Ordinance.

23 6. Petitioner's membership includes, but is not limited to, the following: (i) Elkay
24 Plastics Co., Inc., (ii) Crown Poly, Inc., and (iii) Grand Packaging, Inc. doing business as
25 "Command Packaging." All of these companies supply plastic bags to businesses in Manhattan
26 Beach.

27 7. Plastic bags have been the subject of a vilification campaign by various groups
28 purporting to promote environmental values.

1 8. Such groups have used myths, misinformation, and exaggerations to promote
2 their goal of banning plastic bags.

3 9. On March 8, 2008, an editorial in the London Times stated as follows: ""Many
4 of those who have demonized plastic bags have enlisted scientific study to their cause. By
5 exaggerating a grain of truth into a larger falsehood they spread misinformation, and abuse the
6 trust of their unwitting audiences."

7 10. One environmental group, Californians Against Waste, states on its website that
8 "plastic bag manufacturers may indeed be behind a vast global conspiracy aimed at increasing
9 the proliferation of plastic bag litter and waste." This statement allegation exemplifies the
10 hysteria about plastic bags.

11 11. One reason for the formation of Petitioner coalition was to counter such myths,
12 misinformation and exaggerations by publishing the truth about plastic bags. In July 2008,
13 Petitioner launched a website at www.savetheplasticbag.com to provide factual information to
14 the public and decision-makers. No plastic industry studies are cited on the website. All
15 citations are to reports by governmental entities, environmental groups, or independent
16 organizations.

17 12. Another reason for the formation of Petitioner coalition was to file lawsuits to
18 require governmental entities to prepare EIRs before banning or taking action against plastic
19 bags. Petitioner's members believe that EIRs will force governmental entities to make decisions
20 about plastic bags based on the truth instead of myths, misinformation and exaggerations.

21 13. Petitioner has standing as an association to bring this action, because (i) its
22 members would otherwise have standing to sue on their own behalf; (ii) the interests Petitioner
23 seeks to protect in this lawsuit are germane to the organization's purpose; and (iii) neither the
24 claims asserted herein, nor the relief requested, require participation of the members in this
25 lawsuit. This action involves public rights, and Petitioner's objective in bringing this action is
26 that of an interested citizen seeking to procure enforcement of Respondents' public duties and
27 compliance with applicable state and local laws.
28

1 14. In accordance with Public Resources Code § 21177(a) and (b), the alleged
2 grounds for noncompliance with CEQA were presented to Respondents orally and in writing by
3 Petitioner during the public comment period provided by CEQA and prior to the close of the
4 public hearing on the proposed ordinance before the issuance of the notice of determination.

5 15. The City is a municipal corporation in the State of California, County of Los
6 Angeles, exercising governmental power.

7 16. The City is the “lead agency” responsible for compliance with CEQA, including
8 but not limited to preparation of an EIR. The “City of Manhattan Beach” is identified as the
9 “lead agency” in the City’s Initial Study/Environmental Checklist dated June 12, 2008 which is
10 attached hereto as Exhibit G.

11 17. The Ordinance is a “project” under CEQA Guidelines § 15378(a)(1).

12 18. The Council is the legislative body duly authorized to legislate and act on behalf
13 of the City. The Council is responsible for complying with CEQA.

14 19. Petitioner is ignorant of the true names and capacities of DOES 1 through 20,
15 inclusive, and therefore sues said Respondents by such fictitious names. Petitioner will amend
16 this Petition to allege their true names and capacities when ascertained. Petitioner is informed
17 and believes and thereon alleges that each of these fictitiously named Respondents were, and
18 continue to be, responsible in some manner for the acts or omissions herein alleged.

19 20. Petitioner is informed and believes and thereon alleges that at all relevant times,
20 each Respondent, including the DOE Respondents, were the agents, employees, or partners of
21 each of the other Respondents, and were at all times acting within the purpose and scope of
22 their employment, agency or partnership, or at the direction of the other Respondents.

23 21. This Court has jurisdiction over the matters alleged in this Petition pursuant to
24 Code of Civil Procedure § 1085, and/or § 1094.5, and Public Resources Code § 21167.

25 22. Venue is proper in this Court under § 394(a) of the Code of Civil Procedure.

26 **STATEMENT OF FACTS**

27 23. City staff presented a Staff Report dated June 3, 2008 to the Council along with
28 a proposed ordinance to ban plastic bags. The purpose of the proposed ordinance, according to

1 said Staff Report, was to promote the “sustainability of our environment.” A true and correct
2 copy of said Staff Report and the proposed ordinance are attached hereto as Exhibit B and
3 incorporated herein by reference.

4 24. The June 3, 2008 Staff Report was a totally one-sided anti-plastic bag advocacy
5 document and was not an objective or accurate assessment of the environmental impact of
6 banning plastic bags. City staff included therein many of the myths, misinformation and
7 exaggerations that had been published about plastic bags on various websites.

8 25. On June 3, 2008, Petitioner filed a letter with Respondents objecting to said Staff
9 Report and addressing the myths, misinformation, and exaggerations therein. In the letter,
10 Petitioner requested and demanded that an EIR be prepared prior to adoption of the proposed
11 ordinance in order to ascertain the truth. Among other points in the letter, Petitioner identified
12 ways in which paper carryout bags (hereinafter “paper bags”) are worse for the environment
13 than plastic bags. A true and correct copy of said letter is attached hereto as Exhibit C and
14 incorporated herein by reference. Petitioner simultaneously filed the following two further
15 documents with Petitioner.

- 16 • A printout of an article in the London Times dated March 8, 2008 regarding sea
17 animals and seabirds entitled: “Series Of Blunders Turned The Plastic Bag Into
18 Global Villain.” A true and correct copy of the article is attached to Exhibit D
19 and incorporated herein by reference.
- 20 • The Oakland Decision (which is discussed below). A true and correct copy of
21 the Oakland Decision is attached hereto as Exhibit E and incorporated herein by
22 reference.

23 26. A Council meeting was held on June 3, 2008, following receipt by Respondents
24 of said letter.

25 27. At said meeting, the City Attorney commented on said letter and told the
26 Council that the City would not need to prepare a full EIR. He told the Council that the purpose
27 of the exercise was merely to “beef up the record” to justify a plastic bag ban and that as long as
28 a study was not “obviously flawed” it would be good enough. He also told the Council: “What

1 we are looking for is studies that say why plastic is bad.”

2 28. On June 5, 2008, the following report appeared in *Easy Reader*, a local
3 publication:

4 [Manhattan Beach] Councilman Jim Aldinger said the [Save The
5 Plastic Bag Coalition] was hijacking environmental law, harboring
6 ulterior motives other than the improvement of the environment.
“Using CEQA for this purpose is ridiculous,” he said.

7 29. On June 10, 2008, Petitioner filed a letter with Respondents objecting to the City
8 Attorney’s comments referenced above. A true and correct copy thereof is attached hereto as
9 Exhibit F and incorporated herein by reference.

10 30. On June 12, 2008, the City issued a Draft Initial Study/Environmental Checklist
11 containing a finding that the proposed ordinance could not possibly have a significant negative
12 effect on the environment and stating that a Negative Declaration would be prepared. A true
13 and correct copy thereof is attached hereto as Exhibit G and incorporated herein by reference.

14 31. On June 18, 2008, Petitioner filed formal objections to the proposed Negative
15 Declaration, again demanding that an EIR be prepared prior to a vote on the proposed
16 ordinance. A true and correct copy thereof is attached hereto as Exhibit H and incorporated
17 herein by reference.

18 32. The City published a second Staff Report dated July 1, 2008. A true and correct
19 copy thereof is attached hereto as Exhibit I and incorporated herein by reference.

20 33. Said Staff Report was a totally one-sided anti-plastic bag advocacy document
21 and not an objective or accurate assessment of the environmental impact of banning plastic
22 bags.

23 34. Said Staff Report cited a study “prepared by an independent Swedish
24 Environmental Consulting Group” published in 2000. The report included unfavorable findings
25 about the environmental impact of plastic bags compared to paper bags.

26 35. Said Staff Report failed to disclose that the Swedish study was in fact prepared
27 on behalf of European paper bag producers and was not independent at all.

28 36. Said Staff Report also failed to disclose that the Swedish study contained the

1 following statement: "It is noted that the products analyzed in this study are fundamentally
2 different products to checkout carrier bags – they are bigger bags." In fact, the plastic bags that
3 were the subject of the Swedish study were approximately ten times thicker and heavier than
4 plastic carryout bags.

5 37. The misinformation in the July 1, 2008 Staff Report about the Swedish report
6 was misinformation disseminated to the residents and businesses of Manhattan Beach.

7 38. On July 1, 2008, the Council held a meeting to vote on the proposed ordinance.

8 39. Prior to the July 1, 2008 vote, Petitioner's counsel, Stephen Joseph, made public
9 comments to the Council and filed supplemental objections addressing the July 1, 2008 Staff
10 Report. A true and correct copy of the supplemental objections is attached hereto as Exhibit J
11 and incorporated herein by reference.

12 40. In all of the aforementioned letters and objections and in Petitioner's counsel's
13 public comments on July 1, 2008, Petitioner requested and demanded that Respondents prepare
14 an EIR to ascertain the truth about the environmental impact of banning plastic bags before the
15 Council voted on the proposed ordinance.

16 41. The Ordinance adopted on July 15, 2008 states as follows:

17 An Initial Environmental Study was prepared in compliance with the
18 provisions of [CEQA]. Based upon this study it was determined that
19 the project is not an action involving any significant impacts upon
20 the environment, and a Negative Declaration was prepared and is
hereby adopted.

21 42. No EIR was ever prepared prior to the adoption of the Ordinance by the Council
22 on July 15, 2008.

23 **IMPACT OF PLASTIC BAGS ON MARINE ENVIRONMENT**

24 43. In Section 1 of the Ordinance, the sole reason stated for its adoption was the
25 impact of plastic bags on the marine environment.

26 44. Section 1 states that plastic bags are carried by the wind and find their way into
27 the ocean where they do not break down and remain indefinitely.

28 45. Section 1 further states as follows:

1 While plastic does not bio-degrade it does "photo-degrade" breaking
2 down into smaller pieces which can make their way into the food
3 chain vis [sic] such animals as jellyfish.

4 While their exact numbers are unknown there are many reported
5 instances of marine animals being injured or dying from ingesting or
6 choking on plastic debris in the ocean. It is reasonable to conclude
7 from such information that the presence of plastic debris in the
8 ocean provides a hazard for marine life.

9 46. Section 1 of the Ordinance makes the finding that "plastic debris" is responsible
10 for the alleged injuries to marine animals, not plastic bags. Plastic debris is not the same thing
11 as plastic bags. Plastic debris would include hard plastics, plastic bottles, and other plastic
12 items.

13 47. Respondents did not conduct any research into the issue of whether marine
14 animals are being injured or dying from ingesting or choking on plastic bags in the ocean.
15 (Hereinafter the term "marine animals" includes marine mammals.)

16 48. In the London Times article (Exhibit D) that Petitioner filed with the City on
17 June 3, 2008, the claim that large numbers of marine animals and seabirds are dying from
18 ingesting or choking on plastic bags is shown to be a myth based on a typographical error.

19 49. In its June 3, 2008 objections filed with the City, Petitioner disputed that many
20 marine animals or seabirds are being injured or dying as a result of plastic bags in the ocean.
21 Petitioner continues to dispute it. While there may have been an occasional occurrence, there is
22 no evidence that plastic bags are a continuing significant problem for marine animals or
23 seabirds.

24 50. Heal the Bay is a group based in Santa Monica, California that advocates the
25 banning of plastic bags. Sarah Abramson, Director of Coastal Resources at Heal the Bay, has
26 admitted as follows:

27 When we conduct an autopsy on an animal, it's difficult to figure
28 out what plastic killed it, but going off of the statistics we have from
the amount of high amount of plastic bags found during beach clean-
ups and the large number that wind up in catch basins, it's fair to say
a good percentage of the plastic debris marine life are consuming is
from plastic bags.

1 51. The foregoing statement by Sarah Abramson confirms that environmentalists are
2 merely assuming that plastic bags are injuring or killing marine animals.

3 **ENVIRONMENTAL IMPACTS OF INCREASING PAPER BAG USAGE**

4 52. The Ordinance will inevitably have the effect of increasing the usage of paper
5 bags.

6 53. As stated in Petitioner's June 3, June 18, and July 1, 2008 objections, paper bags
7 have greater significant negative environmental effects than plastic bags.

8 54. Compared with plastic bags, paper bags have significant negative environmental
9 effects, including but not limited to:

- 10 • 1.1 times increased consumption of nonrenewable primary energy.
- 11 • 4.0 times increased consumption of water.
- 12 • 3.3 times increased emission of climate changing greenhouse gases;
- 13 • 1.9 times increased acid rain (atmospheric acidification);
- 14 • 1.3 times increased negative air quality (ground level ozone formation);
- 15 • 14.0 times increased water body eutrophication (defined below); and
- 16 • 2.7 times increased solid waste production.

17 "Eutrophication" means the process by which a body of water becomes rich in dissolved
18 nutrients, thereby encouraging the growth and decomposition of oxygen-depleting plant life and
19 resulting in harm to other organisms.

20 55. The foregoing negative environmental impacts are described in a report by the
21 "Scottish Government" issued in 2005 entitled: "Proposed Plastic Bag Levy- Extended Impact
22 Assessment Report" that Petitioner filed with the City on June 18, 2008 with Exhibit H.

23 56. In addition, the "Revised Analysis of Life Cycle Assessment (LCA) Relating to
24 Grocery Bags" issued by Use-Less-Stuff ("ULS") in March 2008 summarizes the
25 environmental impacts of plastic and paper bags and states:

26 Plastic bags generate 39% less greenhouse gas emissions than
27 uncomposted paper bags, and 68% less greenhouse gas emissions
28 than composted paper bags. The plastic bags generate 4,645 tons of
CO2 equivalents per 150 million bags; while uncomposted paper
bags generate 7,621 tons, and composted paper bags generate

1 14,558 tons, per 100 million bags produced.

2 Plastic bags consume less than 6% of the water needed to make
3 paper bags. It takes 1004 gallons of water to produce 1000 paper
4 bags and 58 gallons of water to produce 1500 plastic bags.

5 Plastic grocery bags consume 71% less energy during production
6 than paper bags. Significantly, even though traditional disposable
7 plastic bags are produced from fossil fuels, the total non-renewable
8 energy consumed during their lifecycle is up to 36% less than the
9 non-renewable energy consumed during the lifecycle of paper bags
10 and up to 64% less than that consumed by biodegradable plastic
11 bags.

12 Using paper sacks generates almost five times more solid waste than
13 using plastic bags.

14 After four or more uses, reusable plastic bags are superior to all
15 types of disposable bags -- paper, polyethylene and compostable
16 plastic -- across all significant environmental indicators.

17 Legislation designed to reduce environmental impacts and litter by
18 outlawing grocery bags based on the material from which they are
19 produced will not deliver the intended results. While some litter
20 reduction might take place, it would be outweighed by the
21 disadvantages that would subsequently occur (increased solid waste
22 and greenhouse gas emissions). Ironically, reducing the use of
23 traditional plastic bags would not even reduce the reliance on fossil
24 fuels, as paper and biodegradable plastic bags consume at least as
25 much non-renewable energy during their full lifecycle.

26 Petitioner filed a copy of the ULS Report with the City on June 18, 2008 with Exhibit H.

27 57. Paper bags degrade in landfills while plastic bags do not. Decomposing paper
28 produces methane, a potent greenhouse gas.

58. Paper bags attract cockroaches, including the German cockroach, while plastic
bags do not. This is a significant negative environmental impact in houses, apartment blocks,
restaurants and food service establishments, and other places.

59. In the June 3, 2008 Staff Report, there was no mention of any negative
environmental impacts of paper bags. In the Ordinance as adopted on July 15, 2008, Petitioner
made the following admission:

1 Plastic and paper bags each have negative impacts on the
2 environment. It is well known that paper bags require more energy
3 to manufacture and recycle and generate effluent during these
4 processes. It is also known that paper bags are bulkier and heavier
5 than plastic bags.

6 CEQA PROCEDURES NOT FOLLOWED

7 60. Respondents claim that the Ordinance will benefit the environment. However,
8 the Ordinance will not produce the benefits that Respondents claim.

9 61. Banning plastic bags in Manhattan Beach will have no significant effect on
10 marine animals or the marine environment.

11 62. Substantial evidence exists that by favoring paper bags over plastic bags, the
12 Ordinance will result in significant adverse environmental impacts as paper bags are
13 substantially worse for the environment than plastic bags.

14 63. If the City would have prepared an EIR prior to adopting and implementing the
15 Ordinance, the Council and the electorate would have known the true facts, including but not
16 limited to the ways in which and the extent to which paper bags are worse for the environment
17 than plastic bags; the extent to which marine animals are injured by plastic bags; and the extent
18 to which banning plastic bags would have any material effect.

19 64. One of the key purposes of an EIR is to "[d]isclose to the public the reasons why
20 a governmental agency approved the project in the manner the agency chose if significant
21 environmental effects are involved." CEQA Guidelines §15002(a)(4). The following quotations
22 from judicial opinions are found in the CEQA Guidelines §15003.

23 "The EIR requirement is the heart of CEQA."

24 "The EIR serves not only to protect the environment but also to
25 demonstrate to the public that it is being protected."

26 "The EIR is to demonstrate to an apprehensive citizenry that the
27 agency has, in fact, analyzed and considered the ecological
28 implications of its action."

"The EIR process will enable the public to determine the
environmental and economic values of their elected and appointed
officials thus allowing for appropriate action come election day
should a majority of the voters disagree."

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65. The public has being denied such information by Respondents.

66. Section 1 of the Ordinance states as follows:

“This ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) in that the activity will not result in direct or indirect or reasonably foreseeable direct or indirect physical change to the environment. Additionally, this ordinance is exempt from CEQA Guidelines Section 15308 as a regulatory program to protect the environment.”

67. As alleged above, the Ordinance will in fact result in a significant negative impact on the environment.

68. CEQA Guidelines Section 15308 is inapplicable as there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances including the fact that paper bags are worse for the environment than plastic bags. CEQA Guidelines 15300.2(c). Further, the regulatory process does not involve procedures for the protection of the environment.

69. Respondents have not acted in good faith regarding compliance with CEQA.

70. 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. Given the adverse impacts to the environment as outlined above, Respondents’ failure to comply with CEQA before adopting the Ordinance necessitates the need for this Court to issue a writ of mandate to set aside, void, annul, and terminate the enforcement and implementation of the Ordinance.

71. Accordingly, Petitioner requests that this Court issue a writ of mandate to set aside, void, annul, and terminate the implementation and enforcement of the Ordinance.

72. Petitioner also requests preliminary and permanent injunctive relief to maintain the status quo as necessary to prevent significant harm to the environment, unless and until Respondents comply with CEQA.

73. This is also an action for declaratory relief seeking a judicial declaration that Respondents have no power to ban plastic bags even if they comply with CEQA.

1 **THE OAKLAND DECISION**

2 74. In July 2007, the City of Oakland adopted an ordinance banning plastic bags.

3 75. In August 2007, the "Coalition To Support Plastic Bag Recycling" filed a
4 lawsuit against the City of Oakland and the City Council of Oakland in the Alameda County
5 Superior Court for failure to prepare an Environmental Impact Report pursuant to CEQA prior
6 to adopting the ordinance. *Coalition To Support Plastic Bag Recycling v. City of Oakland, et*
7 *al.*, Case No. RG07-339097.

8 76. In April 2008, the Alameda County Superior Court issued a writ of mandate
9 against the City of Oakland and invalidated the ordinance, because the city had failed to prepare
10 an EIR pursuant to CEQA. The court found that there was a possibility that the ordinance would
11 have a significant adverse environmental impact because the banning of plastic bags would
12 result in increased paper bag usage. The court based its ruling on the Scottish Government and
13 ULS reports referenced above. The Alameda Superior Court's ruling is referred to herein as the
14 "Oakland Decision." A true and correct copy of the ruling is attached hereto as Exhibit E.

15 77. While the ruling of the Alameda County Superior Court is not binding on this
16 Court, it is nevertheless persuasive.

17 **NO ADEQUATE REMEDY AT LAW**

18 78. Petitioner has no plain, speedy or adequate remedy at law and will suffer
19 irreparable harm, in that if enforcement of the Ordinance is not immediately enjoined, the
20 significant negative environmental impacts of increased usage of paper bags will occur.

21 79. It is necessary for this Court to provide provisional and permanent remedies to
22 Petitioner by means of an injunction and a writ of mandate to prevent Respondents, and each of
23 their agents, officers, employees, representatives, duly elected officials, and all persons acting
24 in concert or participating with them, from implementing or continuing to implement the
25 Ordinance.

26 **ATTORNEY'S FEES**

27 80. Petitioner brings this action under Code of Civil Procedure § 1021.5, and other
28 applicable laws, which entitle Petitioner to an award of attorney's fees in actions to enforce an

1 important right affecting the public interest, such as the CEQA violation alleged herein.

2 81. In addition to § 1021.5, or in the alternative, Petitioner brings this action on the
3 basis of Government Code § 800, which entitles Petitioner to an award of attorney's fees to
4 overturn Respondents' arbitrary and capricious approval of the Ordinance.

5 **FIRST CAUSE OF ACTION**

6 (Non-compliance with CEQA against both Respondents)

7 82. Petitioner realleges and incorporates herein each and every allegation contained
8 in the above paragraphs.

