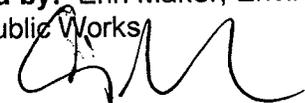


**STAFF REPORT**  
**COUNCIL MEETING DATE:**  
**October 10, 2011**

**ITEMS FOR COUNCIL CONSIDERATION:**

**Initiation of an amendment to the Carpinteria Municipal Code concerning the regulation of single-use shopping bags in the City of Carpinteria.**

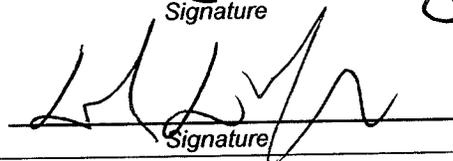
**Report prepared by:** Erin Maker, Environmental Coordinator  
**Department:** Public Works

  
\_\_\_\_\_  
Signature

**Reviewed by  
Public Works  
Director:**

  
\_\_\_\_\_  
Signature

**Reviewed by  
City Manager:**

  
\_\_\_\_\_  
Signature

**ACTION  NON-ACTION  STAFF RECOMMENDATION:**

**Direct staff to prepare for City Council consideration a draft ordinance establishing regulations pertaining to single-use shopping bags.**

Sample Motion: I move to direct staff to prepare an ordinance establishing regulations pertaining to single-use, carryout shopping bags, pursuant the recommendations included in the staff report, and return the matter for City Council consideration at a public hearing.

**I. BACKGROUND:**

At its regular meeting of February 25, 2008, the City Council received a staff report<sup>1</sup> on local pollution and recycling issues related to polystyrene take-out food containers and single-use plastic bags, and how, at that time, eleven California cities and other cities across the nation

<sup>1</sup> The February 2008 report along with other reports and minutes from meetings where the City Council considered this matter since 2008, are included as Attachment A to this report.

had adopted local regulations to address the emerging public policy issue. The impetus for the February 2008 report was a presentation in July 2007 by the Santa Barbara City College Sustainability Workshop, which presented information about the environmental impacts associated with the pervasive use of expanded polystyrene (EPS) food containers and single-use plastic shopping bags, and advocated for local regulations in order to minimize or eliminate these products in the environment and the waste stream. After considering information, staff analysis, options, and public testimony on the issues during public meetings in February, September and October 2008, the City Council adopted Ordinance No. 634 that, starting in February 2009, prohibited the use of certain non-recyclable plastic food containers within the City.<sup>2</sup>

As a way of reducing the amount of film plastic bags that wind up in area creeks, sensitive habitat areas, the ocean, and in regional landfills, the City Council had also expressed interest in considering local single-use plastic bag regulations. Ultimately, however, the City Council was dissuaded from moving forward at that time due to (1) apparent interest by the State legislature in regulating in this area<sup>3</sup> and (2) concern over uncertainty regarding the cost of potential litigation.<sup>4</sup> The Council's concern was that any regulations established at that time would either be preempted in total or part by future State law and/or that the City would become engaged in protracted and costly litigation.

As an alternative, the City Council implemented a two-pronged approach of education and monitoring that would encourage use of reusable bags in the community and that could allow the City Council to re-engage the process of developing local regulations at a later, more appropriate, time.

1. Education. The City has promoted Reusable Bag month, provided information about the negative impacts of plastic bags on the environment on its website and through its stormwater management education program, and financially supported efforts by Carpinteria Beautiful to distribute thousands of reusable plastic bags in the community. The City also encouraged Albertsons Grocery when Albertsons independently decided to eliminate single-use bags and offer only reusable bags at its store in Carpinteria.
2. Monitoring. Staff updated the City Council on legislative activity and litigation on August 8, 2011, March 28, 2011, June 28, 2010, and May 11, 2009. Despite many attempts, the State has yet to pass comprehensive regulation concerning single-use plastic bags; however, there has been a significant legal precedent recently established as an outcome of litigation, i.e., *Save the Plastic Bag Coalition v. City of Manhattan Beach*. The City Council received a briefing on the implications of this case for the City of Carpinteria on August 8, 2011. The Manhattan Beach decision suggests that a City the size of Carpinteria need not prepare an Environmental Impact Report, but instead would qualify for a CEQA exemption such as the common sense exemption, should the City consider establishing local plastic bag regulations similar to those of the City of Manhattan Beach. There is more discussion on the implications of this case for the City in the Legal section of this report.

