



**Date:** March 9, 2009  
**To:** Environmental Committee Members  
**From:** Suzanne Frick, Assistant City Manager  
**Subject:** Plastic Bag Policy Update

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### BACKGROUND

On April 22, 2008, the Environmental Committee met regarding plastic bag policy as a follow-up to recommendations made at the November 28, 2007 Environmental Committee meeting. At that meeting, the Committee requested that staff return with a proposal to phase out and eventually ban plastic bags. However, since that time, there have been several legislative and legal developments regarding plastic bag policy that may significantly impact the City's ability to enact certain plastic bag use restrictions. In light of these recent developments, the following update and options are provided for the Committee's consideration.

### DISCUSSION

#### *Reusable Bag Education*

As part of its Litter Free Long Beach program, the Environmental Services Bureau has given away approximately 20,000 reusable bags in the past year. These reusable bags promote the reduction of single use bags, both paper and plastic, as well as educate the public. The reusable bags are accompanied by an educational handout that explains the problems with single use paper and plastic bags and encourages the use of the reusable bag. The City has also participated in both 2007 and 2008's, "A Day Without A Bag," both of which were very successful.

#### *Plastic Bag Recycling*

It is also important to note that plastic bag bans are often instituted in cities that do not accept plastic bags in their curbside recycling programs. This is not the case in Long Beach as plastic bags can be put in the City's purple recycling bins. Furthermore, the recent City ordinance that requires that all multi-family residences provide recycling access will also further improve recycling efforts citywide. This will ensure that more Long Beach residents have the opportunity to recycle their plastic bags at home as well as at grocery stores and pharmacies as required under existing law.

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#### *AB 2449 Revisited*

AB 2449, which requires all large grocery stores and pharmacies in California to take back plastic bags to recycle, has been in effect since July 2007. This law also requires that the regulated stores sell reusable bags. However, AB 2449 preempts local governments from placing a fee on plastic bags.

At this time, it is difficult to estimate the success of this program. Stores are required to annually report the weight of plastic bags purchased and either the weight of bags recycled or the weight of all film plastic recycled. 2008 reports, due April 2009, will contain the first full year of data. The State will create a baseline 2008-2009 recycling rate based on this information. Thus far, the State estimates that they have received reports for 2007 from 300 operators that cover 4,400 out of the approximately 6,000 regulated stores.

#### *State Legislative Update*

In the 2008 session, Assemblymember Lloyd Levine introduced AB 2058, which would have required large grocery stores and pharmacies to charge a point of sale fee on plastic bags if they did not meet a 70 percent recycling rate. This bill never passed, and Mr. Levine is no longer serving in the Assembly due to term limits.

However, in December 2008, Assemblymember Julia Brownley introduced a similar bill, AB 68. This bill would require (on and after July 1, 2010) stores to charge at least \$0.25 per single-use bag. This fee applies to paper and plastic bags as well as "green carryout bags," which are bags made from at least 40 percent post-consumer recycled content material, are recyclable in curbside programs, or are compostable. This fee does not include reusable bags. WIC and food stamp participants are exempt from this fee. AB 68 also allows the regulated store to keep a portion of the fee for administrative costs.

Under AB 68, if a city prohibits the use of all single-use carryout bags, including green carryout bags, and no fees are collected, then that City is not eligible for grant funds pursuant to this section. However, the bill does not bar cities from prohibiting the use, import, sale or distribution of any plastic, paper or compostable carryout bag. Stores are allowed to keep no more than \$0.05 (\$0.10 for green bags) for administrative costs. This bill has been referred to the Natural Resources Committee, but has not yet been scheduled for a hearing.

#### *Existing Ordinances/Litigation Update*

Please see Attachment A for a memo from the City Attorney's Office outlining recent litigation regarding plastic bag bans. Below are some of the most recent developments in local government policy in California cities.