9 83. Respondents have abused their discretion and failed to act in a manner required
10 by CEQA with respect to the Ordinance, because they have failed to adequately address,
11 analyze, or otherwise consider the environmental impacts, necessary or foreseeable mitigation
12 measures, or a reasonable range of alternatives to the Ordinance.

13 84. Respondents abused their discretion by adopting the Ordinance without prior
14 compliance with CEQA, including but not limited to preparation of an EIR.

15 85. Said abuse of discretion by Respondents is prejudicial to Petitioner and the
16 interests that it represents in this action.

17 **SECOND CAUSE OF ACTION**

18 (Declaratory relief against both Respondents)

19 86. Petitioner realleges and incorporates herein each and every allegation contained
20 in the above paragraphs.

21 87. An actual controversy has arisen and now exists between Petitioner and
22 Respondents.

23 88. Petitioner contends that Respondents have no power to ban plastic bags.

24 89. Pursuant to Code. Civ. Proc. § 1060, Petitioner requests a judicial determination
25 and declaration that said contentions are legally correct.

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1 PRAYER FOR RELIEF

2 WHEREFORE, Petitioner prays for:

3 A. A peremptory or alternative writ of mandate directing:

4 i. Respondents to set aside, void, annul, and terminate the enforcement and
5 implementation of the Ordinance and the resolution adopting the Ordinance
6 for failure to comply with CEQA;

7 ii. Respondents to comply with CEQA, including the preparation of a legally
8 adequate EIR, before taking any action that would limit or ban plastic bag
9 usage or distribution; and

10 iii. A stay of all action preventing Respondents from implementing or enforcing
11 the Ordinance, pending final resolution of this action.

12 B. For preliminary and permanent injunctive relief.

13 C. A judicial determination and declaration that Respondents have no power to ban
14 plastic bags.

15 D. For reasonable attorney's fees.

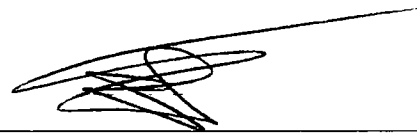
16 E. For costs of this suit incurred herein.

17 F. For other such further relief as the Court may deem just and proper.
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DATED: August 9, 2008

STEPHEN L. JOSEPH



Attorney for Petitioner
SAVE THE PLASTIC BAG COALITION

DATED: August 9, 2008

ADY LAW GROUP



AFSHIN YOUSEFFYEH
Attorney for Petitioner
SAVE THE PLASTIC BAG COALITION

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VERIFICATION

I, Stephen L. Joseph, declare:

1. I am an attorney at law duly admitted and licensed to practice in the State of California.
2. I am one of the attorneys of record for Petitioner, SAVE THE PLASTIC BAG COALITION, in the above-entitled matter.
3. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND REQUEST FOR DECLARATORY RELIEF and know the contents thereof.
4. I am informed and believe that the matters stated therein are true and, on that ground, I allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Tiburon, California on August 9, 2008.

STEPHEN L. JOSEPH

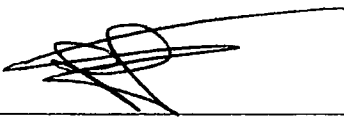


EXHIBIT A

ORDINANCE NO. 2115

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, ADDING A NEW SECTION 5.88.010 TO A NEW "ENVIRONMENTAL REGULATIONS" CHAPTER 5.88 TO TITLE 5 OF THE MANHATTAN BEACH MUNICIPAL CODE PROHIBITING THE USE OF PLASTIC CARRY-OUT BAGS

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach hereby finds as follows:

- A. As a coastal city Manhattan Beach has a strong interest in protecting the marine environment an element which contributes to the unique quality of life in the City:
- B. Plastic and paper bags each have negative impacts on the environment. It is well known that paper bags require more energy to manufacture and recycle and generate effluent during these processes. It is also known that paper bags are bulkier and heavier than plastic bags.
- C. However a primary and significant problem with plastic bags is that they do not biodegrade and are extremely light and easily caught in the wind. In a coastal city like Manhattan Beach even plastic bags which are properly discarded can find their way into the marine environment where they do not break down and essentially remain indefinitely.
- D. The Pacific Ocean contains a huge accumulation of debris known as the "Great Pacific Garbage Patch" which consists mostly of plastic debris. Some scientists estimate the density of plastic in this garbage patch as one million pieces of plastic per square mile. While plastic does not bio-degrade it does "photo-degrade" breaking down into smaller pieces which can make their way into the food chain via such animals as jellyfish.
- E. While the exact numbers are unknown there are many reported instances of marine animals being injured or dying from ingesting or choking on plastic debris in the ocean. It is reasonable to conclude from such information that the presence of plastic debris in the ocean provides a hazard for marine life.
- F. Because there is a strong possibility that plastic bags discarded in Manhattan Beach can end up in the ocean where they will last indefinitely and create an aesthetic blight and potential hazard to marine life (and paper bags will not do so because they biodegrade and are less likely to be blown out to sea) it is in the best interests of the public health, safety and welfare to adopt the proposed ban on distribution of plastic bags at point of sale within the boundaries of the City of Manhattan Beach.
- G. The City Council of the City of Manhattan Beach conducted a noticed public hearing regarding the project at their regular scheduled meeting of July 1, 2008. The public hearing was advertised pursuant to applicable law and testimony was invited and received.
- H. An Initial Environmental Study was prepared in compliance with the provisions of the California Environmental Quality Act. Based upon this study it was determined that the project is not an action involving any significant impacts upon the environment, and a Negative Declaration was prepared and is hereby adopted.
- I. The proposed amendments will have no negative impact on Fish and Game resources pursuant to Section 21089(b) of the Public Resources Code.

SECTION 2. A new Section 5.88.010 is hereby added to a new Chapter 5.88 "Environmental Regulations" in Title 5 of the Manhattan Beach Municipal Code to read as follows:

"CHAPTER 5.88 ENVIRONMENTAL REGULATIONS"

Section 5.88.010 Prohibition Of Plastic Carry-Out Bags

(a). Definitions:

For purposes of this chapter, the following terms shall have the following meanings:

"Affected Retail Establishment" means any retail establishment located within or doing business within the geographical limits of the City of Manhattan Beach.

"City Sponsored Event" means any event organized or sponsored by the City of Manhattan Beach or any Department of the City of Manhattan Beach.

"Customer" means any person obtaining goods from an Affected Retail Establishment, Vendor or Non-Profit Vendor.

"Grocery Store" means any dealer in staple foodstuffs, meats, produce and dairy products and usual household supplies.

"Non-Profit Vendor" means a recognized tax exempt organization which provides goods as a part of its services.

"Person" means any natural person, firm, corporation, partnership or other organization or group however organized.

"Pharmacy" means a retail use where the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescription medications are offered for sale.

"Plastic Carry-Out Bag" or "Plastic Bag" means any bag made from plastic (including compostable and biodegradeable plastic), excluding reusable bags, provided by an Affected Retail Establishment, Vendor or Non-Profit Vendor to a customer at the point of sale for the purpose of carrying away goods.

"Recyclable" means material that can be sorted, cleansed, and reconstituted using Manhattan Beach's available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

"Recyclable Paper Bag" means a paper bag that meets all of the following requirements: (1) contains no old growth fiber; (2) is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content; and (3) displays the words "Reusable" and "Recyclable" in a highly visible manner on the outside of the bag.

"Retail Establishment" means any commercial business facility that sells goods directly to the ultimate consumer including but not limited to grocery stores, pharmacies, liquor stores, "mini-marts," and retail stores and vendors selling clothing, food and personal items.

"Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is either: (1) made of cloth or other machine washable fabric; or (2) made of other durable material suitable for reuse.

"Vendor" means any store, shop, restaurant, sales outlet or other commercial establishment located within or doing business within the City of Manhattan Beach, which provides perishable or non-perishable goods.

(b). Plastic Carry-Out Bags Prohibited

- A. No Affected Retail Establishment, Restaurant, Vendor or Non-Profit Vendor shall provide Plastic Carry-Out Bags to customers at the point of sale. Reusable Bags and Recyclable Paper Bags are allowed alternatives.
- B. Nothing in this section shall be read to preclude Affected Retail Establishments, Restaurants, Vendors and Non-Profit Vendors from making Recyclable Paper Bags available to customers.
- C. Affected Retail Establishments are strongly encouraged to provide incentives for the use of Reusable Bags through education and through credits or rebates for customers that use Reusable Bags at the point of sale for the purpose of carrying away goods.
- D. No person shall distribute Plastic Carry-Out Bags at any City facility or any event held on City property.
- E. This Chapter shall apply only to Plastic Carry-Out Bags provided at the point of sale for the purpose of carrying away goods. This Chapter shall not apply to single-use plastic produce bags distributed in a grocery store exclusively for the purpose of transporting produce to the point of sale.

(c). Exemption.

The City Manager, or his or her designee, may exempt an Affected Retail Establishment, Vendor or Non-Profit Vendor from the requirements of this Chapter for a period of up to one additional year after the operative date of this Ordinance, upon sufficient showing by the applicant that the provisions of this Chapter would cause undue hardship. The phrase undue hardship includes:

- A. Situations where there are no acceptable alternatives to Plastic Carry-Out Bags for reasons which are unique to the Retail Establishment, Vendor or Non-Profit Vendor;
- B. Situations where compliance with the requirements of this Code would deprive a person of a legally protected right.*

SECTION 3. All other provisions of Manhattan Beach Municipal Code shall remain unchanged and continue in full force and effect.

SECTION 4. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinances of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 5. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 6. This Ordinance shall become operative as to: 1) Grocery Stores, Food Vendors, Restaurants, Pharmacies and City facilities six (6) months after its effective date; and 2) all remaining Affected Retail Establishments, Vendors and Non-Profit Vendors one (1) year after its effective date.

SECTION 7. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the

City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 15th day of July, 2008.

Ayes:
Noes:
Absent:
Abstain:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

APPROVED AS TO FORM:

By

City Attorney

EXHIBIT B



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Montgomery and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Lindy Coe-Juell, Assistant to the City Manager

DATE: June 3, 2008

SUBJECT: Consideration of an Ordinance to Prohibit the Use of Plastic Carry-Out Bags in Manhattan Beach

RECOMMENDATION:

Staff recommends that the City Council: 1) conduct the public hearing, 2) waive further reading, and 3) introduce Ordinance No. 2115. This ordinance would ban all point-of-sale plastic carry-out bags within the City of Manhattan Beach. This ban would take effect for grocery stores, food vendors, restaurants, pharmacies and City facilities six months after the ordinance is adopted and one year after adoption for all other retail establishments and vendors. Based on research regarding what other cities have done and of several other policy alternatives, staff believes that that a ban of plastic bags is the best option for the sustainability of our environment.

FISCAL IMPLICATION:

There are no direct budget implications related to the Staff recommendation. There will, however, be Staff time involved with outreach and education. Also, though we expect a high rate of compliance, there may be Staff time involved with enforcement issues.

BACKGROUND:

The City Council, as a part of its 2008-2009 Work Plan, asked Staff to investigate and provide information on strategies to ban plastic bag use, including what other cities have done. This report provides information for a discussion of banning plastic carry-out bags used at the point-of-sale.

DISCUSSION:

The Problem

Plastic carry-out bags (or plastic bags), which are generally petroleum based, have been found to significantly contribute to litter and to have many negative impacts on the environment. Plastic bags were first introduced by retail stores in the United States in 1975 and began to be distributed to customers at the point-of-sale in grocery stores in 1977. Today these bags are ubiquitous in the marketplace because they are light-weight, strong and inexpensive.

According to the California Integrated Waste Management Board (CIWMB), approximately 6 billion plastic bags are consumed in Los Angeles County each year. This number is equivalent to

Agenda Item #: _____

600 bags per person per year. Plastic bags are recyclable, however less than 5 percent are actually recycled. Research conducted by the County of Los Angeles found that this is largely due to the logistics of sorting, high contamination rates, the tendency of the bags to jam the screens used to separate materials at the recycling facilities, the low quality of plastic used in the bags and the lack of suitable markets for the recycled plastic resin.

Plastic bags have a propensity to become litter and to adversely effect the marine environment. Due to their expansive and lightweight characteristics, they are easily windblown and end up littering landscaping, streets, streams, storm drain systems and, ultimately, the ocean. Plastic bags are a significant source of marine debris and are hazardous to birds and marine animals. The California Coastal Commission estimates that 60-80 percent of all marine debris, and 90 percent of floating debris, is plastic.

Plastic bags pose a particular problem for wildlife that mistake the bags for food, and as a result, ingest the bags thereby starving or suffocating. It is estimated that more than 1 million sea birds, 100,000 marine mammals and countless fish die annually through ingestion of and entanglement in marine debris, including plastic bags¹. Whales and birds often swallow plastic bags inadvertently during feeding. Turtles swallow the bags since they resemble their main food source, jellyfish. Plastic bags are also known to smother plants, restricting growth and destroying the natural habitat².

Bag Alternatives

The primary alternatives to plastic bags are reusable bags, made from cloth or other durable materials, and paper bags. These options are widely available in the marketplace and are currently being used at grocery stores, restaurants and other retail stores. Reusable bags are the best alternative for several reasons. Accelerating the widespread use of reusable bags would conserve energy and natural resources, reduce the total volume of waste disposed in landfills, diminish plastic bag litter and help to promote a clean and sustainable environment. Although reusable bags are the preferred option, paper bags do not have the same impact on the environment as plastic bags do. They are heavier, not easily blown by the wind, they will biodegrade in water and are made from renewable resources (especially if recycled paper content is used). Paper bags also have a higher recycling rate, estimated at 21 percent by the US EPA.

Biodegradable plastic bags are not a viable option for Southern California even though they have been considered as an alternative to plastic bags in cities such as San Francisco and Oakland. Northern California has the commercial composting facilities needed to process biodegradable bags; however, these types of facilities are not available in our area. The biodegradable bags have the same lightweight and inflatable qualities as regular plastic bags that allow them to become windblown and litter the environment. Additionally, although the biodegradable bags will break down under properly maintained composting conditions, they will not break down quickly enough in the marine environment to avoid impacts to wildlife. They also have the potential to contaminate plastic recycling programs and will cause the same problems, with clogging recycling

¹N. Wallace. "Debris Entanglement in the Marine Environment: A Review" pp 259-277 in Proceedings of the Workshop on the Fate and Impact of Marine Debris, U.S. Department of Commerce, NOAA Technical Memorandum, 1985.

² United Nations Environment Program, www.unep.org.

screens, at sorting facilities as do the regular plastic bags.

Policy Alternatives

Several U.S. cities and many Countries have adopted various policy strategies from fees to voluntary programs to reduce the consumption of plastic bags. Of these strategies, per bag fees have been shown to be particularly effective. In March 2002, Ireland became the first Country to introduce a plastic tax, or "PlasTax" at the rate of 20 (U.S.) cents. Ireland's tax resulted in a 90 percent reduction in the consumption of plastic bags and the funds received are earmarked for a green fund established to benefit the environment. Although the per bag fees have been shown to be effective in reducing plastic bag consumption, that option is not available in California due to current state law.

The California State Legislature enacted Assembly Bill 2449, which took effect on July 1, 2007. This law requires stores with over 10,000 square feet or gross annual sales of \$2 million or more to provide customers the option to return clean plastic carry-out bags for recycling. It also requires these stores to make reusable bags available to customers for purchase. Additionally, and of importance to local governments, AB 2449 prohibits a city, county or other public agency from imposing a per bag fee.

The Legislature is looking to pass a new measure that would build upon and strengthen AB 2449. However, recent actions have postponed the effort. AB 2829 proposed a statewide fee of 25 cents per bag to be effective by 2009. On April 14th, the Assembly Natural Resources Committee voted against AB 2829. Instead, they passed a competing bill (AB 2058) that would give grocery stores and large drug stores three years to meet recycling goals to reduce plastic bags with an eventual fee of 15 cents if the recycling targets are not met.

On January 22, 2008, the Los Angeles Board of Supervisors voted to reduce plastic bag use by enacting voluntary reductions of 30 percent and 65 percent by 2010 and 2013 respectively. If these targets are not met by the deadlines, a mandatory ban may be implemented. Although this is a step in the right direction, international experience shows that voluntary programs will probably not be effective in reducing plastic bag litter. In 2002, the Australian federal government began a voluntary initiative to reduce plastic bag consumption by 50 percent and plastic bag litter by 75 percent by 2005. After retailers had spent \$50 million on education efforts, recycling rates did increase but there was no change in the amount of plastic bag litter. In January 2008, the Australian federal government announced plans to eliminate the use of plastic carry-out bags by the end of 2008, in part because the voluntary program did not achieve the desired results.

Other Countries that have banned plastic bags include Taiwan, Kenya, Rwanda, Bangladesh, Germany, Sweden and China. Within California, the cities of San Francisco and Oakland have banned the distribution of non-biodegradable plastic bags. However, as mentioned above, appropriate commercial composting facilities are available in Northern California making the use of biodegradable bags a viable alternative. On May 12, 2008, Malibu became the first City in California to ban all point-of-sale plastic bags and the City of Santa Monica is set to adopt a similar ordinance this month.

Staff Recommendation

Staff recommends that the City Council adopt Ordinance No. 2115, which would ban all point-of-

sale plastic carry-out bags within the City of Manhattan Beach. This ban would take effect for grocery stores, food vendors, restaurants, pharmacies and City facilities six months after the ordinance is adopted and one year after adoption for all other retail establishments and vendors. Staff believes that a ban of plastic bags is the best policy alternative for the sustainability of our environment because of the readily available alternatives of reusable and paper bags and because the current state law that prohibits a plastic bag fee.

If the City Council decides to adopt Ordinance No. 2115, Staff will begin an aggressive education and outreach campaign to inform our residential and business community of the ban and to promote personal stewardship and responsibility in the use of reusable and paper bag alternatives. Among the outreach activities, we will advertise in local papers, post information on our website, distribute information at upcoming public events and include the information in our City-wide newsletter.

Through our education and outreach campaign, we will also work with business groups like the Chamber of Commerce, the Downtown Business and Professional Association and the Village Mall. We have already made contact with the Executive Directors of these groups, and they expressed support for the ordinance. Additionally, we have contacted Waste Management, our solid waste and recycling contractor, to find out how we may be able to track the progress our the ban. They have offered to conduct a waste audit of materials arriving at their recycling facilities before and after the ban to assess the percentage of plastic bags. Waste Management has also offered to assist with targeted education and outreach to certain areas as needed based on the results of the audit.

Based on the initial support expressed by members of our community, both residents and business affiliated, we expect to have a high rate of compliance with this point-of-sale plastic bag ban. However, we will plan to provide warnings and work with businesses to promote awareness of the ban before moving to enforcement through citations. We have also included an exemption clause in the ordinance whereby businesses that show the ban would cause undue hardship may be granted a one-year extension to comply by the City Manager.

Part of the evolving, and improving, awareness of environmental stewardship includes the idea of the "four R's": reduce, reuse, recycle and *rethink*. The ultimate goal of our outreach campaign will be to reach people on the importance of changing behavior by switching to reusable bags for carrying goods in order to make a positive and sustainable collective impact on the environment.

ALTERNATIVES:

1. Adopt Ordinance No. 2115 to prohibit the use of plastic carry-out bags in Manhattan Beach.
2. Provide direction to support the County's Reduction and Recycling program.
3. Provide other direction.

ATTACHMENT: Ordinance No. 2115

ORDINANCE NO. 2115

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, ADDING A NEW SECTION 5.88.010 TO A NEW "ENVIRONMENTAL REGULATIONS" CHAPTER 5.88 TO TITLE 5 OF THE MANHATTAN BEACH MUNICIPAL CODE PROHIBITING THE USE OF PLASTIC CARRY-OUT BAGS

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach hereby finds as follows:

- A. This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) in that the activity will not result in direct or indirect or reasonably foreseeable direct or indirect physical change to the environment. Additionally this ordinance is exempt from CEQA Guidelines Section 15308 as a regulatory program to protect the environment.
- B. The proposed amendments will have no impact on Fish and Game resources pursuant to Section 21089(b) of the Public Resources Code.

SECTION 2. A new Section 5.88.010 is hereby added to a new Chapter 5.88 "Environmental Regulations" in Title 5 of the Manhattan Beach Municipal Code to read as follows:

"CHAPTER 5.88 ENVIRONMENTAL REGULATIONS"

Section 5.88.010 Prohibition Of Plastic Carry-Out Bags

(a). Definitions:

For purposes of this chapter, the following terms shall have the following meanings:

"Affected Retail Establishment" means any retail establishment located within or doing business within the geographical limits of the City of Manhattan Beach.

"City Sponsored Event" means any event organized or sponsored by the City of Manhattan Beach or any Department of the City of Manhattan Beach.

"Customer" means any person obtaining goods from an Affected Retail Establishment, Vendor or Non-Profit Vendor.

"Grocery Store" means any dealer in staple foodstuffs, meats, produce and dairy products and usual household supplies.

"Non-Profit Vendor" means a recognized tax exempt organization which provides goods as a part of its services.

"Person" means any natural person, firm, corporation, partnership or other organization or group however organized.

"Pharmacy" means a retail use where the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescription medications are offered for sale.

"Plastic Carry-Out Bag" or "Plastic Bag" means any bag made from plastic (including compostable and biodegradable plastic), excluding reusable bags, provided by an Affected Retail Establishment, Vendor or Non-Profit Vendor to a customer at the point of sale for the purpose of carrying away goods.

