

LAW OFFICES
of
STEPHEN L. JOSEPH, ESQ.

P.O. BOX 221
TIBURON, CA 94920-0221

Admitted in California and the District of Columbia

TELEPHONE: (415) 577-6660
FAX: (415) 869-5380
E-MAIL: sljoseph.law@earthlink.net

June 3, 2008

To: City Council
Geoff Dolan, City Manager
Lindy Coe-Juell, Assistant to City Manager
City Attorney

City of Manhattan Beach
City Hall
1400 Highland Avenue
Manhattan Beach, CA 90266

Via fax to (310) 802-5001; (310) 802-5251
Via e-mail to gdolan@citymb.info; lcoe-juell@citymb.info

RE: Legal objection to proposed ordinance to ban plastic bags and proposed hearing; CEQA demand; notice of intent to file lawsuit

Dear Sirs and Madam:

I represent the Save The Plastic Bag Coalition, a newly formed group of companies that will be affected by any ordinance to ban or impose fees on plastic bags.

PURPOSE OF THE COALITION

The Coalition's position on plastic bag bans and fees is as follows:

- A. The plastic bag is an excellent product that has been unfairly attacked and stigmatized.
- B. The anti-plastic bag campaign is based on myths, misinformation, gross exaggerations, and misconceptions propagated by groups, government officials, and politicians who have shown little or no interest in the facts and demonstrate no serious understanding or concern about the environmental or economic

- consequences of their actions. Such governmental officials and politicians are overreaching and denying freedom of choice to businesses and consumers.
- C. Imposing fees on or banning plastic carryout bags would result in a massive switch to paper carryout bags, notwithstanding the availability of reusable bags. It is therefore critically important to ensure that government officials, politicians, and the public know the truth about both plastic and paper bags and are provided with accurate information about their comparative environmental and economic merits and advantages.
 - D. In the plastic versus paper debate, there is no reason why paper should be accorded preferential treatment. There is also no reason why consumers should be made to feel guilty about choosing plastic over paper.
 - E. The Coalition will defend the right of businesses to distribute, and the right of consumers to receive, free plastic bags.

THE STAFF REPORT

The Coalition hereby responds to the City of Manhattan Beach Staff Report on the consideration of an ordinance to prohibit use of plastic carryout bags, dated June 3, 2008.

STAFF REPORT: “Plastic carry-out bags (or plastic bags), which are generally petroleum based....”

RESPONSE: This is incorrect. Plastic bags are made from a gaseous by-product of oil.

STAFF REPORT: “Today these bags are ubiquitous in the marketplace because they are light-weight, strong and inexpensive.”

RESPONSE: These are reasons NOT to ban them. They are an excellent and extremely useful product that consumers want, need, and should be entitled to use if they wish.

STAFF REPORT: “According to the California Integrated Waste Management Board (CIWMB), approximately 6 billion plastic bags are consumed in Los Angeles County each year.”

RESPONSE: “Plastic bags” includes produce bags, retail bags, newspaper bags, and dry cleaning bags. It is true that many plastic bags are used, because as the Staff Report states they are “light-weight, strong and inexpensive.” Coalition members are *proud* that consumers like and choose their products. The plastic bag

industry is certainly not going to apologize to anyone for creating a good product that people want and use in large numbers.

STAFF REPORT: “Plastic bags are recyclable, however less than 5 percent are actually recycled.”

RESPONSE: Plastic bags are indeed recyclable. However, cities that allow the curbside recycling of plastic bags must ensure that plastic bags are not just thrown in recycling bins. Unfortunately, the City of Manhattan Beach does not have a good curbside program for plastic bags. The Coalition is ready to have discussions with you on ways to improve your curbside program. The Coalition has a lot of expertise in this area.

AB 2449 came into effect in July 2007, mandating the placement of plastic bag recycling bins in large stores. The City of Manhattan Beach should be promoting this program instead of disregarding it. It could also encourage smaller stores not covered by AB 2449 to participate.

In any event, burying plastic bags in landfills is not a significant issue. Less than 0.3 percent of landfills consist of plastic bags (including produce bags, retail bags, newspaper bags, and dry cleaning bags). Plastic bags take up very little space in landfills because they are thin.

Is the City of Manhattan Beach proposing to ban all of the items that make up the remaining 99.97% of landfills?

