



Agenda Item #: \_\_\_\_\_

# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Tell and Members of the City Council

**THROUGH:** David N. Carmany, City Manager

**FROM:** Roxanne M. Diaz, City Attorney  
Diana Varat, Assistant City Attorney

**DATE:** March 15, 2012

**SUBJECT:** Ordinance 2158 Amending the City of Manhattan Beach Municipal Code to Clarify that the City's Prohibition of the Distribution of Plastic Carry-Out Bags Shall Not Supersede the California Retail Food Code, or Any Other State or Federal Law

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### **RECOMMENDATION:**

Staff recommends that the City Council waive full reading of the ordinance and that the ordinance entitled: "An Ordinance of the City of Manhattan Beach Clarifying the City's Prohibition of Plastic Carry-Out Bags, and Amending Section 5.88.010 of the Manhattan Beach Municipal Code" be introduced and read by title only.

### **FISCAL IMPLICATION:**

Adoption of this ordinance has no fiscal impact.

### **DISCUSSION:**

In July 2008, the City adopted Ordinance No. 2115, prohibiting the distribution of plastic bags at the point-of-sale for all retail establishments. The ordinance was challenged by the "Save the Plastic Bag Coalition," whose members include plastic bag manufacturers and distributors, who asserted that the City should have conducted a full environmental impact report rather than a negative declaration prior to adopting the plastic bag ban. After several years in litigation, the ordinance and the appropriateness of the City's environmental compliance was upheld by the California Supreme Court in *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal. 4th 155 (2011). Due to the protracted nature of litigation, implementation of the ordinance was phased in and the City recently began to inform City businesses that compliance was going to begin. Enforcement for certain types of establishments (such as grocery stores and pharmacies) will begin on April 14, 2012. All other retail establishments will need to comply starting July 14, 2012.

Since the adoption of the City's ordinance, more than 40 cities in various counties throughout California have adopted plastic bag bans. While cities and counties continue to adopt plastic bag ban ordinances, litigation by special interest continue to threaten local governments' ability to do so. Such litigation delays or prevents plastic bag ban ordinances from going into effect.

Recently, some have taken the position that the California Retail Food Code (Health & Safety Code Sections 11370 et seq.) preempts a plastic bag prohibition as it applies to restaurants. The California Retail Food Code establishes health and sanitation standards for retail food establishments such as traditional restaurants, food trucks, catering services, etc. These standards apply statewide. While our office does not believe that the Retail Food Code preempts the City's plastic bag prohibition as it applies to businesses that sell food to be carried off-site (since the City's ordinance is an environmental regulation and not intended to regulate health and sanitation), in order to avoid any potential threats of litigation regarding the City's plastic bag prohibition, we are recommending that the ordinance be amended to expressly state that it does not prohibit any business affected by the plastic bag ban from complying with the Retail Food Code or any other state or federal law. This is in line with what other cities have done such as Pasadena, Santa Monica, Dana Point and others. Accordingly, an ordinance amending Section 5.88.010 of the Municipal Code is provided for the City Council's consideration.

**CONCLUSION:**

In conclusion, the City Attorney's office recommends that the City Council introduce Ordinance No. 2158 to amend Section 5.88.010 of the Manhattan Beach Municipal Code.

**ATTACHMENTS:**

Exhibit A: Ordinance No. 2158

ORDINANCE NO. 2158

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH, CLARIFYING  
THE CITY'S PROHIBITION OF PLASTIC CARRY-OUT BAGS AND  
AMENDING SECTION 5.88.010 OF THE MANHATTAN BEACH  
MUNICIPAL CODE

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

Section 1. Section 5.88.010(b) of Chapter 5.88 of Title 5 of the Manhattan Beach  
Municipal Code is hereby amended by a new subsection (F) to read as follows:

"F. Nothing in this Chapter shall prohibit the provision of plastic carry-out bags as may  
be necessary to comply with the California Retail Food Code or any other state or federal law."

Section 2. CEQA Finding. The City Council hereby finds that it can be seen with  
certainty that there is no possibility that the adoption of this Ordinance will have a significant  
effect on the environment. The Ordinance merely clarifies existing Ordinance No. 2115,  
expressly stating that local regulations regarding plastic carry-out bags do not supersede any  
state or federal law requirements. It is therefore exempt from California Environmental Quality  
Act review pursuant to 14 California Code of Regulations Section 15061(b)(3).

Section 3. Severability. If any section, subsection, subdivision, paragraph,  
sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is  
for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not  
affect the validity or enforceability of the remaining sections, subsections, subdivisions,  
paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other  
person or circumstance. The City Council declares that it would have adopted each section,  
subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact  
that any one or more other sections, subsections, subdivisions, paragraphs, sentences,  
clauses or phrases hereof be declared invalid or unenforceable.

Section 4. The City Clerk shall certify to the passage and adoption of this  
Ordinance and shall cause this ordinance to be published within fifteen (15) days after its  
passage, in accordance with Section 36933 of the Government Code.

Section 5. This Ordinance shall go into effect and be in full force and effect at  
12:01 a.m. on the thirty-first (31st) day after its passage..

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ of \_\_\_\_\_, 2012.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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NICHOLAS W. TELL, JR.  
Mayor, City of Manhattan Beach, California

ATTEST:

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LIZA TAMURA  
City Clerk

APPROVED AS TO FORM:

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ROXANNE M. DIAZ  
City Attorney