"Recyclable" means material that can be sorted, cleansed, and reconstituted using Manhattan Beach's available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

"Recyclable Paper Bag" means a paper bag that meets all of the following requirements: (1) contains no old growth fiber; (2) is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content; and (3) displays the words "Reusable" and "Recyclable" in a highly visible manner on the outside of the bag.

"Retail Establishment" means any commercial business facility that sells goods directly to the ultimate consumer including but not limited to grocery stores, pharmacies, liquor stores, "mini-marts," and retail stores and vendors selling clothing, food and personal items.

"Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is either: (1) made of cloth or other machine washable fabric; or (2) made of other durable material suitable for reuse.

"Vendor" means any store, shop, restaurant, sales outlet or other commercial establishment located within or doing business within the City of Manhattan Beach, which provides perishable or non-perishable goods.

(b). Plastic Carry-Out Bags Prohibited

- A. No Affected Retail Establishment, Restaurant, Vendor or Non-Profit Vendor shall provide Plastic Carry-Out Bags to customers at the point of sale. Reusable Bags and Recyclable Paper Bags are allowed alternatives.
- B. Nothing in this section shall be read to preclude Affected Retail Establishments, Restaurants, Vendors and Non-Profit Vendors from making Recyclable Paper Bags available to customers.
- C. Affected Retail Establishments are strongly encouraged to provide incentives for the use of Reusable Bags through education and through credits or rebates for customers that use Reusable Bags at the point of sale for the purpose of carrying away goods.
- D. No person shall distribute Plastic Carry-Out Bags at any City facility or any event held on City property.
- E. This Chapter shall apply only to Plastic Carry-Out Bags provided at the point of sale for the purpose of carrying away goods. This Chapter shall not apply to single-use plastic produce bags distributed in a grocery store exclusively for the purpose of transporting produce to the point of sale.

(c). Exemption.

The City Manager, or his or her designee, may exempt an Affected Retail Establishment, Vendor or Non-Profit Vendor from the requirements of this Chapter for a period of up to one additional year after the operative date of this Ordinance, upon sufficient showing by the applicant that the provisions of this Chapter would cause undue hardship. The phrase undue hardship includes:

- A. Situations where there are no acceptable alternatives to Plastic Carry-Out Bags for reasons which are unique to the Retail Establishment, Vendor or Non-Profit Vendor;
- B. Situations where compliance with the requirements of this Code would deprive a person of a legally protected right."

SECTION 3. All other provisions of Manhattan Beach Municipal Code shall remain unchanged and continue in full force and effect.

SECTION 4. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinances of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 5. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 6. This Ordinance shall become operative as to: 1) Grocery Stores, Food Vendors, Restaurants, Pharmacies and City facilities six (6) months after its effective date; and 2) all remaining Affected Retail Establishments, Vendors and Non-Profit Vendors one (1) year after its effective date.

SECTION 7. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 17th day of June, 2008.

Ayes:
Noes:
Absent:
Abstain:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

EXHIBIT C

LAW OFFICES
of
STEPHEN L. JOSEPH, ESQ.

P.O. BOX 221
TIBURON, CA 94920-0221

Admitted in California and the District of Columbia

TELEPHONE: (415) 577-6660
FAX: (415) 869-5380
E-MAIL: sljoseph.law@earthlink.net

June 3, 2008

To: City Council
Geoff Dolan, City Manager
Lindy Coe-Juell, Assistant to City Manager
City Attorney

City of Manhattan Beach
City Hall
1400 Highland Avenue
Manhattan Beach, CA 90266

Via fax to (310) 802-5001; (310) 802-5251
Via e-mail to gdolan@citymb.info; lcoe-juell@citymb.info

RE: Legal objection to proposed ordinance to ban plastic bags and proposed hearing; CEQA demand; notice of intent to file lawsuit

Dear Sirs and Madam:

I represent the Save The Plastic Bag Coalition, a newly formed group of companies that will be affected by any ordinance to ban or impose fees on plastic bags.

PURPOSE OF THE COALITION

The Coalition's position on plastic bag bans and fees is as follows:

- A. The plastic bag is an excellent product that has been unfairly attacked and stigmatized.
- B. The anti-plastic bag campaign is based on myths, misinformation, gross exaggerations, and misconceptions propagated by groups, government officials, and politicians who have shown little or no interest in the facts and demonstrate no serious understanding or concern about the environmental or economic

consequences of their actions. Such governmental officials and politicians are overreaching and denying freedom of choice to businesses and consumers.

- C. Imposing fees on or banning plastic carryout bags would result in a massive switch to paper carryout bags, notwithstanding the availability of reusable bags. It is therefore critically important to ensure that government officials, politicians, and the public know the truth about both plastic and paper bags and are provided with accurate information about their comparative environmental and economic merits and advantages.
- D. In the plastic versus paper debate, there is no reason why paper should be accorded preferential treatment. There is also no reason why consumers should be made to feel guilty about choosing plastic over paper.
- E. The Coalition will defend the right of businesses to distribute, and the right of consumers to receive, free plastic bags.

THE STAFF REPORT

The Coalition hereby responds to the City of Manhattan Beach Staff Report on the consideration of an ordinance to prohibit use of plastic carryout bags, dated June 3, 2008.

STAFF REPORT: "Plastic carry-out bags (or plastic bags), which are generally petroleum based...."

RESPONSE: This is incorrect. Plastic bags are made from a gaseous by-product of oil.

STAFF REPORT: "Today these bags are ubiquitous in the marketplace because they are light-weight, strong and inexpensive."

RESPONSE: These are reasons NOT to ban them. They are an excellent and extremely useful product that consumers want, need, and should be entitled to use if they wish.

STAFF REPORT: "According to the California Integrated Waste Management Board (CIWMB), approximately 6 billion plastic bags are consumed in Los Angeles County each year."

RESPONSE: "Plastic bags" includes produce bags, retail bags, newspaper bags, and dry cleaning bags. It is true that many plastic bags are used, because as the Staff Report states they are "light-weight, strong and inexpensive." Coalition members are *proud* that consumers like and choose their products. The plastic bag

industry is certainly not going to apologize to anyone for creating a good product that people want and use in large numbers.

STAFF REPORT: "Plastic bags are recyclable, however less than 5 percent are actually recycled."

RESPONSE: Plastic bags are indeed recyclable. However, cities that allow the curbside recycling of plastic bags must ensure that plastic bags are not just thrown in recycling bins. Unfortunately, the City of Manhattan Beach does not have a good curbside program for plastic bags. The Coalition is ready to have discussions with you on ways to improve your curbside program. The Coalition has a lot of expertise in this area.

AB 2449 came into effect in July 2007, mandating the placement of plastic bag recycling bins in large stores. The City of Manhattan Beach should be promoting this program instead of disregarding it. It could also encourage smaller stores not covered by AB 2449 to participate.

In any event, burying plastic bags in landfills is not a significant issue. Less than 0.3 percent of landfills consist of plastic bags (including produce bags, retail bags, newspaper bags, and dry cleaning bags). Plastic bags take up very little space in landfills because they are thin.

Is the City of Manhattan Beach proposing to ban all of the items that make up the remaining 99.97% of landfills?

Fortunately, plastic bags do not break down in landfills. Virtually nothing breaks down in a landfill because the contents are not exposed to air or light. Products that do break down in landfills emit methane, a climate-changing gas. Moreover, when plastic bags are in landfills, they are not causing litter or any other kind of problem.

The issue of burying plastic bags in landfills has been grossly exaggerated.

STAFF REPORT: "Plastic bags have a propensity to become litter and to adversely affect the marine environment. Due to their expansive and lightweight characteristics, they are easily windblown and end up littering landscaping, streets, streams, storm drain systems and, ultimately, the ocean. Plastic bags are a significant source of marine debris and are hazardous to birds and marine animals. The California Coastal Commission estimates that 60-80 percent of all marine debris, and 90 percent of floating debris, is plastic."

RESPONSE: Some plastic bags end up as litter, obviously. Out of the 6 billion bags that the Staff Report says are used in Los Angeles County each year, it would be fair to assume that *at least* 99.9999% do *not* end up as litter.

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Plastic bags are not alone in the litter stream. Cigarette butts, soda cans, bottles, and many other items become litter. Is the City of Manhattan beach proposing to ban all such items? Why are plastic bags being singled out for unique and special treatment?

We do not understand why the report states that 60-80 percent of all marine debris is "plastic" and 90 percent of floating debris is "plastic." Why is that relevant? Not all plastic is plastic bags. There are many thousands of other products made from plastic too.

STAFF REPORT: "Plastic bags pose a particular problem for wildlife that mistake the bags for food, and as a result, ingest the bags thereby starving or suffocating. It is estimated that more than 1 million sea birds, 100,000 marine mammals and countless fish die annually through ingestion of an entanglement in marine debris, including plastic bags. Whales and birds often swallow plastic bags inadvertently during feeding. Turtles swallow the bags since they resemble their main food source, jellyfish. Plastic bags are also known to smother plants, restricting growth and destroying the natural habitat."

RESPONSE: When we complain about myths, misinformation, errors, and misconceptions propagated by groups, government officials, and politicians who have shown little or no interest in the facts, it is exactly this kind of defamatory and baseless statement that we are talking about.

The London Times is one of the most respected newspapers in the world. No one accuses the Times of a pro-business or anti-environmental bias. Along with this letter, I am sending you a Times article published on March 8, 2008 entitled: "Series of blunders turned the plastic bag into global villain." The reports states:

"The central claim of campaigners is that the bags kill more than 100,000 marine mammals and one million seabirds every year. However, this figure is based on a misinterpretation of a 1987 Canadian study in Newfoundland, which found that, between 1981 and 1984, more than 100,000 marine mammals, including birds, were killed by discarded nets. The Canadian study did not mention plastic bags.

Fifteen years later in 2002, when the Australian Government commissioned a report into the effects of plastic bags, its authors misquoted the Newfoundland study, mistakenly attributing the deaths to "plastic bags".

The figure was latched on to by conservationists as proof that the bags were killers. For four years the "typo" remained uncorrected. It was only in 2006 that the authors altered the report, replacing "plastic

bags” with “plastic debris”. But they admitted: “The actual numbers of animals killed annually by plastic bag litter is nearly impossible to determine.”

In a postscript to the correction they admitted that the original Canadian study had referred to fishing tackle, not plastic debris, as the threat to the marine environment.

Regardless, the erroneous claim has become the keystone of a widening campaign to demonise plastic bags.”

A marine biologist from Greenpeace told The Times: “It’s very unlikely that many animals are killed by plastic bags,” he said. “The evidence shows just the opposite.” A marine biologist from the British Natural History Museum told The Times: “I’ve never seen a bird killed by a plastic bag.”

In response to the article, the embarrassed British government minister charged with eliminating plastic bags wrote to The Times stating:

“We have never said that plastic bags were a leading cause of death in marine animals, though general plastic waste does make a contribution. There are nonetheless serious reasons for our aim to end the practice of dispensing for free, single use bags. They are a significant cause of litter.... Most of the rest of the 13 billion bags used each year end up in landfill. They are a potent *symbol* of our throwaway society and public opinion recognizes this. Of course, these bags contribute only a small part of the waste that leads to climate-changing emissions, but we need to change the small things as well as the large and to work with the grain of public opinion.”
[Emphasis added.]

Ideological symbolism, not truth and environmental protection, is driving the anti-plastic bag campaign.

We know how your residents love the ocean, but getting them agitated about the effects of plastic bags on marine life based on misinformation is highly irresponsible.

STAFF REPORT: The primary alternatives to plastic bags are reusable bags, made from cloth or other durable materials, and paper bags.... Although reusable bags are the preferred option, paper bags do not have the same impact on the environment as plastic bags do.”

RESPONSE: If plastic bags are banned, it is obvious that paper bag usage will massively increase. Here are the facts about paper bags.

- It takes 13 to 17 trees to make one ton of paper bags. [Source: EPA] Over a million tons of paper bags are used in the United States each year. That's 13 to 17 million trees annually.
- At least four out of five carryout bags used at present are plastic. If plastic carryout bags are banned, the number of trees that would have to be chopped down, turned to pulp, and treated with chemicals to create paper bags would multiply. Nobody knows the number, but it could exceed 50 million every year.
- It takes more than four times more energy to manufacture a paper bag than a plastic bag. [Source: EPA] It takes 85 times more energy to recycle paper bags than plastic bags. [Source: USA Today]
- Paper bags are about 10 times heavier than plastic bags. [Source: EPA] That means it takes about 10 times more diesel fuel consuming trucks to deliver paper bags. *At a time when fuel prices are sky high, and diesel could soon cost \$6 per gallon or more, this is a very serious concern.*
- The manufacture of paper bags generates 70 percent more air pollutants and 50 times more water pollutants than plastic bags. [Source: Comparison of the Effects on the Environment of Polyethylene and Paper Carrier Bags, Federal Office of the Environment, August 1988.]
- Paper bags produce 80% more solid waste than plastic bags. [Source: EPA] Paper bags take up about nine times more space in landfills than plastic bags. [Source: USA Today]
- Current research demonstrates that paper in today's landfills does not degrade or break down at a substantially faster rate than plastic does. [Source: EPA]

Paper bags cost up to five times more for stores to purchase than plastic bags, a fact that is not even mentioned in the Staff Report. Your staff may not consider it significant, but your residents will think it is *very* significant if they have to pay more for their groceries at a time when food prices are escalating.

The impact of a massive switch to paper bags would be enormous. Are these the results that the City of Manhattan Beach is looking for?

FURTHER COMMENT ON STAFF REPORT

The Staff Report makes no mention of the economic impact of its recommendation. This is an inexcusable omission. There will be an effect on the cost of shopping and an impact on jobs if plastic bag bans are passed. We hope that the City Council is sensitive to this issue that the staff apparently believes is not important enough to mention.

Americans are very protective of their right to make choices and deeply resent the government interfering with or removing those choices. This too is not mentioned in the Staff Report, signifying that the staff attaches no importance to it whatsoever. This is a serious misreading of public sentiment.

The Staff Report is packed with bare assertions, misinformation, and illogical conclusions. We have not responded to all of them in this letter, because (as discussed below) the City of Manhattan Beach is *required by law* to do a proper environment study before holding a hearing and passing an ordinance. If and when that study is done, we will respond to the findings therein at that time.

LEGAL OBJECTIONS AND CEQA DEMAND

Section 1(A) of the proposed Ordinance reads as follows:

“This ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) in that the activity will not result in direct or indirect or reasonably foreseeable direct or indirect physical change to the environment. Additionally this ordinance is exempt from CEQA Guidelines Section 15308 as a regulatory program to protect the environment.”

The Alameda Superior Court has ruled that no city or county in California may ban plastic bags without first doing an environmental study pursuant to the California Environmental Quality Act (CEQA). *The City of Oakland passed a plastic bag ban without doing a CEQA environmental study first and the court struck the law down.* The court stated as follows in its ruling:

“The court also finds that substantial evidence in the record supports at least a fair argument that single-use paper bags are more environmentally damaging than single use plastic bags.”

Incredibly, there is no mention in the Staff Report of the Alameda Superior Court’s decision on this point. A copy of the ruling is provided herewith for your review.

The purpose of CEQA is to make absolutely sure that cities like Manhattan Beach fully research and analyze the facts and evidence before making decisions that affect the

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environment, rather than relying on poorly researched and erroneous staff reports. The CEQA law was created with the support of the environmental community to ensure that local governments did not inadvertently enact laws that hurt the environment.

The Coalition and its members *strongly object* to any attempt by the City of Manhattan Beach to disregard the environmental review requirements of CEQA. We will file a lawsuit against the City of Manhattan if an ordinance banning plastic bags is passed without a prior environmental study that conforms fully with all of the CEQA requirements.

The Staff Report states that "staff believes that a ban of plastic bags is the best option for the sustainability of our environment." Even if a CEQA study is done, the City of Manhattan Beach has no legal authority to ban products based on "sustainability of our environment."

Plastic bags are the least of our problems. We are an industrial and consumer society with many thousands of products. According to the staff's philosophy, in order to sustain the environment our society should produce nothing.

This is not intended to be an exhaustive statement of our legal objections to a proposed ordinance. No waiver is intended. All rights are reserved.

CONCLUSION

We trust that the City Council will make the right decision and discontinue the plastic bag ban initiative.

Thank you for your consideration. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be "Stephen L. Joseph", written over a horizontal line.

Stephen L. Joseph

EXHIBIT D

<http://www.timesonline.co.uk/tol/news/environment/article3508263.ece>

News Site of the Year | The 2008 Newspaper Awards

TIMESONLINE

March 8, 2008

Series of blunders turned the plastic bag into global villain

Alexi Mostrous

Scientists and environmentalists have attacked a global campaign to ban plastic bags which they say is based on flawed science and exaggerated claims.

The widely stated accusation that the bags kill 100,000 animals and a million seabirds every year are false, experts have told The Times. They pose only a minimal threat to most marine species, including seals, whales, dolphins and seabirds.

Gordon Brown announced last month that he would force supermarkets to charge for the bags, saying that they were "one of the most visible symbols of environmental waste". Retailers and some pressure groups, including the Campaign to Protect Rural England, threw their support behind him.

But scientists, politicians and marine experts attacked the Government for joining a "bandwagon" based on poor science.

Lord Taverne, the chairman of Sense about Science, said: "The Government is irresponsible to jump on a bandwagon that has no base in scientific evidence. This is one of many examples where you get bad science leading to bad decisions which are counter-productive. Attacking plastic bags makes people feel good but it doesn't achieve anything."

Campaigners say that plastic bags pollute coastlines and waterways, killing or injuring birds and livestock on land and, in the oceans, destroying vast numbers of seabirds, seals, turtles and whales. However, The Times has established that there is no scientific evidence to show that the bags pose any direct threat to marine mammals.

They "don't figure" in the majority of cases where animals die from marine debris, said David Laist, the author of a seminal 1997 study on the subject. Most deaths were caused when creatures became caught up in waste produce. "Plastic bags don't figure in entanglement," he said. "The main culprits are fishing gear, ropes, lines and strapping bands. Most mammals are too big to get caught up in a plastic bag."

He added: "The impact of bags on whales, dolphins, porpoises and seals ranges from nil for most species to very minor for perhaps a few species. For birds, plastic bags are not a problem either."

The central claim of campaigners is that the bags kill more than 100,000 marine mammals and one million seabirds every year. However, this figure is based on a misinterpretation of a 1987 Canadian study in Newfoundland, which found that, between 1981 and 1984, more than 100,000 marine mammals, including birds, were killed by discarded nets. The Canadian study did not mention plastic bags.

Fifteen years later in 2002, when the Australian Government commissioned a report into the effects of plastic bags, its authors misquoted the Newfoundland study, mistakenly attributing the deaths to "plastic bags".

The figure was latched on to by conservationists as proof that the bags were killers. For four years the "typo" remained uncorrected. It was only in 2006 that the authors altered the report, replacing "plastic bags" with "plastic debris". But they admitted: "The actual numbers of animals killed annually by plastic bag litter is nearly impossible to determine."

In a postscript to the correction they admitted that the original Canadian study had referred to fishing tackle, not plastic debris, as the threat to the marine environment.

Regardless, the erroneous claim has become the keystone of a widening campaign to demonise plastic bags.

David Santillo, a marine biologist at Greenpeace, told The Times that bad science was undermining the Government's case for banning the bags. "It's very unlikely that many animals are killed by plastic bags," he said. "The evidence shows just the opposite. We are not going to solve the problem of waste by focusing on plastic bags.

"It doesn't do the Government's case any favours if you've got statements being made that aren't supported by the scientific literature that's out there. With larger mammals it's fishing gear that's the big problem. On a global basis plastic bags aren't an issue. It would be great if statements like these weren't made."

Geoffrey Cox, a Tory member of the Commons Environment Select Committee, said: "I don't like plastic bags and I certainly support restricting their use, but plainly it's extremely important that before we take any steps we should rely on accurate information. It is bizarre that any campaign should be endorsed on the basis of a mistranslation. Gordon Brown should get his facts right."

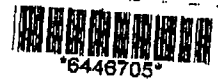
A 1968 study of albatross carcasses found that 90 per cent contained some form of plastic but only two birds had ingested part of a plastic bag.

Professor Geoff Boxshall, a marine biologist at the Natural History Museum, said: "I've never seen a bird killed by a plastic bag. Other forms of plastic in the ocean are much more damaging. Only a very small proportion is caused by bags."

Plastic particles known as nurdles, dumped in the sea by industrial companies, form a much greater threat as they can be easily consumed by birds and animals. Many British groups are now questioning whether a ban on bags would cost consumers more than the environmental benefits.

Charlie Mayfield, chairman of retailer John Lewis, said that tackling packaging waste and reducing carbon emissions were far more important goals. "We don't see reducing the use of plastic bags as our biggest priority," he said. "Of all the waste that goes to landfill, 20 per cent is household waste and 0.3 per cent is plastic bags." John Lewis added that a scheme in Ireland had reduced plastic bag usage, but sales of bin liners had increased 400 per cent.

EXHIBIT E



FILED
ALAMEDA COUNTY

APR 17 2008

CLERK OF THE SUPERIOR COURT

By Vicki Daybell *JD*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

COALITION TO SUPPORT PLASTIC
BAG RECYCLING, an unincorporated
association,

Petitioner,

vs.

CITY OF OAKLAND, et al.

Respondents.