Fortunately, plastic bags do not break down in landfills. Virtually nothing breaks down in a landfill because the contents are not exposed to air or light. Products that do break down in landfills emit methane, a climate-changing gas. Moreover, when plastic bags are in landfills, they are not causing litter or any other kind of problem.

The issue of burying plastic bags in landfills has been grossly exaggerated.

STAFF REPORT: “Plastic bags have a propensity to become litter and to adversely affect 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.”

RESPONSE: Some plastic bags end up as litter, obviously. Out of the 6 billion bags that the Staff Report says are used in Los Angeles County each year, it would be fair to assume that *at least* 99.9999% do *not* end up as litter.

Plastic bags are not alone in the litter stream. Cigarette butts, soda cans, bottles, and many other items become litter. Is the City of Manhattan beach proposing to ban all such items? Why are plastic bags being singled out for unique and special treatment?

We do not understand why the report states that 60-80 percent of all marine debris is “plastic” and 90 percent of floating debris is “plastic.” Why is that relevant? Not all plastic is plastic bags. There are many thousands of other products made from plastic too.

STAFF REPORT: “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 an entanglement in marine debris, including plastic bags. 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 habitat.”

RESPONSE: When we complain about myths, misinformation, errors, and misconceptions propagated by groups, government officials, and politicians who have shown little or no interest in the facts, it is exactly this kind of defamatory and baseless statement that we are talking about.

The London Times is one of the most respected newspapers in the world. No one accuses the Times of a pro-business or anti-environmental bias. Along with this letter, I am sending you a Times article published on March 8, 2008 entitled: “Series of blunders turned the plastic bag into global villain.” The reports states:

“The central claim of campaigners is that the bags kill more than 100,000 marine mammals and one million seabirds every year. However, this figure is based on a misinterpretation of a 1987 Canadian study in Newfoundland, which found that, between 1981 and 1984, more than 100,000 marine mammals, including birds, were killed by discarded nets. The Canadian study did not mention plastic bags.

Fifteen years later in 2002, when the Australian Government commissioned a report into the effects of plastic bags, its authors misquoted the Newfoundland study, mistakenly attributing the deaths to “plastic bags”.

The figure was latched on to by conservationists as proof that the bags were killers. For four years the “typo” remained uncorrected. It was only in 2006 that the authors altered the report, replacing “plastic

bags” with “plastic debris”. But they admitted: “The actual numbers of animals killed annually by plastic bag litter is nearly impossible to determine.”

In a postscript to the correction they admitted that the original Canadian study had referred to fishing tackle, not plastic debris, as the threat to the marine environment.

Regardless, the erroneous claim has become the keystone of a widening campaign to demonise plastic bags.”

A marine biologist from Greenpeace told The Times: “It’s very unlikely that many animals are killed by plastic bags,” he said. “The evidence shows just the opposite.” A marine biologist from the British Natural History Museum told The Times: “I’ve never seen a bird killed by a plastic bag.”

In response to the article, the embarrassed British government minister charged with eliminating plastic bags wrote to The Times stating:

“We have never said that plastic bags were a leading cause of death in marine animals, though general plastic waste does make a contribution. There are nonetheless serious reasons for our aim to end the practice of dispensing for free, single use bags. They are a significant cause of litter.... Most of the rest of the 13 billion bags used each year end up in landfill. They are a potent *symbol* of our throwaway society and public opinion recognizes this. Of course, these bags contribute only a small part of the waste that leads to climate-changing emissions, but we need to change the small things as well as the large and to work with the grain of public opinion.”
[Emphasis added.]

Ideological symbolism, not truth and environmental protection, is driving the anti-plastic bag campaign.

We know how your residents love the ocean, but getting them agitated about the effects of plastic bags on marine life based on misinformation is highly irresponsible.

STAFF REPORT: The primary alternatives to plastic bags are reusable bags, made from cloth or other durable materials, and paper bags.... Although reusable bags are the preferred option, paper bags do not have the same impact on the environment as plastic bags do.”

RESPONSE: If plastic bags are banned, it is obvious that paper bag usage will massively increase. Here are the facts about paper bags.