San Francisco—Currently, the City of San Francisco is the only major city with a ban in effect. San Francisco's ordinance bans plastic bags, and stores are allowed to distribute compostable bags or 100 percent recyclable paper bags that

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are made from at least 40 percent post-consumer recycled material. When the issue was first discussed, San Francisco had wanted to pass a bag fee, as it was considered more effective; however, the City was preempted by AB 2449 in the midst of policy discussions. San Francisco's Department of the Environment has noted an increase in paper bag usage, although the bags used do have higher recycled content, and no notable decrease in plastic bag litter.

San Jose—The City of San Jose has been considering policy to reduce the use of plastic bags including a single-use bag ban. The Council is scheduled to discuss the issue again on February 24, 2009. This meeting had not occurred at the time this memo was submitted. Save the Plastic Bag filed formal legal objections in January to San Jose's policy proposals.

Mountain View—In January 2009, the Mountain View City Council considered a plastic bag ban ordinance that would ban single-use bags unless a fee was charged. The ordinance was based on draft model language from Santa Clara County. Save the Plastic Bag filed formal legal objections in response to this item. The minutes associated with this meeting have not yet been published, so it is unclear what action was taken.

Oakland—The City of Oakland adopted a plastic bag ban in July 2007, but has since rescinded its ban at the direction of the court. The City was successfully sued by the Coalition to Support Plastic Bag Recycling on the grounds that the City had not completed the proper environmental review under CEQA.

LA County—The LA County program requires a 30 percent reduction in plastic bag disposal rate by 2010 and a 65 percent reduction by 2013. The educational component is geared toward reaching these goals. If either of these goals are not met, then a ban is automatically triggered. The Save the Plastic Bag Coalition (STPB), a plastic bag industry group, is suing based on the fact that the City needs to do a full EIR and is seeking a declaration that the County cannot legally impose a ban on plastic bags.

Manhattan Beach—The ordinance banning plastic bags was scheduled to take effect in two phases, beginning in February 2009; however, STPB is suing on the grounds that the initial study of the proposed ordinance and the negative declaration was insufficient. The lawsuit also asks that the judge declare that that city has no authority to ban plastic bags. The Los Angeles Superior Court voided the ordinance based on this lawsuit.

Santa Monica—The City of Santa Monica has been working on a plastic bag ban and paper bag fee for several months. Most recently, due to the threat of a lawsuit by the Save the Plastic Bag Coalition, the Santa Monica City Council deferred a vote on the ordinance until a full environmental review could be completed.

San Diego—In December 2008, the Natural Resources and Culture Committee of the San Diego City Council voted to send a proposed ordinance to the City Attorney for review before sending to the full council. STPB also filed legal objections and intent to sue documents similar to that of Manhattan Beach.

#### OPTIONS FOR CONSIDERATION

1. Continue to support reusable bag use while awaiting results of state legislation.

*Considerations:* The City could choose to officially support legislation that would repeal the plastic bag tax prohibition on local governments or would require point of sale fees on single-use bags, namely AB 68.

2. Move forward with an ordinance with the appropriate environmental review, which would likely require an EIR based on existing precedent.

*Considerations:* This action would likely open the City up to litigation as other cities have already been sued on CEQA grounds and the more recent lawsuits are also seeking a declaration that local governments have no power to ban plastic bags. The plastic bag industry has been extremely aggressive in trying to stop plastic bag legislation and has been fairly successful thus far. The costs of a lawsuit as well as an EIR could be substantial. There could also be the unintended consequence of a lawsuit against the City creating precedent for other cities.

3. Adopt a resolution to join LA County's educational program. Staff has been monitoring the development of this program. Joining this program would require substantial staff time as the County supplies materials, but it is the individual cities' responsibility to work with stores to promote this program.

*Considerations:* Due to the pending litigation, it is difficult to anticipate the fate of this program. LA County staff is continuing to proceed with implementation of this program despite the litigation.

4. Expand the existing educational campaign. As mentioned above, ESB has incorporated the promotion of reusable bags into the Litter Free Long Beach program. An expanded educational program would allow outreach to even more residents.

*Considerations:* Any expansion of the program would likely need additional funding.