No. RG07-339097

TENTATIVE DECISION
GRANTING PETITION FOR
WRIT OF MANDATE

The Petition of Coalition to Support Plastic Bag Recycling for Writ of Mandate came on regularly for hearing on January 29, 2008, in Department 31 of this Court, Judge Frank Roesch presiding. Petitioner appeared by Michael N. Mills, Esq. of Downey Brand LLP. Respondents City of Oakland and Oakland City Council appeared by Kevin D. Siegel, Esq., Deputy City Attorney of the City of Oakland.

The court has considered all the papers filed on behalf of the parties and the arguments presented at the hearing and hereby issues this TENTATIVE DECISION granting the Petition for Writ of Mandate. This Tentative Decision shall become the Statement of Decision unless, within ten days, a party specifies controverted issues or makes proposals not covered in this Tentative Decision. The Petition for Writ of Mandate is hereby GRANTED. The Court's findings and reasoning follow.

Factual Summary

This action challenges the legality of Oakland Ordinance No. 12818 ("the Ordinance"), adopted by Respondent City Council on behalf of Respondent City of Oakland (collectively, "City") on July 17, 2007. (1 AR 4-9.) The Ordinance bans the distribution of plastic carry out bags by an affected class of retailers in Oakland whose annual sales meet or exceed \$1,000,000. (Ordinance, Section 3.A. found at 1 AR 6) The Ordinance defines "plastic carry out bag" as a non-compostable plastic bag provided by a store to a customer at the point of sale. (1 AR 6.) Although the Ordinance would ban those 100% petroleum based plastic carry out bags,¹ the Ordinance allows, but does not require, the affected retailers to provide "[r]eusable bags, recyclable paper bags and compostable plastic bags" as alternatives to the 100% petroleum plastic bags. (1 AR 7, Ordinance section 3B.)

"Compostable plastic bag" means "a carry out bag that is certified and labeled as meeting the current ASTM-Standard Specifications for compostability" (1 AR 6.) Compostable plastic bags are not visually distinguishable from the 100% petroleum plastic bags and the Ordinance requires they be color-coded to allow them to be sorted out from the 100% petroleum bags. (1 AR 6.)

¹ The court uses the following naming conventions: "100% petroleum plastic bags" are the bags presently provided by most grocery retailers which are banned by the Ordinance. "Compostable plastic bags" are the plastic bags permitted by the Ordinance as one of the alternative carry out bags.

Compostable bags are manufactured with less than 100% petroleum (many with 70-80% petroleum content [see e-mail of Brenda Platt to Misseldine then to Arrona then to Councilmember Nadel dated May 16, 2007]), and decompose in a commercial composting facility (but not in a backyard compost pile.) "Reusable Bag" means a bag that is specifically designed and manufactured for multiple re-use. (1 AR 6.) "Recyclable Paper Bag" is the familiar paper carry out bag provided by retailers to a customer at the point of sale for purposes of transporting groceries or other goods and which, here, meets all of the following requirements: (1) contains no old growth fiber; (2) is 100% recyclable; and (3) contains a minimum of 40% post-consumer recycled content. (1 AR 6.)

The stated purpose of the Ordinance is to prevent litter in, and toxic contamination of, the marine environment; to reduce the consumption of oil; and to discourage use of non-biodegradable plastic bags in favor of reusable bags as governments in other countries have done. (1 AR 4-5, recitals.) A staff report prepared in advance of the July 3, 2007 City Council meeting explains that a further purpose of the Ordinance is to "ban the use of single-use, non-biodegradable plastic bags and to foster a behavioral shift on the part of shoppers away from the use of any type of single-use bag and toward the use of their own re-usable bags." (1 AR 114.)

The City promulgated a Notice of Exemption (from CEQA review) for the Ordinance on July 19, 2007, citing each of the exemptions found in CEQA Guidelines² sections 15307 and 15308 on the basis that the Ordinance will "maintain, restore, or enhance" natural resources or the environment and further citing CEQA Guidelines section 15061, subdivision (b)(3) ("the common sense

² "CEQA Guidelines" refers to title 14 of the California Code of Regulations Sections 15000 et seq.

exemption”), asserting the Ordinance will have “positive environmental effects and no possibility of significant adverse effects.”³ (1 AR 1-3.)

On August 3, 2007, Petitioner filed its action to invalidate the Ordinance asserting non-compliance with the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) Petitioner⁴ contends that City ignored substantial evidence in the record supporting the proposition that the Ordinance will have unintended adverse environmental consequences, making City’s reliance on categorical and other exemptions for the project inappropriate and requiring further CEQA review. More specifically, Petitioner contends that if 100% petroleum plastic bags are banned, the ban will cause a significant increase in the use of paper bags and that such an increase of paper bag use will have a significant effect on the environment. Petitioner also contends that if compostable plastic bags are available, their use will trigger the significant environmental effect of causing contamination of the 100% petroleum plastic bag recycling stream mandated by AB 2449.⁵ Petitioner asks the court to invalidate the Ordinance and the City’s finding that the Ordinance is exempt from further environmental review under CEQA.

³ City’s Notice also states that City relied on the exemption found in Guidelines section 15183 for projects that are consistent with a community plan, general plan or zoning. (CEQA Guidelines, § 15183) Petitioner contends that this exemption does not apply to the Ordinance and City does not refute this contention in its brief. For that reason, any argument that might have been raised here regarding the applicability of CEQA Guidelines section 15183 is deemed waived.

⁴ Petitioner Coalition to Support Plastic Bag Recycling is comprised of the following: Fresh Pak Corporation, Advanced Polybag, Inc., Crown Poly, Inc. Elkay Plastics Co., Inc. Grand Packaging, Inc. Heritage Plastics, Inc. Hilex Poly Company LLC, Superbag Operating, Ltd. and Kevin Kelly. Mr. Kelly lives in Oakland and is the Chief Executive Officer of Emerald Packaging, a plastic packaging manufacturer. Petition ¶ 7; 2 AR 463.

⁵ AB 2449 is a state law enacted in 2006 requiring large retailers to install in-store plastic bag recycling stations that consumers can use to recycle petroleum-based plastic bags. (Pub. Resources Code, §§ 42250-42257.)

Standard of Review

The standard of review in an action alleging a violation of CEQA is whether there has been a prejudicial abuse of discretion. (See § 21168.5; *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) “Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.” (§ 21168.5; *Laurel Heights, supra*, 47 Cal.3d at 409.) Substantial evidence is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (CEQA Guidelines § 15384(a); *Laurel Heights, supra*, 47 Cal.3d at 393.) It includes facts, reasonable assumptions predicated on facts, and expert opinion supported by facts; however, it does not include argument, speculation, or unsubstantiated opinion or narrative. (CEQA Guidelines §§ 21080(e), 21082.2(c).)

This case involves an analysis of the applicability of “the common sense exemption” and the applicability of two categorical exemptions. Further, if either or both of the categorical exemptions apply, the issue arises of the applicability of exceptions to the categorical exemptions.

An activity is exempt from the requirements of CEQA if it is activity that has no potential for causing a significant effect on the environment. “Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” (CEQA Guidelines, section 15061 (b)(3).) The applicability of this “common sense exemption” is determined by an analysis of the Administrative Record. If there is substantial evidence in the record demonstrating no possibility of environmental effect, the exemption applies. The burden is on the City to produce the evidence to support its determination that the common sense

exemption applies, including evidence that entirely negates any substantial evidence in the record of an environmental effect.

“The showing required of a party challenging an exemption under Guidelines section 15061, subdivision (b)(3) is slight, since that exemption requires the agency to be certain that there is no possibility the project may cause significant environmental impacts. If legitimate questions can be raised about whether the project might have a significant impact and there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt.”

Davidon Homes v. City of San Jose, (1997) 54 Cal.App.4th 106, 117.

An activity is also exempt from CEQA if it falls into any one of the categorical exemptions. (see CEQA Guidelines Sections 15300-15332.) If there is substantial evidence in the record demonstrating that the activity qualifies for any asserted exemption, the exemption applies. The burden is on the City to produce the evidence to support its determination of applicability. “On review, an agency’s categorical exemption determination will be affirmed if supported by substantial evidence that the project fell within the exempt category of projects.” (*Magan v County of Kings* (2002) 105 Cal.App.4th 468, 474 quoting from *Davidon Homes*, supra.)

If the agency establishes that the activity or project falls within a categorical exemption, the burden shifts to the party challenging the exemption who must show, by substantial evidence in the Administrative Record, that an exception to the exemption applies. (see, e.g., *Davidon Homes*, supra, and *Magan*, supra; see also *Apartment Assn of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1172-1175.)

City’s Reliance on the Common Sense Exemption

City relied on the “common sense” exemption from CEQA review for the Ordinance. (1 AR 1, Notice of Exemption.) CEQA Guidelines section

15061(b)(3) states: "The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing significant effect on the environment. Where it can be seen with certainty that there is *no possibility* that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." (14 CCR § 15061, subd. (b)(3) [emphasis added].)

It appears from a review of the Ordinance that its sole operative portion merely substitutes one type of plastic single use carry out bag (the compostable plastic bag) in place of another (the 100% petroleum plastic bag). Common sense would suggest that such a one-for-one substitution would engender no environmental effect and that the "common sense exemption" of CEQA Guidelines section 15061(b)(3) would apply (assuming there was no evidence whatever that the compostable plastic bag may, of itself, have environmental consequences separate or worse than the 100% petroleum plastic bag). (See, *e.g.*, *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal. 4th 372).

However, this seductively simple, straightforward (and elegant) argument is completely undercut by the credible (and uncontroverted) evidence presented by Kevin Kelly, a manufacturer of both 100% petroleum plastic bags and compostable plastic bags who described himself as "one of the larger providers of biodegradable and compostable produce packaging in the State of California."

Kevin Kelly is the Chief Executive Officer of a Union City plastic packaging manufacturer and a member of Petitioner Coalition. In a comment letter to City in advance of its June 26, 2007 Public Works Committee meeting, Mr. Kelly gave his opinion that compostable plastic bags were unlikely to be available in quantities sufficient to meet the demand created by the (proposed) Ordinance. (2 AR 463-464.) In subsequent testimony to the City Council at its July 3, 2007 meeting, Mr. Kelly gave the basis for his unavailability prediction:

“There is not enough biodegradable resin in the United States...to support the demand that would be generated [by the Ordinance].” (1 AR 180-181.)

As the Chief Executive Officer of one of the “larger” manufacturers of one kind of compostable plastic bag, Mr. Kelly is competent to express an opinion regarding the availability or unavailability of the material needed to produce the substitute compostable bags permitted by the Ordinance.⁶ (See *Architectural Heritage Ass’n v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1117 [fact based observations by persons qualified to speak to a question qualify as substantial evidence].)

The fact of credible evidence in the record supporting a fair argument in that the substitute compostable plastic bags may not be available after the 100% petroleum plastic bags are banned needs be evaluated together with the Scottish Executive Environment Group Research Report 2005/6 (1 AR 333-446) (“Scottish Report”) which provides evidence that the reduced availability of plastic bags (because of a surcharge in the Scottish situation) resulted in an increase in the use of paper bags.

The Scottish Report is the result of a study to evaluate the environmental impacts of a proposed levy in Scotland on petroleum-based plastic bags, called “lightweight plastic carrier bags” in the Scottish Report. (2 AR 337.) Under a heading entitled “Consumer Behavior,” the report’s findings included:

[i]f a levy is introduced and does not include paper bags, it is anticipated that there will be an increased use of paper bags...Under scenarios 1A and 1B (in which paper bags are not subject to the levy), it is assumed that of consumers not purchasing a lightweight plastic carrier bag...25% will switch to paper carrier bags.

⁶ The fact that Mr. Kelly is a member of Petitioner’s coalition does not alter the validity of his opinion as an “expert opinion supported by facts,” or at a minimum, a lay opinion predicated on his personal observations in the packaging trade. (Pub. Resources Code, §21082.2(c); and see *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 583 [lay witnesses testimony may qualify as substantial evidence if based on relevant personal observations or involve non-technical issues].)

(2 AR 363 (emphasis added)).

The Scottish Report further concluded:

In scenarios where paper bags are excluded, the environmental benefits of reduced plastic bag usage are negated for some indicators by the impacts of *increased paper bag usage*. This is because a paper bag has a more adverse impact than a plastic bag for most of the environmental issues considered..."

(2 AR 375 (emphasis added)).

The City attempts to distinguish the Scottish Report on the ground that the report did not consider the availability of compostable plastic bags in its analysis. (2 AR 366 ["we have not considered compostable...bags in the analysis...because they are not thought to be used in any great numbers."]). In other words, because the Scottish Report did not analyze how a *plastic* plastic-bag alternative might affect consumer choice, the City argues that its conclusions are not evidence of any adverse environmental effect here.

Were it not for Mr. Kelly's comments regarding a shortage in the material needed to manufacture compostable bags, the court might agree with the City regarding the relevance of the Scottish Report's conclusions. However, considered together, the Kelly comments and the Scottish Report amount to "enough relevant information and reasonable inferences from this information that a fair argument can be made that a project may have a significant environmental effect." (CEQA Guidelines § 15384(a); *Laurel Heights, supra*, 47 Cal.3d at 393.) Moreover, the Scottish Report's conclusion of a 25 percent increase in the use of paper bags appears conservative as applied here. Under the scenarios analyzed in the Scottish Report, consumers had the option to purchase single-use plastic bags, whereas consumers lack this option under the Ordinance. The findings of the Scottish report raise a reasonable inference that an outright ban on single-use 100% petroleum plastic bags may result in increased use of paper bags.

This evidence is sufficient to defeat the assertion of the “common sense exemption” because, with such evidence as part of the record, the City cannot meet the standard that there is no possibility that the Ordinance will cause a significant environmental effect.

Stated in a different way: the City is not able to assert the common sense exemption because the record contains evidence which raises a fair argument that there will be a shortage of substitute compostable plastic bags and that such shortage will cause an increase in the use of paper take out bags. It is because of that evidence in the record and unanimity (1 AR 114) of the uncertainty whether paper bags are less (or more) environmentally friendly than plastic bags that the City cannot assert that there is “no possibility” of any significant environmental effect caused by the ban of the 100% petroleum plastic bags.

Having found evidence to support a fair argument regarding the significant adverse effects of the Ordinance claimed by Petitioner, and no evidence that would permit the City to conclude to a certainty that Petitioner’s concerns are unfounded, City’s reliance on the common sense exemption was an abuse of discretion. (*Davidon Homes v. City of San Jose, supra*, 54 Cal.App.4th 106,118 [if a reasonable argument is made to suggest a possibility that a project will cause a significant environmental impact, the agency must refute that claim to a certainty before finding that the exemption applies].)

City’s Reliance on Categorical Exemptions for the Ordinance.

The City also relied on the two CEQA categorical exemptions found in Guideline sections 15307 and 15308, which provide an exemption for projects undertaken to assure the “maintenance, restoration, or enhancement” of a natural resource or the environment. (CEQA Guidelines, §§15307, 15308.) The City’s determination that the Ordinance falls within those categorical exemptions will be

upheld if there is substantial evidence in the record that the Ordinance meets the definition of a categorically exempt project. (*Davidon Homes v. City of San Jose, supra*, 54 Cal.App.4th 106, 114-115.)

The court finds that the City met its burden to demonstrate substantial evidence in the record to support the City's reliance on the foregoing categorical exemptions for the Ordinance. The Ordinance is intended to maintain, restore and enhance natural resources and the environment based on evidence that it will reduce the City's contribution of oil-based plastic waste to the landfills; reduce oil consumption in general; reduce the amount of toxic plastic litter in the environment; and reduce degradation of the marine environment and harm to marine wildlife. (See, e.g., 1 AR 2:4-5; 1 AR 206; 1 AR 209; 1 AR 211 and 1 AR 217.)

However, there are exceptions to the categorical exemptions. The City cannot rely on a categorical exemption for a project where there is a "reasonable possibility" that the activity will have a significant effect on the environment due to "unusual circumstances." (CEQA Guidelines § 15300.2(c).) The City's determination whether the Ordinance will have a significant effect on the environment is reviewed under the fair argument standard. (*Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 264, 265.) The question is whether "on the basis of the whole record, there was *no* substantial evidence that there would be a significant [environmental] effect." (*Asuza Land Reclamation Company v. Main San Gabriel Basin Watermaster* (1997) 42 Cal.App.4th 1165, 1202 [emphasis in the original].)

A shift in consumer use from one environmentally damaging product to another constitutes an "unusual circumstance" of an activity that would otherwise be exempt from review under CEQA as activity undertaken to protect the environment. (See, e.g., *Magan v. County of Kings, supra*, 105 Cal.App.4th 468,

474.) The court also finds that substantial evidence in the record supports at least a fair argument that single-use paper bags are more environmentally damaging than single-use plastic bags. (2 AR 368 (Scottish Report); 3 AR 742 (EPA Report), 3 AR 739 (ULS Report); see also 1 AR 114 [City's acknowledgement of an "ongoing debate" regarding whether single use paper or single use plastic bags have the greatest environmental impact].)

The Ordinance allows the use of compostable plastic bags as an alternative to 100% petroleum plastic bags, but it does not require retailers to provide them. (1 AR 6, Ordinance, Section 3.C.) It is self evident that a consumer desiring a plastic single use carry out bag would accept a single use compostable plastic bag in place of an 100% petroleum plastic bag if it were offered. Thus Petitioner's claim that the Ordinance will result in a shift in consumer use to single-use paper depends on the existence of evidence that compostable plastic bags will not be available. For the reasons discussed above relative to the common sense exemption, the court concludes that the evidence cited by Petitioner, consisting of comments by plastic packaging manufacturer Kevin Kelly and relevant conclusions contained in the Scottish Report (1 AR 333-446), amounts to substantial evidence that would support a fair argument of an adverse environmental effect excepting the Ordinance from both categorical exemptions and warranting further environmental review.

Although City points to evidence in the record that contradicts evidence cited by Petitioner, the court does not address it except to note that none of this evidence negates the evidence cited by Petitioner. "If such evidence [supporting a fair argument of significant environmental impact] is found, it cannot be overcome by substantial evidence to the contrary." (Leonoff v. Monterey County Board of Supervisors (1990) 222 Cal.App.3d 1337, 1348.) Having concluded that the record contains sufficient evidence of a fair argument that the Ordinance may have a significant environmental effect, City must conduct further environmental

review, even if other conclusions might also be reached. (*Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1000-1003.)

The court need not address Petitioner's alternate claim concerning the potential for contamination of the plastics recycling stream in the event that more compostable bags are used.

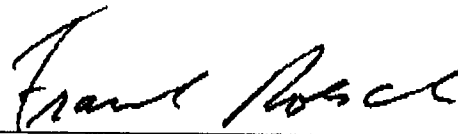
Conclusion

For the reasons set forth above, the Petition is GRANTED. Petitioner is asked to prepare form of judgment for the Court and to submit it to Respondent for approval as to form before submitting it to the Court.

Evidentiary Rulings

1. City's unopposed Requests for Judicial Notice are GRANTED.
2. The court GRANTS Petitioner's request to augment the administrative record to include the May 16, 2007 email messages addressing the merits of banning compostable bags as part of the Ordinance.

Date: April 17, 2008



FRANK ROESCH
Judge of the Superior Court

EXHIBIT F

LAW OFFICES
of
STEPHEN L. JOSEPH, ESQ.

P.O. BOX 221
TIBURON, CA 94920-0221

Admitted in California and the District of Columbia

TELEPHONE: (415) 577-6660
FAX: (415) 869-5380
E-MAIL: sljoseph.law@earthlink.net

June 10, 2008

City Council
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

RE: Proposed plastic bag ban ordinance and CEQA demand

Dear Council Members:

I represent the Save The Plastic Bag Coalition.

On June 3, 2008, I wrote to the city stating the coalition's legal objections to the proposed plastic bag ban ordinance. In response to my letter, the Council deferred consideration of the proposed ordinance until its next meeting. I am writing to respond to some surprising and disturbing statements made at the June 3 Council meeting. Also, I wish to respond to a comment made by a Council Member regarding the coalition.

INAPPROPRIATE STATEMENTS MADE AT JUNE 3 MEETING

In my letter, I informed the city that it must comply with the California Environmental Quality Act (CEQA). My understanding is that the city does not dispute that point, nor could it in view of the Alameda Superior Court ruling.

At the June 3 meeting, the City Attorney informed the Council that the city would not need to write a full Environmental Impact Report ("EIR"). He indicated that the purpose of the exercise is merely to "beef up the record" to justify a plastic bag ban. He said that as long as a study is not "obviously flawed," it would be good enough. The following exchange took place:

Lindy Coe-Juell: I don't know that we would go to a full EIR in our study...."

City Attorney: "We can do it in two weeks."

Council Member: “Seriously?”

City Attorney: “Yeah I don’t think that we would need an EIR for this. They’ve just simply raised an issue. It would depend on what information is out there. But if we can come up with studies that contradict the argument they’ve made about paper bags being more negative to the environment than plastic bags then I think we can move forward rather quickly on it.”

....

City Attorney “What we are looking for is studies that say why plastic is bad.”

These statements are inappropriate and legally wrong. We believe that the City Attorney’s position regarding CEQA was flippant and dismissive. The last people who should be undermining CEQA are those who profess to be concerned about protecting the environment.

The purpose of the EIR is not to prove that plastic bags or paper bags are good or bad, or any other preconceived conclusions. The purpose is to obtain reliable information on all sides of the issue and conduct an objective analysis.

The EIR must be prepared in good faith. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. It informs governmental decision-makers and the public of the significant environmental effect of a project, identifies possible ways to minimize the significant effects, and describes reasonable alternatives. 14 CCR §15121.