- It takes 13 to 17 trees to make one ton of paper bags. [Source: EPA] Over a million tons of paper bags are used in the United States each year. That's 13 to 17 million trees annually.
- At least four out of five carryout bags used at present are plastic. If plastic carryout bags are banned, the number of trees that would have to be chopped down, turned to pulp, and treated with chemicals to create paper bags would multiply. Nobody knows the number, but it could exceed 50 million every year.
- It takes more than four times more energy to manufacture a paper bag than a plastic bag. [Source: EPA] It takes 85 times more energy to recycle paper bags than plastic bags. [Source: USA Today]
- Paper bags are about 10 times heavier than plastic bags. [Source: EPA] That means it takes about 10 times more diesel fuel consuming trucks to deliver paper bags. *At a time when fuel prices are sky high, and diesel could soon cost \$6 per gallon or more, this is a very serious concern.*
- The manufacture of paper bags generates 70 percent more air pollutants and 50 times more water pollutants than plastic bags. [Source: Comparison of the Effects on the Environment of Polyethylene and Paper Carrier Bags, Federal Office of the Environment, August 1988.]
- Paper bags produce 80% more solid waste than plastic bags. [Source: EPA] Paper bags take up about nine times more space in landfills than plastic bags. [Source: USA Today]
- Current research demonstrates that paper in today's landfills does not degrade or break down at a substantially faster rate than plastic does. [Source: EPA]

Paper bags cost up to five times more for stores to purchase than plastic bags, a fact that is not even mentioned in the Staff Report. Your staff may not consider it significant, but your residents will think it is *very* significant if they have to pay more for their groceries at a time when food prices are escalating.

The impact of a massive switch to paper bags would be enormous. Are these the results that the City of Manhattan Beach is looking for?

FURTHER COMMENT ON STAFF REPORT

The Staff Report makes no mention of the economic impact of its recommendation. This is an inexcusable omission. There will be an effect on the cost of shopping and an impact on jobs if plastic bag bans are passed. We hope that the City Council is sensitive to this issue that the staff apparently believes is not important enough to mention.

Americans are very protective of their right to make choices and deeply resent the government interfering with or removing those choices. This too is not mentioned in the Staff Report, signifying that the staff attaches no importance to it whatsoever. This is a serious misreading of public sentiment.

The Staff Report is packed with bare assertions, misinformation, and illogical conclusions. We have not responded to all of them in this letter, because (as discussed below) the City of Manhattan Beach is *required by law* to do a proper environment study before holding a hearing and passing an ordinance. If and when that study is done, we will respond to the findings therein at that time.

LEGAL OBJECTIONS AND CEQA DEMAND

Section 1(A) of the proposed Ordinance reads as follows:

“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.”

The Alameda Superior Court has ruled that no city or county in California may ban plastic bags without first doing an environmental study pursuant to the California Environmental Quality Act (CEQA). *The City of Oakland passed a plastic bag ban without doing a CEQA environmental study first and the court struck the law down.* The court stated as follows in its ruling:

“The court also finds that substantial evidence in the record supports at least a fair argument that single-use paper bags are more environmentally damaging than single use plastic bags.”

Incredibly, there is no mention in the Staff Report of the Alameda Superior Court’s decision on this point. A copy of the ruling is provided herewith for your review.

The purpose of CEQA is to make absolutely sure that cities like Manhattan Beach fully research and analyze the facts and evidence before making decisions that affect the

environment, rather than relying on poorly researched and erroneous staff reports. The CEQA law was created with the support of the environmental community to ensure that local governments did not inadvertently enact laws that hurt the environment.

The Coalition and its members *strongly object* to any attempt by the City of Manhattan Beach to disregard the environmental review requirements of CEQA. We will file a lawsuit against the City of Manhattan if an ordinance banning plastic bags is passed without a prior environmental study that conforms fully with all of the CEQA requirements.

The Staff Report states that “staff believes that a ban of plastic bags is the best option for the sustainability of our environment.” Even if a CEQA study is done, the City of Manhattan Beach has no legal authority to ban products based on “sustainability of our environment.”

Plastic bags are the least of our problems. We are an industrial and consumer society with many thousands of products. According to the staff’s philosophy, in order to sustain the environment our society should produce nothing.

This is not intended to be an exhaustive statement of our legal objections to a proposed ordinance. No waiver is intended. All rights are reserved.

CONCLUSION

We trust that the City Council will make the right decision and discontinue the plastic bag ban initiative.

Thank you for your consideration. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be "S. Joseph", with a long horizontal line extending to the right from the top of the signature.

Stephen L. Joseph