5. Implement a phased approach to banning.

*Considerations:* A program similar to that of LA County would give the City time to do a full environmental review before a full ban. However, given the litigation against LA County, the City could face similar issues.

6. Increase enforcement of AB 2449. Under AB 2449, a city, county, and other public agency can ensure compliance, issue penalties for non-compliance, review store records and pursue civil penalties. Currently, the State is relying primarily on reports from local governments and individual citizens to report non-compliance.

*Considerations:* Cities can choose to enforce AB 2449 regulations in whatever manner they see fit. Jurisdictions such as the City of San Jose and LA County have been fairly aggressive in ensuring stores' compliance and assisting with education. Store visits to ensure compliance would likely require a great deal of staff time, but would be the most effective in determining compliance levels.

#### TIMING CONSIDERATIONS

This item is not time sensitive.

#### FISCAL IMPACT

The cost of pursuing an ordinance and the associated environmental review would likely be the most significant cost associated with any of the above options. To help shield the City from litigation, an EIR would likely need to be done. Given that this is a unique situation and no other city has completed a full environmental review on a plastic bag ordinance, it is difficult to anticipate the costs involved; however, a typical development EIR is approximately \$100,000. Further financial analysis would be necessary to determine the cost of the option(s) the Committee chooses to pursue.

#### CONCLUSION

Based on the pending litigation, moving forward with a ban on plastic bags will likely be a long and expensive process, requiring significant environmental review and staff time. Plastic bag use policy has become a complicated issue and one that represents a larger issue of litter, marine debris, wastefulness and the general overuse of disposable products. There is also no clear evidence based on other cities' experiences that plastic bag bans significantly reduce plastic bag litter.

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Given the cost and time that would be required to pass an ordinance and the uncertain outcomes of litigation that may affect the City's ability to make future policy, careful consideration should be given to this issue. Currently, the most effective and productive strategy seems to be to continue to promote the use of reusable bags as part of the City's overall sustainability efforts. New initiatives currently underway, such as the Sustainable City Action Plan and green business designation program, will be used to comprehensively address plastic bag use as part of the overall plan to promote more environmentally friendly packaging and practices.

Given that plastic bags are one part of a larger problem of wastefulness and over-consumption, the Committee could look at ways in which the City can promote resource conservation, reuse, and less wastefulness of consumer products, in general, rather than focus exclusively on plastic bags. The more the City can emphasize reusable, sustainable, non-toxic products as a whole, the more of a positive impact there will be on the environment in Long Beach.

Respectfully submitted,

  
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PATRICK H. WEST  
CITY MANAGER

Attachment:

- A. City Attorney's Report on the Status of Pending Litigation Related to Plastic Bag Bans

AV  
3-9-09 EC Plastic bag Staff Report


**City of Long Beach**
*Working Together to Serve*
**Office of the City Attorney**
**Memorandum**

**DATE:** February 24, 2009  
**To:** Alfre Vaille, City Manager's Office  
**FROM:** Amy R. Burton, Deputy City Attorney, Ext. 82227 *ARB*  
**SUBJECT:** Report on the Status of Pending Litigation Related to Plastic Bag Bans

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The Environmental Committee of the City Council has requested an update regarding the status of litigation related to local ordinances regulating single-use plastic shopping bags.

### 1. Local Ordinances Banning Plastic Bags

Several California cities have enacted ordinances banning the use of plastic bags, with varying degrees of success. The status of the ordinances is indicated below:

