

MB to Appeal Ruling That Sacked Plastic-Bag Ban

By Andrea Woodhouse, Staff Writer
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Manhattan Beach has opted to appeal a judge's recent rejection of its ban on plastic bags.

The City Council also decided Wednesday it will still consider fully studying the possible environmental effects of such a prohibition, a hurdle members skipped before approving the ban in July.

By doing so, Manhattan Beach violated the California Environmental Quality Act, a judge ruled last month.

When he invalidated the ban, Los Angeles Superior Court Judge David Yaffe sided with a group of plastics manufacturers that sued the city in August.

In the appeal, City Attorney Bob Wadden will argue that Yaffe used an inappropriate standard to determine whether an environmental impact report was necessary before banning plastic bags, he said.

Yaffe overlooked a provision of CEQA that requires a full environmental study only when a proposed project poses a substantial impact on the environment, Wadden said.

"There was no evidence in the record to show that there was a fair argument that there would be substantive impacts," he said.

Mayor Portia Cohen said an appeal would likely take about six months and cost about \$2,000 to pursue, but would prove to Manhattan's residents, business owners and opposing Save the Plastic Bag Coalition members the city's commitment to eliminating the synthetic carriers in town.

"We really didn't discuss if we thought we'd prevail," she said. "The point is to send a message to our community and the plastic bag coalition that we're not giving up on our intention to ban plastic bags and promote the use of reusable bags."

City leaders will also consider conducting an environmental review to settle opponents' arguments that nixing plastic bags would increase use and litter of paper sacks, which some studies show require more energy to produce, consume more space in landfills and emit more methane gases during decomposition.

Estimated to cost about \$100,000, an environmental analysis tackling the paper vs. plastic debate would be the first of its kind, Cohen said.

"What makes it risky is that no one has done an EIR for plastic bags before," she said. "It would be novel, and we don't quite know what the courts would expect, so there's hesitation."

Manhattan Beach could also wait until another city pursuing a plastic bag ban, such as Malibu, conducts an environmental analysis. Manhattan could model its research after that study should it hold up in court, Cohen said.

A third option for Manhattan Beach would be to combine forces with other cities interested in pursuing a ban to share the costs to conduct an environmental impact report, Cohen added.

The council will likely decide its next move in the coming months but, for now, an appeal is an economical and meaningful option, Cohen said.

"We decided we're going to go forward with the appeal because the cost is so low and it sends a message to the community," she said. "With the expense and in today's economy, I just don't know about an EIR."

Yaffe's Feb. 20 ruling came about a week before Manhattan Beach's ban was set to kick in for some local businesses, many of which had already prepared for the switch by stocking paper or reusable bags.

Despite the legal setback, Manhattan Beach hoped to nurture that momentum, Cohen said.

"We're going to send a letter to our businesses telling them the status of the lawsuit, but emphasizing our hope that they'll continue with their plans to emphasize using reusable bags," she said.

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