



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

# Staff Report

## City of Manhattan Beach

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

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

**FROM:** Roxanne M. Diaz, City Attorney

**DATE:** May 1, 2012

**SUBJECT:** Ordinance 2158 Amending the City of Manhattan Beach Municipal Code to Exempt Restaurants from the City's Plastic Bag Ban Prohibition

---

### **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 as it Relates to Restaurants 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 statewide health and sanitation standards for retail food establishments such as traditional restaurants, food trucks, catering services, etc. The restaurants have expressed concern in other communities that in order to ensure the health and safety of its customers, plastic carry out bags were necessary, for example, to place hot foods or hot liquids in such bags for carry out service.

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 recommend adoption of the ordinance to allow restaurants to distribute plastic carryout bags for the transportation of food or beverages that are provided to customers for consumption on the premises, for take-out or by delivery. This is line with what other cities have done such as Pasadena, Santa Monica, Dana Point, Santa Cruz and others. The City Council introduced the ordinance on April 17, 2012.

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

**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 AS IT RELATES TO RESTAURANTS 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. The definition of "Vendor" in Section 5.88.010(a) of Chapter 5.88 of Title 5 of the Manhattan Beach Municipal Code is hereby amended to read as follows:

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

Section 2. Section 5.88.010(b)(A) of Chapter 5.88 of Title 5 of the Manhattan Beach Municipal Code is hereby amended to read as follows:

"A. No Affected Retail Establishment, 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."

Section 3. 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. Notwithstanding the prohibition set forth in Subdivision A of this Section, plastic carryout bags may be distributed by restaurants for the transportation of food or beverages that are provided to customers for consumption on the premises, for take-out or by delivery."

Section 4. 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 5. 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 6. 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 7. 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:

\_\_\_\_\_  
WAYNE POWELL  
Mayor, City of Manhattan Beach, California

ATTEST:

\_\_\_\_\_  
LIZA TAMURA  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
ROXANNE M. DIAZ  
City Attorney