- A. San Francisco. In effect. San Francisco adopted its ordinance on March 22, 2007, banning the distribution of non-biodegradable plastic carryout bags. This followed the failure by supermarkets in the city to meet agreed-upon targets for reducing plastic bag consumption by consumers on a voluntary basis. The San Francisco ordinance requires all large supermarkets and retail pharmacy chains in the City to provide their customers with one or more of the following: 1) biodegradable carryout bags; 2) paper carryout bags (that do not contain old growth fiber, are 100% recyclable and contain at least 40% post consumer recycled content); 3) reusable bags made from cloth or from durable plastic greater than 2.25 mils thick. The ordinance has been in effect since November 20, 2007, with no legal challenge.
- B. City of Oakland. Not in effect. The City of Oakland adopted a similar ban on July 17, 2007, which was scheduled to take effect on January 17, 2008. Oakland's ordinance applied to all stores generating \$1 million or more in annual sales with the exception of restaurants. In August 2007, Oakland was sued by the Coalition to Support Plastic Bag Recycling which argued that the City failed to complete an environmental impact report as required by CEQA before adopting its ordinance. On April 17, 2008, a state court judge issued an injunction prohibiting the enforcement of the ordinance; the court ruled that the city had not complied with

CEQA, finding that there were environmental effects (notably, a possible increase in the use of paper bags) which had not been considered. The City rejected the idea of doing an EIR as too costly and as a bad precedent for other cities. The City has not appealed the ruling, has rescinded its ordinance and is relying on state legislation to address the issue.

C. City of Malibu. Ordinance passed, enforceable December 28, 2008 (6 months from the effective date of June 28, 2008).

On May 27, 2008 the City of Malibu adopted an ordinance prohibiting selected businesses from providing plastic bags, after completing an initial study and adopting a negative declaration under CEQA, with no legal challenge.

D. City of Manhattan Beach. Not in effect, following court action.

In July, 2008, the City of Manhattan Beach adopted a bag ban, after completing an initial study and adopting a negative declaration under CEQA. Within a few days of passage, the City was sued by Save the Plastic Bag Coalition, a group similar in composition to the one that sued Oakland, on similar CEQA grounds. The group promised to sue "every city" that enacts a ban without a full EIR. Los Angeles Superior Court Judge David Yaffe recently ruled that a full EIR is required prior to adoption of a ban. The ordinance was voided by the court's order. The city is considering an appeal.

E. City of Santa Monica. Pending.

In February, 2008, the City Council directed the City Attorney to draft an ordinance banning plastic bags. To date, the City has not adopted an ordinance. An interesting feature to be included in the proposed ordinance is a fee for paper bags, in addition to the ban on plastic bags.

F. County of Los Angeles. Prospectively in effect.

The County of Los Angeles Board of Supervisors voted on January 22, 2008 to ban the free distribution of single-use plastic carry out bags in unincorporated areas of the County if voluntary programs by retailers in those areas to reduce plastic bag use do not result in decreases of at least 30% by July 2010 and 65% by July 2013.

G. City of Los Angeles. Prospectively in effect.

The City of Los Angeles in June, 2008 approved a similar policy requiring a ban if specified numeric compliance goals are not met.

## 2. State Legislation



- AB 2449, approved in 2007, contains a preemption clause prohibiting local governments from “interfering” in the at-store recycling program, imposing a plastic carryout bag fee on the affected store or increasing the reporting requirements. The bill does not directly prohibit a ban.
- AB 68 (Pending -- Brownley) This proposed legislation would require large grocery stores and convenience stores to charge a 25 cent fee per single-use bag, whether plastic (including compostable plastic) or paper. The fees would be used for local litter abatement, prevention and education programs. It has been referred to the State Assembly Committee on Natural Resources.

### 3. Conclusion

It appears from the practice of the industry pro-plastic groups in both Northern and Southern California that there is a likelihood the City would be sued if a bag ban was enacted, as they seek out larger cities with some visibility and ample retail outlets. CEQA is the vehicle of choice for these pro-plastic bag groups, and their current position seems to be that only a full EIR is sufficient to assess the environmental impacts of a ban. (The Oakland ordinance was challenged on grounds that a categorical exemption was inadequate; the Manhattan Beach ordinance has now been challenged on grounds that an initial study and negative declaration were inadequate.) In addition to the cost of preparation of a CEQA document, a CEQA lawsuit could result in attorneys' fees being assessed against the City. An additional consequence could be the precedential effect of a ruling against the City. Therefore, a decision to enact a bag ban should be made with awareness of the financial and legal consequences.

If you have further questions on the status of these ordinances, please let me know.