



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 21, 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

RECOMMENDATION:

Staff recommends that the City Council adopt Ordinance 2158, 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."

FISCAL IMPLICATION:

Adoption of this ordinance has no fiscal impact.

DISCUSSION:

The City adopted Ordinance No. 2115, prohibiting the distribution of plastic bags at the point-of-sale for all retail establishments in July 2008. 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 and to provide clarity for our businesses, 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. Our office prepared such an ordinance, which was introduced by the City Council on March 20, 2012.

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CONCLUSION:

The City Attorney's office recommends that the City Council adopt 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:

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

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:

ROXANNE M. DIAZ
City Attorney