



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 17, 2008

SUBJECT: Continuation of the Consideration of an Ordinance to Prohibit the Use of Plastic Carry-Out Bags in Manhattan Beach to the July 1, 2008 City Council Meeting

RECOMMENDATION:

Staff recommends that the City Council continue the public hearing to introduce Ordinance No. 2115 to the July 1, 2008 regularly scheduled City Council meeting. This ordinance would ban all point-of-sale plastic carry-out bags within the City of Manhattan Beach. It is necessary to continue the public hearing to July 1st to allow for a 20-day environmental review notification period required by state law.

FISCAL IMPLICATION:

There are no direct budget implications related to the Staff recommendation.

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. On June 3, 2008 Staff provided a report, presentation and draft ordinance to City Council. Due to a threat of a law suit that was received that day, Council decided to continue the public hearing of the ordinance pending an environmental review to address the California Environmental Quality Act (CEQA). Staff posted notice of the environmental review with the County Clerk and the Beach Reporter on June 12, 2008.

Staff will return to City Council at the July 1st meeting with an updated report and the results of the environmental review.

ATTACHMENTS: Staff Report dated June 3, 2008
Ordinance No. 2115



Agenda Item #: _____



Staff Report

City of Manhattan Beach

TO: Honorable Mayor Montgomery and Members of the City Council

THROUGH: Geoff Dolan, City Manager *GD*

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

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

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

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.

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

APPROVED AS TO FORM:

By 
City Attorney