Title 14, Chapter 3 of the California Code of Regulations contains legal requirements about the EIR process and the contents of an EIR. We are very concerned, based on the City Attorney’s statements, that the city does not intend to comply with the legal requirements. The coalition will seek judicial enforcement if necessary.

CEQA is critically important legislation for the protection of the environment. It ensures that governmental actions are based on sound environmental information, thorough analysis, and consideration of the alternatives, not myths and misinformation. I hope that you will make it clear at the next Council meeting that the city takes its obligations under CEQA seriously.

The Council needs an EIR because the city is intentionally disregarding the facts. For example, in my June 3 letter, I quoted from a report in the London Times establishing that the statements in the Staff Report about marine mammals and seabirds were incorrect and based on a typographical error. The London Times report was never mentioned at the June 3 meeting.

INAPPROPRIATE STATEMENT TO THE MEDIA

The following appeared in a report in *Easy Reader* on June 5.

“Councilman Jim Aldinger said the coalition was hijacking environmental law, harboring ulterior motives other than the improvement of the environment. “Using CEQA for this purpose is ridiculous,” he said.

It is not the coalition that is hijacking environmental law. It is the city that is undermining it. The city assumes that it already knows everything on this subject, even though it has done zero research and zero analysis. Selectively copying inaccurate one-liners from the Internet and calling it a “Staff Report” does not qualify as legitimate research. Calling the requirement of a CEQA analysis “ridiculous” is irresponsible and suggests that Council Member Aldinger is not seriously interested in investigating the facts or facing up to the consequences of the proposed ordinance.

LACK OF LEGAL AUTHORITY TO BAN

In my June 3 letter, I stated that even if an EIR is completed, the City of Manhattan Beach has no legal authority to ban plastic bags. Unfortunately, this point was not mentioned by anyone at the June 3 meeting. In the event that an ordinance is passed banning plastic bags, you should expect this issue to be litigated.

THE INCONVENIENT TRUTH ABOUT PAPER BAGS

Plastic is not perfect, nothing is, but it is far better for the environment than paper. It would be ludicrous to ban the environmentally superior alternative. We will provide support for the following information upon request and as part of the EIR process.

Plastic is far more energy efficient. It takes approximately four times more energy to create a paper bag. It takes approximately ten times more diesel fuel to transport paper bags, because they are heavier and bulkier. It takes as much as eighty-five times more energy to recycle a paper bag. Think of the CO2 emissions.

Plastic is far cleaner. The manufacture of paper bags generates approximately 70 percent more air pollutants and 50 times more water pollutants than plastic bags.

Plastic saves trees. What is happening in the oceans is important, but so too is what is happening on land and in the atmosphere. Approximately 13 to 17 million trees are chopped down each year to make paper bags, which will multiply if plastic bags are banned. Logging has an impact on climate change. Trees absorb and store CO2. Logging releases stored CO2 into the atmosphere. CO2 is increasing the acidification of the oceans and threatening the ecosystem and entire species of marine life.

The June 3 Staff Report is full of assertions about the negative environmental impacts of plastic bags. The report does not contain a single word about the negative environmental impacts of paper bags. Not one word! Why?

Taking the position that paper bags have no negative environmental impact is intellectually dishonest and absurd. Is this the quality of information that the City of Manhattan Beach considers acceptable when it makes its decisions?

We are not suggesting that the city must accept as true our information about the environmental impacts of paper bags. Far from it. The city should not accept anything as true just because someone has said it or it is on the Internet. We are saying that the city must conduct a proper investigation of all the ramifications of the proposed ordinance through the mandatory EIR process. Burying the facts is not acceptable.

DRIVING UP THE COST OF GROCERY SHOPPING

Paper bags are far more expensive for stores to purchase than plastic bags. Ultimately, the extra cost will be passed on to the consumer. Food costs are rising. Many people in the community are struggling to pay the costs of groceries. Passing a plastic bag ban would be economically damaging to these people and incredibly insensitive.

CEQA states that a finding of a significant effect on the environment "shall" be made if the "the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." Public Resources Code §21083(c). These effects include "adverse economic or social effects on people." *Citizens Assn. For Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 170.

We demand that the EIR include an examination of the economic and social effects of the higher cost of paper bags.

OUR PROPOSAL: REDUCE, REUSE, RECYCLE, PUBLICIZE

Banning plastic bags is a bad idea. This is what we propose.

Reduce: Stores should be asked to reduce the number of bags they hand out by putting more items in them and avoiding double-bagging.

Reuse: The city should ask residents to take their own reusable bags to the store. If they forget and have to obtain bags at the checkout, they should be encouraged to choose plastic over paper because it is the environmentally superior choice.

Recycle: Consumers should be asked to take their used plastic bags back to the store and deposit them in the special plastic bag recycling bins that were installed statewide last year. The city should also be working to improve the curbside recycling of plastic bags.

June 10, 2008
City of Manhattan Beach
Page 5 of 5

Publicize: The city should put posters up, do mailings, and get the word out through the media encouraging reduction, reuse, and recycling.

CONCLUSION

The coalition was formed to make people ask questions, look at *all* of the facts, consider *all* of the consequences, and think for themselves rather than believing everything they hear and jumping on the anti-plastic bag bandwagon. Being factually correct is more important than being politically correct. That is why the coalition is demanding an EIR.

I request that you make this letter and my June 3 letter part of the public record. Thank you for your consideration. All rights are reserved.

Sincerely,

A handwritten signature in black ink, appearing to be "Stephen L. Joseph", with a long horizontal line extending to the right.

Stephen L. Joseph

Copies to:

Geoff Dolan, City Manager
Lindy Coe-Juell, Assistant to City Manager
City Attorney Robert V. Wadden, Jr. Esq.

EXHIBIT G

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**INITIAL STUDY/ENVIRONMENTAL CHECKLIST
FOR THE
MANHATTAN BEACH MUNICIPAL CODE AMENDMENT TO PROHIBIT
SINGLE-USE PLASTIC CARRY-OUT BAGS AT COMMERCIAL
ESTABLISHMENTS**

Prepared by:

**City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266**

DRAFT

June 2008

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INITIAL STUDY, ENVIRONMENTAL CHECKLIST

1. **Project Title:** Municipal Code Amendment to Prohibit Single-Use Plastic Carry-Out Bags at Commercial Establishments
2. **Lead Agency Name and Address:** City of Manhattan Beach
1400 Highland Ave.
Manhattan Beach, California 90266
3. **Contact Person and Phone Number:** Mr. Eric Haaland Lindy Coe-Juell
Community Dev. Dept Assistant to the City Manager
(310) 802-5511 (310) 802-5054
4. **Project Location:** Citywide
5. **Project Sponsor's Name and Address:** Same as Lead Agency
6. **General Plan Designations:** Various
7. **Zoning:** Various
8. **Project Description** Prohibit Issuance of Plastic Bags with Purchased Merchandise at all Manhattan Beach Commercial Establishments
9. **Surrounding Land Uses And Setting** Neighboring South Bay Cities composed of residential, commercial, public/semi-public, and industrial uses.
10. **Approvals Required** Ordinance Approval:
City of Manhattan Beach City Council
11. **Other Public Agencies Whose Approval Is Required** None

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ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages:

- | | | |
|--|---|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology / Soils |
| <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality | <input type="checkbox"/> Land Use / Planning |
| <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise | <input type="checkbox"/> Population / Housing |
| <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation | <input type="checkbox"/> Transportation / Traffic |
| <input type="checkbox"/> Utilities / Service Systems | <input type="checkbox"/> Mandatory Findings of Significance | |

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

- I find that the proposed project **COULD NOT** have a significant effect on the environment, and a **NEGATIVE DECLARATION** will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A **MITIGATED NEGATIVE DECLARATION** will be prepared.
- I find that the proposed project **MAY** have a significant effect on the environment, and an **ENVIRONMENTAL IMPACT REPORT** is required.
- I find that the proposed project **MAY** have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been address by mitigation measures based on the earlier analysis as described on attached sheets. An **ENVIRONMENTAL IMPACT REPORT** is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or **NEGATIVE DECLARATION** pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or **NEGATIVE DECLARATION**, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature

Date

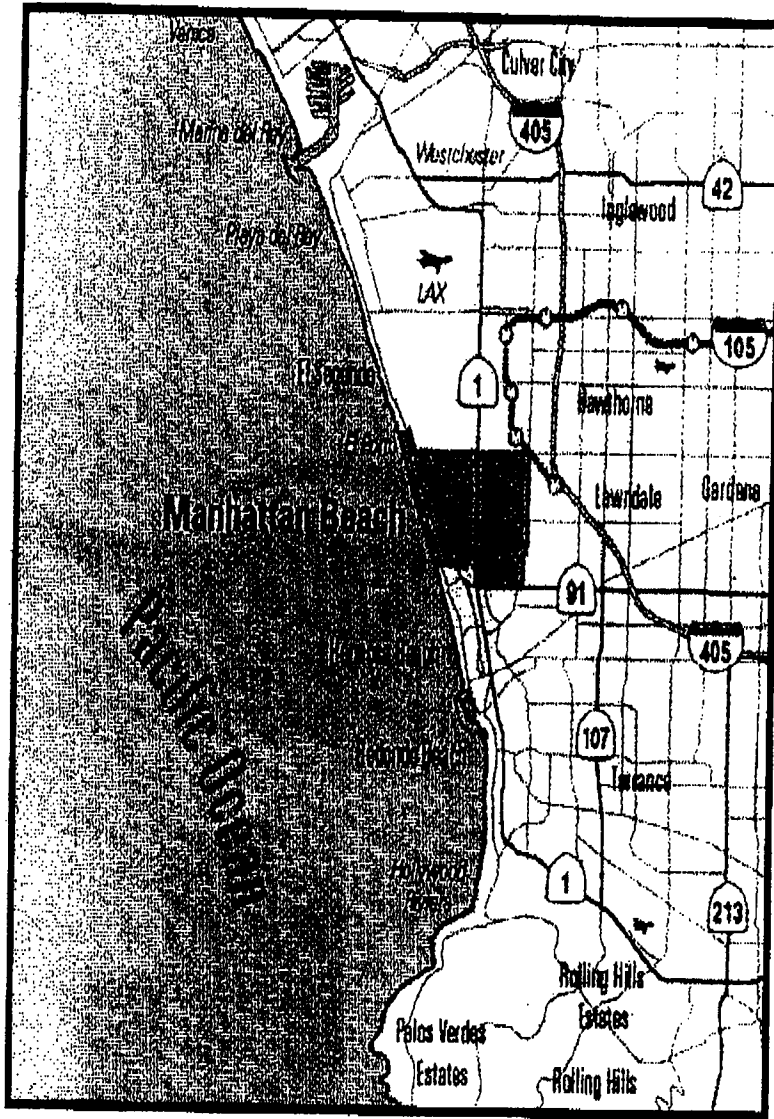
Printed Name

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For: Richard Thompson
Community Development Director,
City of Manhattan Beach
1400 Highland Avenue,
Manhattan Beach, California 90266
(310) 802-5000

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FIGURE 1 - REGIONAL LOCATION MAP



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Detailed Project Description

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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, ADDING A NEW SECTION 5.88.010 TO A NEW "ENVIRONMENTAL REGULATIONS" CHAPTER 5.88 TO TITLE 5 OF THE MANHATTAN BEACH MUNICIPAL CODE PROHIBITING THE USE OF PLASTIC CARRY-OUT BAGS

Earlier Analysis

The California Environmental Quality Act (CEQA) (Guidelines Section 15063(c)(3)(D)) permits earlier analysis to be used where a CEQA document has adequately analyzed an effect. No earlier analysis had adequately analyzed the project's potential effects and as such, no earlier analysis was utilized.

References

California Air Resources Board, *The 2001 California Almanac of Emissions & Air Quality* (2001).

South Coast Air Quality Management District (SCAQMD), *Draft Final 1997 Air Quality Management Plan* (October 1996).

California Department of Conservation, Division of Land Resources Protection, Los Angeles County, *Important Farmland 2002 Map* (2004).

California Department of Water Resources, *California's Groundwater*, Bulletin 118 (October 2003).

California Code of Regulations, Title 14 Chapter 3, *Guidelines for California Environmental Quality Act* (2004). (Short Title: State CEQA Guidelines [14 CCR 3, Section 15001])

California Government Code, Section 65962.5.

California Public Health and Safety Code, Section 5097.98

California Public Resources Code Division 13, *Environmental Quality*, Sections 21000-21178, 2004.

Rand McNally, *The Thomas Guide, Los Angeles and Orange Counties Street Guide*, 2008.

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City of Manhattan Beach, *General Plan*, Adopted December 2, 2003.

City of Manhattan Beach, *General Plan Final Environmental Impact Report*, October 2003.

City of Manhattan Beach, *Municipal Code*.

City of Manhattan Beach, *Local Coastal Program Land Use Plan Amendment*, Adopted January 2004

California Department of Conservation, *Farmland Mapping and Monitoring Program*, 2002

California Environmental Quality Act, *CEQA Guidelines*, 2004

An Overview of Carryout Bags in Los Angeles County, A staff report to the Los Angeles County Board of Supervisors, August 2007.

National Oceanic and Atmospheric Administration, *Marine Debris Program*, <http://marinedebris.noaa.gov/>

California Integrated Waste Management Board, <http://www.ciwmb.ca.gov/Plastic/>

Algalita Marine Research Foundation, <http://www.algalita.org/research.html>

"Pelagic Plastics", www.algalita.org/pelagic_plastic.html

Moore, C.J., Lattin, G.L., Zellers, A.F., *Working Our Way Upstream: A Snapshot of Land-based Contributions of Plastic and other Trash to Coastal Waters and Beaches of Southern California.*, 2005

Moore, C.J., Lattin, G.L., Zellers, A.F., *A Brief Analysis of Organic Pollutants Sorbed to Pre and Post-Consumer Plastic Particles from the Los Angeles and San Gabriel River Watersheds*, 2005

Moore, C.J., Lattin, G.L., Zellers, A.F., *Density of Plastic Particles Found in Zooplankton Trawls from Coastal Waters of California to the North Pacific Central Gyre.* -2006

Californians Against Waste http://www.cawrecycles.org/issues/plastic_campaign/plastic_bags

US EPA 2005 Characterization of Municipal Solid Waste, <http://www.epa.gov/msw/facts.htm>

Environmental Ministry of Ireland, <http://www.environ.ie/en/Environment/Waste/PlasticBags/>

"The Problem With Marine Debris", California Coastal Commission Public Education Program's web article, <http://www.coastal.ca.gov/publiced/marinedebris.html>.

Boustead Consulting & Associates: *Life Cycle Assessment for Three Types of Grocery Bags – Recyclable Plastic; Compostable, Biodegradable Plastic; and Recycled, Recyclable Paper*, Prepared for the

Progressive Bag Alliance, 2007.

Woods Hole Oceanographic Institution: *Plastics in Our Oceans*, <http://www.whoi.edu/science/B/people/kamaral/plasticsarticle.html> (June 16, 2008).

Earth 911: Facts About Plastic Bags, <http://earth911.org/plastics/facts-about-plastic-bags/> (June 16, 2008).

Ocean Conservancy: Marine Debris, http://www.oceanconservancy.org/site/PageServer?pagename=issues_debris (June 16, 2008).

National Geographic: Are Plastic Grocery Bags Sacking the Environment?, John Roach for National Geographic News, September 2, 2003, <http://news.nationalgeographic.com/news/pf/80107147.html> (June 16, 2008).

Ordinance No. 2115, An Ordinance of the City of Manhattan Beach, California, establishing a ban on plastic carry-out shopping bags Citywide.

REPORT PREPARERS

Lead Agency: City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

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INITIAL STUDY CHECKLIST

EVALUATION OF ENVIRONMENTAL IMPACTS:

- A brief explanation is required for all answers, except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factor as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis.)
- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
 - 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
 - 4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analyses," may be cross-referenced).
 - 5) Earlier analyses may be used where, pursuant to the tiring, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:
 - a) *Earlier Analysis Used.* Identify and state where they are available for review.
 - b) *Impacts Adequately Addressed.* Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - c) *Mitigation Measures.* For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures, which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
 - 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
 - 7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
 - 8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
 - 9) The explanation of each issue should identify:
 - a) the significance criteria or threshold, if any, used to evaluate each question; and
 - b) the mitigation measure identified, if any, to reduce the impact to less than significance.

ENVIRONMENTAL CHECKLIST

I AESTHETICS		Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>Would the project:</i>					
a)	Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
b)	Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway corridor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
c)	Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
d)	Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

Explanation of Checklist Judgments:

I(a-d). No Impact: Plastic bags are a significant component of litter in the environment due to their durability and light weight. The City of Los Angeles conducted a waste characterization study in June 2004 and found that plastic bags made up 25 percent by weight, and 19 percent by volume, of litter found in 30 storm drain catch basins. Often, plastic shopping bags are white or brightly colored, creating a significant eyesore throughout the community, which is currently aesthetically detrimental. Adoption of a prohibition of single-use plastic carry-out bags would prohibit plastic shopping bags Citywide, thereby decreasing the amount of plastic bags that become litter and improving visual aesthetics. The project would not adversely affect any scenic vistas, damage scenic resources, degrade existing visual character, and will not create a source of substantial light or glare. Therefore, no impact is anticipated and no further investigation is required.

II AGRICULTURE RESOURCES		Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:</i>					
a)	Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
b)	Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
c)	Involve other changes in the existing environment that due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

Explanation of Checklist Judgments:

II(a-c). No Impact: The proposed project involves the adoption of an ordinance which would ban plastic shopping bags Citywide, and will have no impact on land designated as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, or land within a Williamson Act contract. Therefore, no impact is anticipated and no further investigation is required.

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III AIR QUALITY	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:</i>				
a) Conflict with or obstruct implementation of the applicable air quality plan?]		X
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?]		X
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?]]	X	
d) Expose sensitive receptors to substantial pollutant concentrations?]	X
e) Create objectionable odors affecting a substantial number of people?]			X

Explanation of Checklist Judgments:

III(a,b). No Impact: The proposed project involves the adoption of an ordinance which would ban plastic shopping bags Citywide. The project would not conflict or obstruct the implementation of the applicable air quality plan nor violate any air quality standards in the City.

III(c). Less Than Significant Impact: There is a potential that the banning of plastic bags in the City of Manhattan Beach may result in an increase in paper bag usage. The proposed ordinance does require that all paper bags used in the City at point of sale be at least composed of 40% recyclable material. However, it is well documented that the manufacture and distribution of paper bags can consume more energy than plastic bags. This increased use of energy could have an impact on the environment by increasing emissions from power plants and possibly from trucks carrying the heavier, bulkier paper bags.

However, the banning of plastic bags by political subdivisions is not widespread. In California only San Francisco, Oakland and Malibu have enacted such bans and Oakland's was invalidated by a court. San Francisco's ban does not include biodegradable plastic bags and so will not displace all plastic bag usage.

The population of Manhattan Beach is only 33,852 according to the 2000 census. However, per capita bag usage would provide an inflated measurement of any net increase in paper bag use since the proposed ordinance does not ban the use of plastic bags by residents but their distribution at point of sale. Only 11.2% of the City is zoned commercial and there are only 217 licensed retail

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establishments within the City which might use plastic bags. There are only two supermarkets, three (and two future) drug stores, and one Target store known to be high volume users of plastic shopping bags in the City which would be affected by the ban. The remaining businesses tend to be smaller and lower volume and many restaurants and most fast food outlets already use paper bags for take out orders.

Plastic bags would not be replaced by paper bags on a one to one ratio since paper bags have a higher capacity. One study (commissioned by the plastic bag industry) estimates that for every 1500 plastic bags it would take 1000 paper bags to replace them. Other studies find that paper bags may hold up to four times the volume of plastic bags. In light of anticipated education efforts, increased publicity (partially resulting from the subject ordinance), and the public's increased concern for pollution and water quality, at least some percentage of plastic bags are expected to be replaced by reusable bags rather than paper bags.

Based on the foregoing it appears that any increase in the total use of paper bags resulting from the proposed ban on plastic bags in Manhattan Beach (and even considering it as a cumulative increase from the bans in Malibu and San Francisco) would be relatively small with a minimal or nonexistent increase in energy consumption. Therefore, the project should not conflict with nor obstruct AQMP implementation, and no further investigation is required.

III(d,e). **No Impact:** The project would not expose sensitive receptors to substantial pollutant concentrations or create objectionable odors.

IV <u>BIOLOGICAL RESOURCES</u>	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>Would the project:</i>				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.				X
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.				X
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites				X

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e)	Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X
f)	Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				X

Explanation of Checklist Judgments:

IV(a-e)

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No Impact: The project consists of the adoption of an ordinance which would ban plastic shopping bags, thereby decreasing the prevalence of plastic bag litter in the marine environment in and near the City. The proposed project is not expected to result in any impacts to federally protected wetlands. It is not expected to substantially interfere with the movement of any native resident or migratory fish or wildlife species or impact any native wildlife nursery sites. The proposed project does not conflict with any local policies protecting biological resources, or conflict with any adopted Habitat Conservation Plan, Natural Community Conservation Plan or other local or regional conservation plans.

Plastic debris is a major pollutant of coastal waters. In the Pacific Ocean there exists a huge accumulation of debris know as the "Great Pacific Garbage Patch" or "Plastic Soup." This is an accumulation of mostly plastic debris drawn by currents to accumulate in the area of the northern Pacific Ocean known as the "North Pacific Gyre". Some scientists estimate the density of plastic in this region at one million pieces of plastic per square mile. Plastic does not biodegrade so over the past two decades this mass has been growing. Some studies show that plastic photo-degrades breaking into smaller pieces and making its way into the food chain via animals such as jellyfish.

While it may be difficult to ascertain the exact numbers of marine life which perish every year due to ingestion of or choking on plastic debris there are numerous anecdotal accounts of marine life being discovered with plastic debris in their stomachs or clogging their breathing apparatus.

Reducing the use of plastic bags in Manhattan Beach will have only a modest positive impact on the migration of plastic refuse into the ocean. However, as a coastal City the imposition of the ban is likely to have some modest impact on improving water quality and removing a potential biohazard from the marine environment. The proposed project would not result in substantial adverse effect, directly or through habitat modification on any species identified as a candidate, sensitive or special species. The adoption of the ordinance would not adversely affect riparian habitats or other sensitive natural communities identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service. A prohibition of single-use plastic carry-out bags is anticipated to result in a positive effect on species and habitats. No impacts to listed species or habitat plans are anticipated, and no further investigation is required.

Consequently, no impacts to biological resources are anticipated. No further investigation is required.

V CULTURAL RESOURCES		Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>Would the project:</i>					
a)	Cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines §15064.5?				X
b)	Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?				X
c)	Directly or indirectly destroy a unique paleontological resource or site or unique geological feature?				X
d)	Disturb any human remains, including those interred outside of formal cemeteries?				X

Explanation of Checklist Judgments:

V(a-d). No Impact: The proposed project involves the adoption of an ordinance to ban plastic shopping bags Citywide and does not include any development or alterations of physical sites or structures. The project would not result in substantial adverse change to a historical resource or archaeological resource. The project would not directly or indirectly destroy a unique paleontological resource or site, nor disturb any human remains, including those interred outside of formal cemeteries. Consequently, there is no impact and no further research is necessary.

VI GEOLOGY AND SOILS		Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>Would the project:</i>					
a)	Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
	i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				X
	ii) Strong seismic ground shaking?				X
	iii) Seismic-related ground failure, including liquefaction?				X
	iv) Landslides?				X
b)	Result in substantial soil erosion or the loss of topsoil?				X
c)	Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?				X
d)	Be located on expansive soil, as defined in Table 10-1-B of the Uniform Building Code (1994), creating substantial risk to life or property?				X

e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Explanation of Checklist Judgments:

VI(a-e)

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No Impact: The project does not include any development; therefore, the project would not expose people or structures to potential substantial adverse effects involving rupture of a known earthquake fault, strong seismic ground shaking, seismic-related ground failure, liquefaction, landslides, or substantial soil erosion or loss of top soil. A prohibition of single-use plastic carry-out bags would not result in future development that would be located on a geologic unit or soil that is unstable, or that would become unstable, or result in offsite landslide, lateral spreading, subsidence, liquefaction or collapse as a result of the project. No further investigation is required.

VII <u>HAZARDS AND HAZARDOUS MATERIALS</u>	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>Would the project:</i>				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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Explanation of Checklist Judgments:

VII(a-h).

No Impact: The project involves the adoption of an ordinance to ban plastic shopping bags in the City of Manhattan Beach and does not cause increased use, disposal or disruption of hazardous materials or create a public or safety

hazard or affect existing emergency response plans or routes. The City is not within an airport land use plan or within two miles of a public airport and the project would not create or result in a safety hazard for people residing or working in the project area. The proposed ordinance would not affect emergency procedures or result in exposure of people or structures to a significant risk of loss, injury or death involving wildland fires. No associated impacts are anticipated, and no further investigation is required.

VIII HYDROLOGY AND WATER QUALITY		Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>Would the project:</i>					
a)	Violate any water quality standards or waste discharge requirements?				X
b)	Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				X
c)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on or off-site?				X
d)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on or off-site?				X
e)	Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff.				X
f)	Otherwise substantially degrade water quality?				X
g)	Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				X
h)	Place within a 100-year flood hazard area structures which would impede or redirect flood flows?				X
i)	Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				X
j)	Inundation by seiche, tsunami, or mudflow?				X

Explanation of Checklist Judgments:

VIII(a-j). No Impact: The proposed project does not involve any development; therefore, would not violate water quality standards or water discharge requirements. Furthermore, the proposed reduction of plastic bag usage would not generate increased use of groundwater, alter existing drainage patterns, increase surface water runoff, or degrade water quality. The project does not involve placing structures within a 100-year flood hazard area or impede and redirect flood flow. The project would not expose people or structures to a significant risk of loss,

injury or death involving flooding, or inundation by seiche, tsunami or mudflow. The proposed project is anticipated to have a positive impact on water quality by reducing the potential for plastic bags entering storms drains and the ocean from the Manhattan Beach area.

There is a potential that the banning of plastic bags in the City of Manhattan Beach may result in an increase in paper bag usage. The proposed ordinance does require that all paper bags used in the City at point of sale be at least composed of 40% recyclable material. However, it is well documented that the manufacture and recycling of paper generates more wastewater than plastic bags. This increased use of energy could have an impact on the environment by increasing emissions from paper mills and recycling plants.

However, the banning of plastic bags by political subdivisions is not widespread. In California only San Francisco, Oakland and Malibu have enacted such bans and Oakland's was invalidated by a court. San Francisco's ban does not include biodegradable plastic bags and so will not displace all plastic bag usage. Malibu is a City of only 12,575 with an extremely small retail component within its boundaries.

The population of Manhattan Beach is only 33,852 according to the 2000 census. However, per capita bag usage would provide an inflated measurement of any net increase in paper bag use since the proposed ordinance does not ban the use of plastic bags by residents but their distribution at point of sale. Only 11.2% of the City is zoned commercial and there are only 217 licensed retail establishments within the City which might use plastic bags. There are only two supermarkets, three (and two future) drug stores, and one Target store known to be high volume users of plastic shopping bags in the City which would be affected by the ban. The remaining businesses tend to be smaller and lower volume and many restaurants and most fast food outlets already use paper bags for take out orders.

Plastic bags would not be replaced by paper bags on a one to one ratio since paper bags have a higher capacity. One study (commissioned by the plastic bag industry) estimates that for every 1500 plastic bags it would take 1000 paper bags to replace them. Other studies find that paper bags may hold up to four times the volume of plastic bags. In light of anticipated education efforts, increased publicity (partially resulting from the subject ordinance), and the public's increased concern for pollution and water quality, at least some percentage of plastic bags are expected to be replaced by reusable bags rather than paper bags.

Plastic debris is a major pollutant of coastal waters. In the Pacific Ocean there exists a huge accumulation of debris know as the "Great Pacific Garbage Patch" or "Plastic Soup." This is an accumulation of mostly plastic debris drawn by currents to accumulate in the area of the northern Pacific Ocean known as the "North Pacific Gyre." Some scientists estimate the density of plastic in this region at one million pieces of plastic per square mile. Plastic does not biodegrade so over the past two decades this mass has been growing. Some studies show that plastic photo-degrades breaking into smaller pieces and

making its way into the food chain via animals such as jellyfish. Reducing the use of plastic bags in Manhattan Beach will have only a modest positive impact on the migration of plastic refuse into the ocean. However, as a coastal City the imposition of the ban is likely to have some modest impact on improving water quality or at least preventing it from degenerating as quickly.

Based on the foregoing it appears that any increase in the total use of paper bags resulting from the proposed ban on plastic bags in Manhattan Beach (and even considering it as a cumulative increase from the bans in Malibu and San Francisco) would be relatively small with a minimal or nonexistent increase in pollutants generated from production and recycling. This is counterbalanced by a modest reduction in plastic refuse being generated in a coastal region. No further investigation is required.

Consequently, no impacts to hydrology and water quality are anticipated. No further investigation is required.

IX <u>LAND USE AND PLANNING</u>	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>Would the project:</i>				
a) Physically divide an established community?		□		X
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				X
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?			□	X

Explanation of Checklist Judgments:

IX(a). **No Impact:** The proposed project involves the adoption an ordinance which would ban plastic shopping bags Citywide. The project does not physically divide an established community. No further investigation is required.

IX(b-c). **No Impact:** The proposed ordinance would not conflict with any applicable land use plan and policy or conflict with any habitat or natural community conservation plans. Furthermore, it would complement the water pollution policies of the City of Manhattan Beach Local Coastal Program to protect marine resources by decreasing the prevalence of plastic shopping bag litter. The project would result in beneficial impacts to litter prevention efforts Citywide. No further investigation is required.

X <u>MINERAL RESOURCES</u>	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact

<i>Would the project:</i>					
a)	Result in the loss of availability of a known mineral resource that would be of future value to the region and the residents of the State?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
b)	Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

Explanation of Checklist Judgments:

X(a,b). **No Impact:** The proposed project is the adoption of an ordinance and does not affect known state, regional, or local mineral resources. No impacts to mineral resources are anticipated.¹ Consequently, no impact or interference with mineral recovery will result, and no further investigation is required.

XI	<u>NOISE</u>	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>Would the project result in:</i>					
a)	Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
b)	Exposure of persons to or generation of excessive ground borne vibration or ground borne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
c)	A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
d)	A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
e)	For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
f)	For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

Explanation of Checklist Judgments:

XI(a-d). **No Impact:** The project would not expose people to, or generate, noise levels in excess of standards established in the General Plan Noise Element or the Manhattan Beach Noise Ordinance. The proposed ordinance would not expose people to excessive ground vibration or result in a substantial permanent or a temporary increase of ambient noise. No further investigation is required

XI(e,f). **No Impact:** The proposed ordinance is effective Citywide, but will not cause any additional exposure to airport noise. The Manhattan Beach City limits are not located within two miles of an airport or near an airstrip; therefore, no impacts

¹ City of Manhattan Beach *General Plan, Final Environmental Impact Report, Initial Study*, page 16 (2003).

are anticipated. Consequently, no airport-related noise impacts are anticipated, and no further investigation is required.

XII POPULATION AND HOUSING		Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>Would the project:</i>					
a)	Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?				X
b)	Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				X
c)	Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				X

Explanation of Checklist Judgments:

XII(a-c). No Impact: The proposed project includes the adoption of an ordinance and would not increase, decrease, or otherwise affect population or local population growth rates. Therefore, no impacts to population or housing would occur as a result of the proposed project. No further investigation is required.

XIII PUBLIC SERVICES		Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services?</i>					
a)	Fire protection?				X
b)	Police protection?				X
c)	Schools?				X
d)	Parks?				X
e)	Other public facilities?			X	

Explanation of Checklist Judgments:

XIII(a-d). No Impact: The proposed project is the adoption of an ordinance to ban plastic shopping bags Citywide and does not involve Public Safety, School, or Recreation services. No further investigation is required.

XIII(e). Less than Significant Impact: The implementation of the ordinance will involve enforcement and education outreach to residents and business owners by

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 administrative City staff. The implementation of the ordinance is anticipated to involve comparable staff resources to similar ordinances previously adopted by the City of Manhattan Beach. Any impacts to government services and facilities are anticipated to be less than significant, and no further investigation is required.

XIV RECREATION	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>			X
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>			X

Explanation of Checklist Judgments:

XIV(a,b). No Impact: The proposed project is the adoption of an ordinance and would not increase the use of recreational facilities. The project does not require the construction or expansion of recreational facilities or otherwise affect existing recreational facilities. No further investigation is required.

XV TRANSPORTATION/TRAFFIC	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>Would the project:</i>				
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?			X	
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?			X	
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?		<input type="checkbox"/>	X	
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?		<input type="checkbox"/>		X
e) Result in inadequate emergency access?			<input type="checkbox"/>	X
f) Result in inadequate parking capacity?		<input type="checkbox"/>	<input type="checkbox"/>	X
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	<input type="checkbox"/>			X

Explanation of Checklist Judgments:

XV(a-c). Less than Significant Impact: The proposed project involves the adoption of an ordinance to ban plastic shopping bags Citywide and would not directly affect current traffic loads, the street system capacity, existing levels of service, or air traffic patterns. There is a potential that the banning of plastic bags in the City of Manhattan Beach may result in an increase in paper bag usage which have more mass per square foot compared to plastic and may increase traffic involved in shipping paper bags to retail establishments. The ordinance will require those paper bags to have 40% recycled content encouraging reduced use with increased costs for single-use bags, and education programs will be launched to encourage patrons to choose and use reusable bags, and thereby reduce total use of single-use bags.

While some shipping traffic increases may result, the banning of plastic bags by political subdivisions is not widespread. In California only San Francisco, Oakland and Malibu have enacted such bans and Oakland's was invalidated by a court. San Francisco's ban does not include biodegradable plastic bags and so will not displace all plastic bag usage. Malibu is a City of only 12,575 with an extremely small retail component within its boundaries.

The population of Manhattan Beach is only 33,852 according to the 2000 census. However, per capita bag usage would provide an inflated measurement of any net increase in paper bag use since the proposed ordinance does not ban the use of plastic bags by residents but their distribution at point of sale. Only 11.2% of the City is zoned commercial and there are only 217 licensed retail establishments within the City which might use plastic bags. There are only two supermarkets, three (and two future) drug stores, and one Target store known to be high volume users of plastic shopping bags in the City which would be affected by the ban. The remaining businesses tend to be smaller and lower volume and many restaurants and most fast food outlets already use paper bags for take out orders.

Based on the foregoing it appears that any increase in the total use of paper bags resulting from the proposed ban on plastic bags in Manhattan Beach (and even considering it as a cumulative increase from the bans in Malibu and San Francisco) would be relatively small with a minimal or nonexistent increase in truck traffic.

XV(d-f). No Impact: The project is the adoption of an ordinance, and does not include any development; therefore, no increase in traffic hazards, impacts to emergency access or parking capacity are anticipated.

XV(g). No Impact: The project would not conflict with adopted policies, plans, or programs supporting alternative transportation. No further investigation is required.

XVI UTILITIES AND SERVICE SYSTEMS		Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>Would the project:</i>					
a)	Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
b)	Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
c)	Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
d)	Have sufficient water supplies available to serve the project from existing entitlements and resources, or are now or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
e)	Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
f)	Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
g)	Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

Explanation of Checklist Judgments:

XVI(a-e). **No Impact:** The proposed project involves the adoption an ordinance to ban plastic shopping bags Citywide. The adoption of the proposed ordinance would not affect wastewater treatment requirements of the Regional Water Quality Control Board or result in construction of a new water or wastewater treatment facility or expansion of existing facilities. The project does not require any additional water supply or wastewater capacity. No further investigation is required.

XVI(f). **Less Than Significant Impact:** While the ordinance would ban plastic shopping bags, it would allow paper bags to be used Citywide. The ordinance will require those paper bags to have 40% recycled content reducing landfill demand and encouraging reduced use with increased costs for paper bags. Since the substituted paper bags can also become litter, education programs will be launched to encourage patrons to choose and use reusable bags, and thereby reduce total use of single-use bags. The substitution of paper bags for plastic that does occur, although larger in mass per square foot compared to plastic, would not significantly impact landfill capacity since a larger portion of paper bags is recycled than plastic, substituted paper bags will be at least 40% paper diverted from landfills, and the City of Manhattan Beach represents a small proportion of regional landfill users. No further investigation is required.

XVI(g). **No Impact:** The proposed ordinance complies with federal, state, and local statutes and regulations related to solid waste. No further investigation is required.

XVII MANDATORY FINDINGS OF SIGNIFICANCE		Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
<i>Does the project:</i>					
a)	Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?				X
b)	Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)				X
c)	Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?				X

Explanation of Checklist Judgments:

XVII(a-c). No Impact: The proposed project involves the adoption of an ordinance to ban plastic shopping bags and does not include any development. The proposed ordinance does not have the potential to degrade the quality of the environment or substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop, or threaten to eliminate a plant or animal community. The project would not eliminate important examples of the major periods of California history or prehistory. The project would not have environmental effects or substantial adverse effects on human beings, either directly or indirectly. Furthermore, the proposed ordinance would decrease the prevalence of plastic bag litter in the marine environment, which adversely impact marine wildlife. The proposed ordinance would decrease the prevalence of plastic bag litter in the City.

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EXHIBIT H

THE SAVE THE PLASTIC BAG COALITION

TO THE CITY OF MANHATTAN BEACH, CALIFORNIA

FORMAL OBJECTIONS BY THE SAVE THE PLASTIC BAG COALITION TO PROPOSED NEGATIVE DECLARATION AND CLAIMS OF EXEMPTION REGARDING PROPOSED ORDINANCE NO. 2115 TO PROHIBIT THE USE OF PLASTIC CARRY-OUT BAGS, AND TO THE PROPOSED ORDINANCE

The Save The Plastic Bag Coalition (the "Coalition") is an unincorporated association of plastic bag manufacturers and distributors. The members include (but are not limited to) Grand Packaging, Inc. and Crown Poly, Inc. which are manufacturers and Elkay Plastics Co., Inc. which is a manufacturer and distributor. Members of the Coalition supply plastic carry-out bags to businesses covered by the proposed ordinance and would be adversely affected by its adoption.

The Coalition hereby responds to the June 12, 2008 Notice Of Intent To Adopt Negative Declaration and asserts the objections herein.

GROUND FOR EXEMPTION CITED BY THE CITY

14 CCR §15061(b)(3) and §15308 are cited by the city in the proposed ordinance as the bases for exemption from the California Environmental Quality Act (CEQA) and the requirement that an Environmental Impact Report (EIR) be prepared.

14 CCR §15061(b)(3) is known as the "common sense exemption." It states as follows:

The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is *no possibility* that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.
[Emphasis added]

Citing 14 CCR §15061(b)(3), the proposed ordinance states that the activity will not result in direct or indirect or reasonably foreseeable direct or indirect physical change to the environment.

14 CCR §15308 is a "categorical exemption." It states that the following category of actions is exempt from CEQA:

[A]ctions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the

environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.

14 CCR §15300.2(c) states an exception to all categorical exemptions, as follows.

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Citing 14 CCR §15308, the proposed ordinance states that the ordinance is exempt as it is a regulatory program designed to protect the environment.

THE SCOTTISH REPORT

In 2005, the Scottish Government issued a full environment impact assessment on the effects of a proposed plastic bag levy (the “Scottish Report”). A copy of the Scottish Report is provided herewith.

The Scottish report states:

If only plastic bags were to be levied (scenarios 1A and 1B), then studies and experience elsewhere suggest that there would be some shift in bag usage to paper bags (which have worse environmental impacts.)

The Scottish Report compared plastic and paper bags and made the following findings:

[A] paper bag has a more adverse impact than a plastic bag for most of the environmental issues considered. Areas where paper bags score particularly badly include water consumption, atmospheric acidification (which can have effects on human health, sensitive ecosystems, forest decline and acidification of lakes) and eutrophication of water bodies (which can lead to growth of algae and depletion of oxygen).

[Note: Eutrophication means the process by which a body of water becomes rich in dissolved nutrients, thereby encouraging the growth and decomposition of oxygen-depleting plant life and resulting in harm to other organisms.]

Paper bags are anywhere between six to ten times heavier than lightweight plastic carrier bags and, as such, require more transport and its associated costs. They would also take up more room in a landfill if they were not recycled.

The Scottish Report contains the following comparison of the environmental metrics of plastic bags and paper bags which is taken from the study done by the French company Groupe Carrefour. The lightweight plastic bag has been given a score of 1 in all categories as a reference point. The report states:

A score greater than 1 indicates that another bag ('bag for life' or paper) makes more contribution to the environmental problem than a lightweight plastic bag *when normalised against the volume of shopping carried*. A score of less than 1 indicates that it makes less of a contribution, i.e. it has less environmental impact than a lightweight plastic bag.” [Emphasis added]

The indicators take account of emissions which occur over the whole lifecycle. They can therefore occur in different locations depending on where different parts of the lifecycle are located. For global environmental problems such as climate change, the location of the emission is not important in assessing the potential environmental impact....

Indicator of environmental impact	HDPE bag lightweight	Paper bag single use
Consumption of non-renewable primary energy	1.0	1.1
Consumption of water	1.0	4.0
Climate change (emission of greenhouse gases)	1.0	3.3
Acid rain (atmospheric acidification)	1.0	1.9
Air quality (ground level ozone formation)	1.0	1.3
Eutrophication of water bodies	1.0	14.0
Solid waste production	1.0	2.7
Risk of litter	1.0	0.2

Scottish Report at page 22-23.

THE ULS REPORT

In March 2008, use-less-stuff.com (“ULS”) issued an updated “Review Of Life Cycle Data Relating To Disposable, Compostable, Biodegradable, And Reusable Grocery Bags” (the “ULS Report”). A copy of the ULS Report and the one-page ULS media release announcing the report are provided herewith.

ULS made the following findings which are contained in the report:

1. Plastic bags generate 39% less greenhouse gas emissions than uncomposted paper bags, and 68% less greenhouse gas emissions than composted paper bags. The plastic bags generate 4,645 tons of CO2 equivalents per 150 million bags; while uncomposted paper bags generate 7,621 tons, and composted paper bags generate 14,558 tons, per 100 million bags produced.
2. Plastic bags consume less than 6% of the water needed to make paper bags. It takes 1004 gallons of water to produce 1000 paper bags and 58 gallons of water to produce 1500 plastic bags.
3. Plastic grocery bags consume 71% less energy during production than paper bags. Significantly, even though traditional disposable plastic bags are produced from fossil fuels, the total non-renewable energy consumed during their lifecycle is up to 36% less than the non-renewable energy consumed during the lifecycle of paper bags and up to 64% less than that consumed by biodegradable plastic bags.
4. Using paper sacks generates almost five times more solid waste than using plastic bags.
5. After four or more uses, reusable plastic bags are superior to all types of disposable bags -- paper, polyethylene and compostable plastic -- across all significant environmental indicators.

ULS Report at pages 3-4. The ULS report concludes as follows:

Legislation designed to reduce environmental impacts and litter by outlawing grocery bags based on the material from which they are produced will not deliver the intended results. While some litter

reduction might take place, it would be outweighed by the disadvantages that would subsequently occur (increased solid waste and greenhouse gas emissions). Ironically, reducing the use of traditional plastic bags would not even reduce the reliance on fossil fuels, as paper and biodegradable plastic bags consume at least as much non-renewable energy during their full lifecycle.

ULS Report at pages 5.

OTHER ENVIRONMENTAL IMPACTS

As stated in my letters dated June 3 and 10, 2008, there are other environmental impacts of a shift to paper bags.

It takes approximately ten times more diesel fuel to transport paper bags than plastic bags, because they are heavier and bulkier.

It takes as much as eighty-five times more energy to recycle a paper bag than a plastic bag.

The manufacture of paper bags generates approximately 70 percent more air pollutants than plastic bags.

Approximately 13 to 17 million trees are chopped down each year to make paper bags, which will multiply if plastic bags are banned. Logging has an impact on climate change. Trees absorb and store CO₂. Logging releases stored CO₂ into the atmosphere. CO₂ is increasing the acidification of the oceans and threatening the ecosystem and entire species of marine life.

A comprehensive review of the impact of the paper industry on the environment is contained in a report entitled "The State of the Paper Industry" by the Environmental Paper Network the "Paper Report"). It can be downloaded at:

www.environmentalpaper.org/stateofthepaperindustry/confirm.htm.

The following findings are stated in the Paper Report:

[T]he paper industry's activities - and our individual use and disposal of paper in our daily lives - have enormous impacts. These include loss and degradation of forests that moderate climate change, destruction of habitat for countless plant and animal species, pollution of air and water with toxic chemicals such as mercury and dioxin, and production of methane - a potent

greenhouse gas - as paper decomposes in landfills, to name just a few. (Page iv)

One of the most significant, and perhaps least understood, impacts of the paper industry is climate change. Every phase of paper's lifecycle contributes to global warming, from harvesting trees to production of pulp and paper to eventual disposal. (Page v)

The climate change effects of paper carry all the way through to disposal. If paper is landfilled rather than recycled, it decomposes and produces methane, a greenhouse gas with 23 times the heat-trapping power of carbon dioxide. More than one-third of municipal solid waste is paper, and municipal landfills account for 34 percent of human related methane emissions to the atmosphere, making landfills the single largest source of such emissions. The U.S. Environmental Protection Agency has identified the decomposition of paper as among the most significant sources of landfill methane. (Page v)

Plastic bags are often criticized on the ground that they do not decompose in landfills. In fact, as we can see from the Paper Report, that is a positive attribute of plastic bags, not a negative one.

THE OAKLAND CASE

The issue of the applicability of CEQA to the banning of plastic bags has already been litigated. *Coalition To Support Plastic Bag Recycling v. City of Oakland et al.*, Alameda Superior Court, Case No. RG07-339097 (hereinafter the "Oakland Case"). The City of Oakland passed an ordinance banning plastic bags, citing 14 CCR §15061(b)(3) and §15308 as reasons for not preparing an EIR. The court ruled that the ordinance was invalid as the city could not make the findings required under either section. A copy of the court's ruling is provided herewith.

In the Oakland Case, the court referred to the Scottish Report and an earlier version of the ULS Report.

The court ruled as follows regarding 14 CCR §15061(b)(3):

The findings of the Scottish report raise a reasonable inference that an outright ban on single-use 100% petroleum plastic bags may result in increased use of paper bags.

This evidence is sufficient to defeat the assertion of the “common sense exemption” because, with such evidence as part of the record, the City cannot meet the standard that there is no possibility that the Ordinance will cause a significant environmental effect....

It is because of this evidence in the record and unanimity of the uncertainty whether paper bags are less (or more) environmentally friendly than plastic bags that the City cannot assert that there is “no possibility” of any significant environmental effect caused by the ban of the 100% petroleum plastic bags.

Having found evidence to support a fair argument regarding the significant adverse effects of the Ordinance claimed by Petitioner, and no evidence that would permit the City to conclude to a certainty that Petitioner’s concerns are unfounded, City’s reliance on the common sense exemption was an abuse of discretion.

Ruling at 9-10.

The court ruled as follows regarding 14 CCR §15308:

[T]here are exceptions to the categorical exemptions. The City cannot rely on a categorical exemption for a project where there is a “reasonable possibility” that the activity will have a significant effect on the environment due to “unusual circumstances.” (CEQA Guidelines § 15300.2(c).) The City’s determination whether the ordinance will have a significant effect on the environment is reviewed under the fair argument standard. [Citation] The question is whether “on the basis of the whole record, there was *no* substantial evidence that there would be a significant [environmental] effect.” [Citation] [Emphasis in original]

A shift in consumer use from one environmentally damaging product to another constitutes an “unusual circumstance” of an activity that would otherwise be exempt from review under CEQA as activity undertaken to protect the environment. [Citation] The court also finds that substantial evidence in the record supports at least a fair argument that single-use paper bags are more environmentally damaging than single-use plastic bags. [Referring to the Scottish Report, the ULS Report, and other documents.]....

Although City points to evidence in the record that contradicts evidence cited by Petitioner, the court does not address it except to note that none of this evidence negates the evidence cited by petitioner. "If such evidence [supporting a fair argument of significant environmental impact] is found, it cannot be overcome by substantial evidence to the contrary." [Citation]

Ruling at 11-12.

CEQA OBJECTIONS

Based on the foregoing and the documents provided herewith, the Coalition objects to the proposed negative declaration and the proposed ordinance on the following grounds:

- A. Based on the Scottish and ULS Reports and common sense, it is clear that the prohibition on the distribution of plastic carry-out bags in Manhattan Beach would result in an increase in the number of paper carry-out bags that would have significant adverse environmental effects. Consequently, the City of Manhattan Beach cannot meet the standard that there is *no possibility* that the proposed ordinance will cause a significant environmental effect.
- B. The IES addresses paper bags. The city concedes in the IES that the banning of plastic bags in Manhattan Beach "may result in an increase in paper bag usage." (Page 15) The city also concedes in the IES that "it is well documented that the manufacture and recycling of paper generates more wastewater than plastic bags. The increased use of energy could have an impact on the environment by increasing emissions from paper mills and recycling plants." (Page 15) The city is thereby conceding that there is a *fair argument* and a *possibility* that the proposed ordinance will have a significant environmental effect.
- C. The City Attorney admitted at the June 3, 2008 Council hearing that the Coalition had made a "fair argument" in its June 3, 2008 letter. He stated: "They have raised in their [June 3, 2008] letter what's called in CEQA terminology a fair argument that in fact there could be a negative impact from adopting this ordinance."
- D. The city states in the IES that Manhattan Beach is a small city with only 217 licensed retail establishments that might use plastic bags. (Page 15) The city concludes as follows: "It *appears* that any increase in the total use of paper bags resulting from the proposed ban on plastic bags...would be relatively small with a minimal or nonexistent increase in pollutants generated from production and recycling." (Page 16) (Emphasis added) This is a bare assertion that is not supported by any facts or evidence in the IES. In any case, the

- word “appears” is a concession by the city that it is *possible* that the ordinance will have significant environmental effect.
- E. The size of the city and the number of retail outlets have nothing to do with whether the activity in question may have a significant negative effect on the environment. If it were otherwise, then each small city could avoid the preparation of an EIR, but the cumulative effect of many small cities doing the same thing would be large. The Coalition hereby makes a *fair argument* that it is *possible* that banning plastic bags in a city with 217 retail outlets would have a significant negative effect on the environment caused by a shift to paper bags.
- F. The IES does not satisfy the requirements of 14 CCR §15063 for an Initial Study as it does not state all of the possible negative environmental effects of an increase in the number of paper carry-out bags, including those identified herein and in the Scottish and ULS Reports (which are incorporated in these objections by reference) and the Coalition’s letters dated June 3 and 10, 2008.
- G. There is substantial evidence in the record that supports a *fair argument* and a reasonable possibility that single-use paper bags are more environmentally damaging than single-use plastic bags, including this document and the Scottish and ULS Reports. Therefore, it cannot be seen *with certainty* that there is *no possibility* that the activity in question may have a significant negative effect on the environment. **This objection cannot be overcome by substantial evidence to the contrary.** 14 CCR §15061(b)(3); Oakland Case at 12; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 CalApp.3d 1337, 1348 (“If such evidence [supporting a fair argument of significant environmental impact] is found, it cannot be overcome by substantial evidence to the contrary.”).
- H. There is substantial evidence in the record that supports a *fair argument* and a reasonable possibility that the activity will have a significant effect on the environment due to “unusual circumstances.” A shift in consumer use from one environmentally damaging product to another constitutes an “unusual circumstance.” **This objection cannot be overcome by substantial evidence to the contrary.** 14 CCR §15308, §15300.2(c); Oakland Case at 12; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 CalApp.3d 1337, 1348 (“If such evidence [supporting a fair argument of significant environmental impact] is found, it cannot be overcome by substantial evidence to the contrary.”).

Each of the above objections is a separate and independent ground.

FURTHER OBJECTIONS

The Coalition further objects to the proposed ordinance on the following grounds:

1. Pursuant to California Public Resources Code §§42250-42257 (also known as “AB 2449”), stores (as defined in §42250(e)) are required to install special recycling bins for plastic bags. AB 2449 was intended to address and constitute the state’s solution to the perceived problems of plastic carry-out bags, including but not limited to recycling, litter, marine debris, and environmental sustainability issues. It occupies the field and preempts any potential city or county action to address those issues by enacting a plastic bag ban. AB 2449 contains no provision permitting a city or county to ban plastic bags. AB 2449 only reserves the right of cities and counties to adopt, implement, and enforce laws governing curbside or drop off recycling programs for plastic bags. §42250(c).
2. California cities and counties have no right or authority to ban a product simply because it is not recycled to a degree deemed satisfactory by the city or county.
3. California cities and counties have no right or authority to ban a product simply because the product sometimes becomes litter.
4. California cities and counties have no right or authority to ban a product simply because the product sometimes becomes marine debris.
5. California cities and counties have no right or authority to ban a product simply because they believe that it would be the best option for the sustainability of the environment.
6. A California city or county has no right or authority to ban plastic bags on environmental grounds. Other cities and counties may decide to pass laws banning paper bags rather than plastic bags. This would result in a patchwork of competing and conflicting environmental schemes that would cancel each other out and defeat the purposes of such laws. Assuming that it is not exclusively a federal matter under the Commerce Clause, only the California Legislature can enact such a ban.

Each of the above objections is a separate and independent ground.

REQUESTS FOR INCLUSION IN THE RECORD

It is requested that the following documents be made part of the record and the Staff Report:

1. This document.
2. The Oakland Case ruling provided herewith.
3. The Scottish Report provided herewith.
4. The ULS Report provided herewith.
5. The ULS media release provided herewith.
6. The London Times report provided herewith.
7. My letters dated June 3 and 10, 2008 on behalf of the Coalition provided herewith.

CONCLUSION

In the event that the city adopts the proposed ordinance, the Coalition and/or some or all of its members intend to file a lawsuit challenging its validity. The grounds will include (but may not be limited to) the points and objections stated herein and in my June 3 and 10, 2008 letters. No arguments or objections are waived. All rights are reserved.

We request an opportunity for the Coalition to provide oral testimony at the public hearing.

Dated: June 18, 2008

STEPHEN L. JOSEPH



Law Offices of Stephen L. Joseph
P.O. Box 221
Tiburon, CA 94920-0221
Telephone: (415) 577-6660
Facsimile: (415) 869-5380
E-mail: sljoseph.law@earthlink.net
Attorney for the Save The Plastic Bag
Coalition

EXHIBIT I



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Montgomery and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Lindy Coe-Juell, Assistant to the City Manager

DATE: July 1, 2008

SUBJECT: Consideration of an Ordinance to Prohibit the Use of Plastic Carry-Out Bags in Manhattan Beach

RECOMMENDATION:

Staff recommends that the City Council: 1) review the Initial Study, 2) conduct the public hearing, 3) waive further reading, and 4) introduce Ordinance No. 2115. This ordinance would ban all point-of-sale plastic carry-out bags within the City of Manhattan Beach. This ban would take effect for grocery stores, food vendors, restaurants, pharmacies and City facilities six months after the ordinance is adopted and one year after adoption for all other retail establishments and vendors.

FISCAL IMPLICATION:

There are no direct budget implications related to the Staff recommendation. There will, however, be Staff time involved with outreach and education. Also, though we expect a high rate of compliance, there may be Staff time involved with enforcement issues.

BACKGROUND:

The City Council, as a part of its 2008-2009 Work Plan, asked Staff to investigate and provide information on strategies to ban plastic bag use, including what other cities have done. This report provides information for a discussion of banning plastic carry-out bags used at the point-of-sale.

DISCUSSION:

The Initial Study

In accordance with the California Environmental Quality Act (CEQA) of 1970, after conducting an Initial Study, Staff found that the proposed ordinance would not have a significant effect on the environment and a Negative Declaration has been prepared. The Initial Study is attached to this report for review. Further discussion of environmental impacts related to carry-out bags is provided below.

The Problem

Plastic carry-out bags (or plastic bags) contribute to litter and to have many negative impacts on the environment. Plastic bags were first introduced by retail stores in the United States in 1975 and began to be distributed to customers at the point-of-sale in grocery stores in 1977. Plastic Bags are made

from plastic resin, which is created by taking chemical chains called polymers commonly found in petroleum and natural gas processing, and connecting them together using heat and pressure.¹ Today these bags are ubiquitous in the marketplace because they are light-weight, strong and inexpensive.

According to the California Integrated Waste Management Board (CIWMB), approximately 6 billion plastic bags are consumed in Los Angeles County each year. This number is equivalent to 600 bags per person per year. Plastic bags are recyclable, however less than 5 percent are actually recycled. Research conducted by the County of Los Angeles found that this is largely due to the logistics of sorting, high contamination rates, the tendency of the bags to jam the screens used to separate materials at the recycling facilities, the low quality of plastic used in the bags and the lack of suitable markets for the recycled plastic resin.

Plastic bags have a propensity to become litter and to adversely effect the marine environment. This impact is of particular concern for many people who live in, work in, and visit Manhattan Beach. As a coastal city, we have a strong interest in protecting the marine environment as an element which contributes to the unique quality of life in Manhattan Beach. Due to the expansive and lightweight characteristics of plastic bags, they are easily windblown and end up littering landscaping, streets, streams, storm drain systems and, ultimately, the ocean.

Plastic bags make up a significant portion of the litter found in storm drains and contribute to the vast amount of plastic debris found in the marine environment. A study conducted by the City of Los Angeles in 2004 found that plastic bags made up 25 percent of the litter cleaned from 30 storm drain catch basins by weight and 19 percent by volume. A primary problem with plastic is that it does not biodegrade. Plastic goes through a process called photodegradation, where sunlight breaks the material down into smaller and smaller pieces that remain in the marine environment for many years. A study cited by the California Coastal Commission found an average of 334,271 pieces of plastic per square mile in the North Pacific Central Gyre, which serves as a natural eddy system where debris accumulates.² Other research has found that broken, degraded plastic pieces outweigh surface zooplankton in the North Pacific Central Gyre by a factor of 6 to 1.³

Although the impacts of plastic bags on the ecosystem are not precisely quantified, reports⁴ have documented the numerous health impacts on wildlife attributed to plastic carry-out bag litter. Plastic bags pose a particular problem for wildlife that mistake the bags for food, and as a result, ingest the bags thereby choking, starving or suffocating. Whales and birds often swallow plastic bags.

¹LA County Staff Report, "An Overview of Carryout Bags in Los Angeles County", August 2007.

²Moore, C.J., S. L. Moore, M.K. Leecaster, and S.B. Weisberg, 2001. A comparison of plastic and plankton in the North Pacific Central Gyre. In: "The Problem with Marine Debris, California Coastal Commission Public Education Program, www.coastal.ca.gov/publiced/marinedebris.html June 16, 2008).

³"Pelagic Plastic", The Agalita Marine Research Foundation, www.algalita.org/pelagic_plastic.html.

⁴"Marine Debris Facts", National Oceanic and Atmospheric Administration, www.marinedebris.noaa.gov (June 16, 2008).

"Pelagic Plastic", citation above.

"The Problem with Marine Debris", citation above.

"Plastics in Our Oceans", Woods Hole Oceanographic Institution, www.whoi.edu/science/B/people/kamaral/plasticsarticle.html, (June 16, 2008).

"Marine Debris", Ocean Conservancy, www.oceanconservancy.org/site/PageServer?pagename=issues_debris (June 24, 2008).

not bags

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inadvertently during feeding. Turtles swallow the bags since they resemble their main food source, jellyfish. Plastic pieces have also been shown to contain additives such as PCBs, DDT and nonylphenols and in turn can seep into marine animals that inadvertently ingest them, which endangers their health and potentially impacts the larger food chain.⁵

Bag Alternatives

The primary alternatives to plastic bags are reusable bags (made from cloth or other durable materials) and paper bags. Reusable and paper bags are widely available in the marketplace and are currently being used at grocery stores, restaurants and other retail stores. Biodegradable plastic bags are not a viable option for Southern California even though they have been considered as an alternative to plastic bags in cities such as San Francisco and Oakland. Northern California has the commercial composting facilities needed to process biodegradable bags; however, these types of facilities are not available in our area.⁶ Additionally, the biodegradable bags have the same lightweight and inflatable qualities as regular plastic bags that allow them to become windblown and litter the environment.

Reusable bags are the best alternative for several reasons. Accelerating the widespread use of reusable bags would conserve energy and natural resources, reduce the total volume of waste disposed in landfills, diminish plastic bag litter and help to promote a clean and sustainable environment. Many people have already begun to carry and use reusable bags. Most grocery stores and large retail stores have reusable bags available for purchase and some offer incentives for customers that bring their own reusable bags. For example, Ralphs grocery stores offers a \$0.05 refund per reusable bag.

We expect that an ever greater number of people will begin turning to the option of reusable bags given the growing awareness of environmental issues and the demand for change. However, it is a fair assumption that more paper bags will be used if plastic bags are banned, especially soon after the ban is passed and before people have had time to adjust. The primary concern of many people in our community regarding plastic bags is the impact they have on the marine environment. Unlike plastic bags, paper bags do biodegrade in the water. They are heavier and so are not easily blown by the wind. They are made from renewable resources (especially if recycled paper content is used) and have a higher recycling rate, estimated at 21 percent by the US EPA.

- paper

Life Cycle Assessment Information

Much attention has been directed toward studies that have reported Life Cycle Assessments⁷ for plastic versus paper bags. LCAs can be a useful tool for evaluating a range of energy and materials

⁵A Brief Analysis of Organic Pollutants Absorbed to Pre and Post Production Plastic Particles from the Los Angeles and San Gabriel River Watersheds, C.J. Moore, G.L. Lattin, A.F. Zellers, Algalita Marine Research, Long Beach, CA.

⁶Biodegradable bags will break down under properly maintained composting conditions, they will not break down quickly enough in the marine environment to avoid impacts to wildlife. They also have the potential to contaminate plastic recycling programs and will cause the same problems, with clogging recycling screens, at sorting facilities as do the regular plastic bags.

⁷As defined by the US EPA, a Life Cycle Assessment (LCA) is a technique to assess the environmental aspects and potential impacts associated with a product, process, or service, by: compiling an inventory of relevant energy and material inputs and environmental releases; evaluating the potential environmental impacts associated with identified inputs and releases; and interpreting the results to help you make a more informed decision.

used and wastes released from a product lifecycle, but they are limited in terms of assumptions made by the researchers and the quality of data used as input. Also, the LCAs that compare paper and plastic bags do not address the direct impact these bags have on the marine environment. In our community, the impact to the marine environment is the primary concern that motivated the consideration of a policy to ban plastic bags. Further, the paper versus plastic environmental impact debate becomes less and less meaningful if one believes that our environmentally conscience community will begin to take reusable bags for their shopping rather than rely on paper or plastic bags provided at the store.

primary
concern

Staff reviewed several paper versus plastic LCA studies,⁸ and have included all of the studies we reviewed as attachments to this report for independent review. We have summarized the findings of a comparative report prepared by the Department of Trade and Industry in the Republic of South Africa. The authors of this report examined two studies with similar goals—to compare the LCA of paper and plastic—but differing results. In our overall review of the LCA studies, we found that assumptions, such as the number of plastic bags compared to paper bags that are used to hold an equivalent amount of goods, varied from study to study. Other factors such as the amount of post-consumer recycled content included in the bags that were studied also varied, or were not explicitly described. We observed that differing results from the reports could be selectively used to lend support to proponents of either plastic or paper bags.

The first LCA study reviewed in the South African report was prepared by the consulting firm Franklin Associates and was commissioned by the Council for Solid Waste Solutions in 1990.⁹ Although this report is 18 years old, it is often cited in articles related to the paper versus plastic debate. The second LCA study was prepared by an Independent Swedish Environmental Consulting Group and was published in the year 2000.

It is interesting to note that some of the findings from the two reports (energy used, air emissions and water emissions) were directly contradictory. The Franklin Associates study showed that plastic had

⁸"Paper or Plastic", Washington Post.com, <http://www.washingtonpost.com/wp-dyn/content/graphic/2007/10/03/GR2007100301385.html?referrer=emailink> (June 25, 2008).

The ULS Report, "Review of Life Cycle Data Relating to Disposable, Compostable, Biodegradable, and Reusable Grocery Bags", March 2008.

Franklin Associates, LTD., "Resource and Environmental Profile Analysis of Polyethylene and Unbleached Paper Grocery Sacks", June 1990.

Fund for Research into Industrial Development, Growth and Equity (FRIDGE), "Socio-Economic Impact of the Proposed Plastic Bag Regulations", chapter 3 lifecycle analysis accessed from the City of San Francisco website at <http://www.sfenvironment.org/downloads/library/asticlifecycleanalysis.pdf.pdf>

Boustead Consulting & Associates, "Life Cycle Assessment for Three Types of Grocery Bags - Recyclable Plastic; Compostable, Biodegradable Plastic; and Recycled, Recyclable Paper, June 2007.

AEA Technology Environment, Scottish Executive Report, "Proposed Plastic Bag Levy - Extended Impact Assessment Final Report, June 2005.

⁹According to www.sourcewatch.org The Council for Solid Waste Solutions was a Washington D.C. based organization that later evolved into the American Plastics Council and then merged with the American Chemistry Council.

the least environmental impact in these categories and the Environmental consulting firm study found that paper had the least environmental impact in the same categories. Other categories of impact were not considered by one report or the other.

The overall conclusion of the South African report was that LCA results are sensitive to and limited by factors such as scope, objectivity, geography, climate, and energy sources. They also concluded that any LCA can be constructed to carry a specific message by carefully selecting the impacts to examine.

Table 1: LCA Findings from the South African Report

Impact Category	Study 1: Franklin Associates	Study 2: Swedish Environmental Consulting Group
Primary Energy	Plastic uses 23.08% less	Paper uses 80% less
Solid Waste	Plastic uses 75.68% less	Category not considered
Abiotic Resource Depletion	Category not considered	Paper depletes 85% less
Global Warming	Category not considered	Paper contributes 95.69% less
Acidification	Category not considered	Paper contributes 53.79% less
Nutrient Enrichment	Category not considered	Plastic contributes 55.36% less
Ozone Formation	Category not considered	Paper contributes 64.04% less
Aquatic Ecotoxicity	Category not considered	Paper contributes 37.04% less
Air Emissions	Plastic contributes 57.45% less	Paper contributes 52.23% less
Water Emissions	Plastic contributes 96.58% less	Paper contributes 28.79% less

Economic Analysis

There are a wide range of factors including size, composition (for example, the percentage of recycled content), quantity ordered and style that impact the cost to a retailer for purchasing different kinds of bags. In general, plastic bags are less expensive than paper bags. However, the cost impact to store owners for a change from plastic to paper bags will depend largely on the quantity of bags used and the style of paper bag selected. The cost to a grocery store or a large retailer for a standard size paper bag will be different than the cost to a boutique store owner that chooses to use a stylized, and perhaps logo-branded, bag. Although there is not one standard finding that we can present, we have attempted to provide information and several examples by which to gauge cost impacts to local businesses.

Bag Costs

- In the report titled “An Overview of Carryout Bags in Los Angeles County”, the County of Los Angeles found the plastic bags range 2 to 5¢ per bag; and paper bags range 5 to 23¢ per bag.
- A local retail store owner reported that the plastic bags ordered for the store range 13 to 18¢ per bag and that the paper bags ordered range 42¢ to \$1.13 per bag.

Bags Used

- A local restaurant owner reported that the restaurant provides approximately 1,000 plastic carry-out bags per year to customers.
- Based on information from a local retail store owner, a retail store provides approximately 12,000 carry-out bags per year to customers.
- A local grocery store manager reported that historically the store provided approximately 3,000,000 plastic bags to customers per year. This manager also reported that many more customers than in the past are bringing their own bags (approximately 1/3 of customers currently bring their own bag).

Cost Differences

- Based on the bag costs reported by the County and a local retail store owner, plastic bags range from 2 to 18¢ per bag; and paper bags range from 5¢ to \$1.13 per bag.
- The low point price difference between a plastic and paper bag is 3¢. The high point price difference between a plastic and paper bag is 95¢.
- For a local restaurant owner that uses approximately 1,000 plastic carry-out bags per year, the approximate cost difference to switch from plastic to paper would range from \$30 to \$950. If one assumes that most restaurants would not use a stylized, high-end paper bag, the price difference would probably be at the lower end of the scale.
- For a local retail owner that uses approximately 12,000 plastic carry-out bags per year (assuming that they currently use plastic bags exclusively and no paper bags), the approximate cost difference to switch from plastic to paper would range from \$360 to \$11,400.
- For a grocery store that uses approximately 3,000,000 plastic carry-out bags per year (assuming that this amount will not decrease with more people bringing their own reusable bags and using the price difference of 3¢ for a basic lower end plastic bag to a basic lower end paper bag), the approximate cost difference to switch from plastic to paper bags would be \$90,000 per year.

Policy Alternatives

Several U.S. Cities and many Countries have adopted various policy strategies from fees to voluntary programs to reduce the consumption of plastic bags. Of these strategies, per bag fees have been shown to be particularly effective.

The Ireland PlasTax Case Study

In March 2002, Ireland became the first Country to introduce a plastic tax, or "PlasTax" at the rate of 20 (U.S.) cents. Ireland's tax resulted in a 90 percent reduction in the consumption of plastic bags. The monies received from the tax are earmarked for a green fund established to benefit the environment. Although the per bag fees have been shown to be effective in reducing plastic bag consumption, that option is not available in California due to current state law.

State Law Concerning Bag Fees

The California State Legislature enacted Assembly Bill 2449, which took effect on July 1, 2007. This law requires retail stores that have over 10,000 square feet and a licensed pharmacy or supermarkets with gross annual sales of \$2 million or more to provide customers the option to return clean plastic carry-out bags for recycling. It also requires these stores to make reusable bags available to customers for purchase. Additionally, and of importance to local governments, AB 2449 prohibits a city, county or other public agency from imposing a per bag fee on plastic bags.

The Legislature is considering a new measure, AB 2058 (Levine), that would establish a diversion/recycling benchmark¹⁰ and require the defined stores (same definition as AB 2449) to

¹⁰AB 2058 states that stores must demonstrate to the California Integrated Waste Management Board that, in comparison to the number of plastic carryout bags provided by the store to customers and subjected to diversion in the 2007 calendar year, at least 70 percent more plastic carryout bags provided by the store to customers during the 12-month period ending on December 31, 2010, and annually thereafter, have been subjected to diversion. Diversion, for the purposes of AB 2449, is defined as a reduction in the volume of plastic carry out bags provided to customers and an increase in the volume of plastic carryout

charge a fee of at least 25 cents per plastic bag if the diversion rate is not met by July 2011. The bill would also require the defined stores to charge 25 cents per paper bag distributed after July 2011.

Due to the fact that AB 2058 limits the affected stores to those that meet the definition of a retail store that has over 10,000 square feet and a licensed pharmacy and a supermarket that has gross annual sales of \$2million or more, it would not apply to most stores in Manhattan Beach that distribute plastic and/or paper carry-out bags to customers at the point of sale.

Voluntary Reduction Programs

On January 22, 2008, the Los Angeles Board of Supervisors voted to reduce plastic bag use by enacting voluntary reductions of 30 percent and 65 percent by 2010 and 2013 respectively. If these targets are not met by the deadlines, a mandatory ban may be implemented. Although this is a step in the right direction for improving recycling rates, international experience shows that voluntary programs may not be effective in reducing plastic bag litter. In 2002, the Australian federal government began a voluntary initiative to reduce plastic bag consumption by 50 percent and plastic bag litter by 75 percent by 2005. After retailers had spent \$50 million on education efforts, recycling rates did increase but there was no change in the amount of plastic bag litter. In January 2008, the Australian federal government announced plans to eliminate the use of plastic carry-out bags by the end of 2008, in part because the voluntary program did not achieve the desired results.

Examples of Plastic Bag Ban Policies

Other Countries that have banned plastic bags include Taiwan, Kenya, Rwanda, Bangladesh, Germany, Sweden and China. Within California, the Cities of San Francisco and Oakland have passed ordinances to ban the distribution of non-biodegradable plastic bags.¹¹ The San Francisco ordinance applies only supermarkets with gross annual sales of two million dollars or more or retail pharmacies with at least five locations in the City under the same ownership. The Oakland ordinance applies to retail establishments, excluding restaurants, with gross annual sales of one million dollars or more. On May 12, 2008, Malibu became the first City in California to ban point-of-sale plastic bags (both compostable and non-compostable) at all retail establishments.¹² The City of Santa Monica is considering a comprehensive plastic bag ban similar to the Malibu ban.

The San Francisco bag ban took effect for large supermarkets in November 2007 and for pharmacies in May 2008. According to a representative with the Environmental Division in the City of San Francisco, they have experienced a very high rate of compliance. In addition to banning non-compostable plastic bags their ordinance requires that paper bags must have 40% recycled content. All but one grocery store was in compliance before the effective date of the ban in terms of eliminating non-compostable plastic bags and in providing the 40% post-consumer recycled paper bags. Staff worked with the one remaining store, which met compliance shortly after the ban took effect. They are experiencing similar cooperation with the pharmacies.

bags recycled. The diversion rate considered to comply with AB 2449 will include any combination of an individual store, a chain of stores under common ownership, diversion within a city, county or region, within the entire state.

¹¹As mentioned in the Discussion section of this report, appropriate commercial composting facilities are available in Northern California making the use of biodegradable bags a viable alternative.

¹²Malibu's ban will take effect for grocery stores, food vendors restaurants, pharmacies and city facilities in December 2008; and will take effect for all remaining retail establishments, vendors and non-profit vendors in June of 2009.

After passing their ordinance, the City of Oakland was sued by the "Coalition to Support Plastic Bag Recycling" on CEQA grounds. The Superior Court for the County of Alameda has issued a tentative decision granting petition for a writ of mandate. Oakland has suspended their ban and is in the process of developing a response. See Attachment H for the full Superior Court tentative decision.

Conclusion

Staff recommends that the City Council adopt Ordinance No. 2115, which would ban all point-of-sale plastic carry-out bags within the City of Manhattan Beach. This ban would take effect for grocery stores, food vendors, restaurants, pharmacies and City facilities six months after the ordinance is adopted and one year after adoption for all other retail establishments and vendors. Staff believes that this ban is the best policy alternative to address the concern regarding plastic bag litter and its impact on the marine environment.

As discussed above, reusable bags are the best alternative for conserving energy and natural resources, for reducing the total volume of waste disposed in landfills, and to help promote a clean and sustainable environment. The City Council could consider a plastic bag ban as the first step toward encouraging the use of reusable bags. If the City Council decides to adopt Ordinance No. 2115, Staff will begin an aggressive education and outreach campaign to inform our residential and business community of the ban and to promote the use of reusable bags. Among the outreach activities, we will advertise in local papers, post information on our website, distribute information at upcoming public events and include the information in our City-wide newsletter.

As an additional step, the City Council could consider a fee or tax to be required for paper bags. The State law that prohibits government agencies from implementing a fee for plastic bags does not extend to paper bags. The City of Santa Monica is currently studying this issue and developing options for implementation. If the City Council is interested in investigating a paper bag fee or tax, Staff would return at a later date with more information.

Through our education and outreach campaign, we would work with business groups like the Chamber of Commerce, the Downtown Business and Professional Association and the Village Mall. The Executive Directors of the Chamber and the Downtown Business and Professional Association have expressed support for the ordinance. As an initial outreach step, the President of the Chamber of Commerce sent an email to the Chamber's membership asking if they would support a ban on plastic bags in Manhattan Beach. As of Friday afternoon, 86 businesses had responded; 70 are in favor of the ban, 10 are opposed to the ban and 6 were uncertain.

Based on the support expressed by members of our community we expect to have a high rate of compliance with this point-of-sale plastic bag ban. However, we will plan to provide warnings and work with businesses to promote awareness of the ban before moving to enforcement through citations. We have also included an exemption clause in the ordinance whereby businesses that show the ban would cause undue hardship may be granted a one-year extension to comply by the City Manager.

Part of the evolving, and improving, awareness of environmental stewardship includes the idea of the "four R's": reduce, reuse, recycle and *rethink*. The ultimate goal of our outreach campaign will be to reach people on the importance of changing behavior by switching to reusable bags for carrying goods

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in order to make a positive and sustainable collective impact on the environment.

ALTERNATIVES:

1. Adopt Ordinance No. 2115 to prohibit the use of plastic carry-out bags in Manhattan Beach.
2. Provide other direction.

ATTACHMENTS:

- A. Initial Study, in accordance with CEQA, for Ordinance No. 2115
- B. Public Notice in the June 12, 2008 Beach Report of the Hearing to Consider Ordinance No. 2115
- C. Ordinance No. 2115
- D. Emails in Support of Ordinance No. 2115
- E. Emails in Opposition of Ordinance No. 2115
- F. Letters in Support of Ordinance No. 2115
- G. Letters in Opposition of Ordinance No. 2115
- H. Superior Court Tentative Decision in the Oakland Case
- I. City of Malibu Staff Report Dated May 12, 2008
- J. Materials Regarding the Use and Impact of Plastic Carry-Out Bags
- K. Formal Objections by the Save the Plastic Bag Coalition
- L. Life Cycle Assessment Reports

EXHIBIT J

THE SAVE THE PLASTIC BAG COALITION

TO THE CITY OF MANHATTAN BEACH, CALIFORNIA

SUPPLEMENTAL FORMAL OBJECTIONS BY THE SAVE THE PLASTIC BAG COALITION TO PROPOSED NEGATIVE DECLARATION AND CLAIMS OF EXEMPTION REGARDING PROPOSED ORDINANCE NO. 2115 TO PROHIBIT THE USE OF PLASTIC CARRY-OUT BAGS, AND TO THE PROPOSED ORDINANCE

The Save The Plastic Bag Coalition (the "Coalition") is an unincorporated association. It is a new group that will include plastic bag manufacturers, plastic bag distributors, retailers, and concerned citizens. The founding members are Elkay Plastics and Command Packaging. The coalition is growing quickly and includes several other companies.

The Coalition has previously filed objections, which are attached to the Staff Report dated July 1, 2008. The Coalition supplements those objections as follows:

A. Objection to statement regarding marine mammals and seabirds

The July 1 Staff Report states:

"Although the impacts of plastic bags on the ecosystem are not precisely quantified, reports [footnotes] have documented the numerous health impacts on wildlife attributed to plastic carry-out bag litter. Plastic bags pose a particular problem for wildlife that mistake bags for food, and as a result, ingest the bags thereby choking, starving or suffocating. Whales and birds often swallow plastic bags inadvertently during feeding. Turtles swallow the bags since they resemble their main food source, jellyfish."

This information is false. We have provided the London Times report which is in the record. ("Series of blunders turned the plastic bag into global villain," March 8, 2008) The city has chosen to ignore the London Times report and is repeating unfounded myths.

One of the most published photographs on the Internet regarding plastic bags shows a turtle with a blue plastic bag in its mouth. The same photograph of the same turtle is shown over and over again on the Internet.

Some plastic bags were apparently found inside a whale in 2007 or early 2008. A picture appeared in the world's press in February 2008 along with calls for a ban on plastic bags.

There does not appear to be photograph of another turtle or mammal or a seabird eating a plastic bag anywhere on the Internet. That is one turtle and one whale.

We have found photographs of just two birds that may have been tangled in plastic bags.

There may be photographs of more turtles, mammals, or birds on the Internet that the Coalition has not been able to find. The number of such photographs is small, perhaps six to ten. They could have been taken at any time over the past 30 years since plastic carryout bags were introduced.

We encourage the Council to conduct to search for “turtle plastic bags” or “marine mammal plastic bags” or “seabird plastic bags” or “bird plastic bags” on Google images. Photographs of large numbers of turtles, mammals, or seabirds ingesting or entangled in plastic bags simply do not exist.

The Coalition objects to the quoted statement as it is baseless and misleading and requests that it be stricken from the record.

B. Objection to statement regarding additives

The July 1 Staff Report states:

“Plastic pieces have also been shown to contain additives such as PCBs, DDT and nonylphenols and in turn can seep into marine mammals that inadvertently ingest them, which endangers their health and potentially impacts the larger food chain.” [Footnote]

This statement has nothing to do with plastic bags and should not even be in the July 1 Staff Report. “Plastic pieces” does not mean plastic bags. Plastic bags do not contain PCBs, DDT or nonylphenols. Plastic bags are non-toxic.

The Coalition objects to the quoted statement as it is misleading and not relevant to plastic bags. The Coalition requests that it be stricken from the record.

C. Objection to non-disclosure regarding Swedish study

The July 1 Staff Report a study “prepared by an independent Swedish Environmental Consulting Group” published in 2000. The report apparently makes unfavorable findings about plastic bags compared to paper bags.

The Swedish study is not attached to the July 1 Staff Report and is not in the record. However, a document is attached to the July 1 Staff Report that contains a summary of the Swedish study. Page 48 is missing from that document. We found it on the Internet. It is attached hereto.

The following sentence appears on missing page 48:

“The study was undertaken by CIT Ekologik, an independent Swedish environmental consultancy, on behalf of Eurosac and CEPI Eurokraft.”

A copy of the homepage of the Eurosac website is attached hereto. Eurosac is described as the “European Federation of Multiwall Paper Sack Manufacturers.”

A copy of the homepage of the CEPI Eurokraft website is attached hereto. CEPI Eurokraft is described as the “European Kraft Paper Producers for the Flexible Packaging Industry.”

Page 48 is clearly highly relevant. It shows that the Swedish report is not independent at all.

The Coalition objects to the omission of page 48 and requests correction of the Staff Report to indicate that the Swedish report was prepared on behalf of the paper industry.

D. Objection to Swedish study based on relevance

According to missing page 48, the Swedish study compared LDPE plastic bags with a thickness of 140 microns with paper bags. A 140 micron bag is 5.6 mils thick. Grocery bags in the United States are made of HDPE, LDPE, or LLDPE and are generally about 13 microns thick, which means that they contain approximately 90% less material than the bags studied in the Swedish report.

The following statement appears on page 48: “It is noted that the products analyzed in this study are fundamentally different products to checkout carrier bags – they are bigger bags.”

The Coalition objects to the omission of page 48 and requests that all references to the Swedish report be stricken from the record as they are misleading and irrelevant.

CONCLUSION

No arguments or objections are waived. All rights are reserved.

We believe that the June 3 and July 1 Staff Reports are intellectually dishonest. The city is knowingly presenting myths and distorting information about plastic bags.

The omission of page 48 from the record is particularly troubling. The Coalition requests that the City of Manhattan Beach conduct a full investigation into why page 48 was omitted from the record.

The Coalition continues to request and demand that an Environmental Impact Report be prepared in good faith, pursuant to CEQA. In the event that an EIR is not prepared, the Coalition will file a lawsuit against the city. We will not accept the continuing disparagement and stigmatization of plastic bags based on myths and misinformation.

Dated: July 1, 2008

STEPHEN L. JOSEPH



Law Offices of Stephen L. Joseph
P.O. Box 221
Tiburon, CA 94920-0221
Telephone: (415) 577-6660
Facsimile: (415) 869-5380
E-mail: sljoseph.law@earthlink.net
Attorney for the Save The Plastic Bag
Coalition

Study 2: Title: "**Distribution in Paper Sacks**," CIT Ekologik, Chalmers Industriteknik, 2000.

The study was undertaken by CIT Ekologik, an independent Swedish environmental consultancy, on behalf of Eurosac and CEPI Eurokraft.

Goal

To compare the environmental performance of distribution in 25kg paper sacks with alternative distribution systems. The alternatives include bulk distribution, 25kg Plastic sacks and 1000kg 'big bags'. It is noted that the products analysed in this study are fundamentally different products to check out carrier bags – they are bigger bags.

Objectives

The primary objective of the study was to compare the environmental impacts of distribution in paper sacks with those of distribution in other systems for filling goods in Europe.

Scope

All of the systems studied include extraction of natural resources, production of raw materials, production of sacks/big bags/silos, after use treatment and all associated transport.

On the comparison of the distribution systems, it became clear that the distribution system transport itself gave the highest impact of the studied systems. This was due to the assumed distribution of 1000kg of filling goods over a distance of 300km. It was also noted that the environmental effects were of the same size regardless of the packaging system and were therefore removed from the presentation of the study results.

The paper and plastics sacks are described as follows:


Bag type	Micron/ g/m ²	Dimensions (cm)
LDPE	140	37 x 72 x 13
Paper	2 x 110	50 x 70 x 13

The lifecycle phases covered in this report are explained in the table below

Life cycle stage	Explanation
Raw material production	Production of paper and LDPE from original source
Conversion	The conversion of paper and resin into Sacks
Waste management	Waste management, incineration, land filling or composting were considered as separate scenarios. The recycling scenario has assumed 100% recycling for both paper and plastic. Note for ease of comparison only reflected the recycling waste management scenarios have been reflected, however where relevant reference is made to other scenarios.
System expansion	The systems are expanded to include parts of other life cycles that are affected by the compared systems. The purpose of this system expansion is to avoid allocation problems that arise at waste incineration or at open loop recycling of material from one life cycle to another. The systems are expanded to include parts of other systems that are affected by the recycling of major materials after use in the distribution system.



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Contact

42, rue Galilée
F - 75116 Paris,
FRANCE

Tel : +33 1 47 23 75 58

Fax : +33 1 47 23 67 53

info@eurosac.org



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of Multiwall Paper Sack
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