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<sup>2</sup> Ordinance No. 634 has been codified as Carpinteria Municipal Code Chapter 5.70, Food Container Regulations.

<sup>3</sup> State legislation that has been considered since 2008 includes AB87 (Davis, 2009), AB1143 (Calderon, 2009), AB68 (Brownley, 2009), SB228 (DeSaulnier, 2009), SB531 (DeSaulnier, 2009), AB1998 (Brownley, 2010), AB298 (Brownley, 2011), SB915 (Calderon, 2011).

<sup>4</sup> The City received two letters in 2008 from the American Chemistry Council, a member of the Save the Plastic Bag Coalition, the group that sued Oakland and Manhattan Beach, recommending that the City not adopt regulations relating to either EPS or single-use plastic bags.

There are currently 13 California local governments that have enacted bans on single-use bags. These bans vary among jurisdictions, but generally fall into two types: bans on all single-use plastic bags with fees imposed on paper bags, and bans on single-use plastic bags with no fee for paper bags. Most cities also require minimum post-consumer, recycled content in paper bags.

The counties of Los Angeles, Santa Clara, Santa Cruz and Marin, along with the cities of Calabasas, Long Beach, San Jose, and Santa Monica all have passed single-use plastic bag bans with fees on single-use paper bags. The cities of Fairfax, Malibu, Manhattan Beach, Palo Alto and San Francisco have single-use plastic bag bans with no additional fee for single-use paper bags.

The issue of plastics in the environment and the waste stream remains a growing concern for jurisdictions of all sizes, but is a particular issue for coastal cities such as Carpinteria. At its regular meeting of August 8, 2011, staff reported on the Save the Plastic Bag Coalition v. City of Manhattan Beach case and its creation of a favorable climate for the City of Carpinteria to consider local regulation of single-use bags. In light of the Manhattan Beach decision and the inability to date of the State legislature to effectively address the issue, staff recommended that the City Council revisit this matter, and the Council concurred.

## **II. Analysis:**

In response to direction from the City Council, this report recommends that the City Council approve initiation of an amendment to the Carpinteria Municipal Code pertaining to single-use bags and provide specific direction to staff as to the details. Generally, the activity that the City wishes to regulate is the distribution, i.e., handing out, of single-use bags by local businesses to customers for the carrying out of purchased products. The purpose of regulating this activity is to minimize or eliminate a particular type of product, single-use bags, in the environment and waste stream.

### **A. Single-use/carry-out bag use.**

Over the last several years there has been much research done on the problem of single-use plastic bags in our environment, including information as to how we use this product in the United States. Some of this information was provided previously to your City Council and is a part of Attachment A to this report. The following updated information about the amount of single-use plastic and paper used in California has been excerpted in large part from a City of San Jose Environmental Impact Report written in support of that City's consideration and adoption of plastic bag regulations in 2010. The information also includes evidence gathered and calculations made by staff as to how much single-use plastic and paper bag use occurs in Carpinteria.

The website for the California Department of Resources, Recycling and Recovery (CalRecycle)<sup>5</sup> contains a 2007 estimate made by the Progressive Bag Alliance that retail establishments in California hand out approximately 19 billion single-use plastic bags at the point of sale annually, at a rate of 600 bags per second.<sup>6</sup>

<sup>5</sup> This department includes parts of the former California Integrated Waste Management Board.

<sup>6</sup> [www.calrecycle.org/lgcentral/basics/plasticbag.htm](http://www.calrecycle.org/lgcentral/basics/plasticbag.htm)

There is no single or definitive estimate as to the number of single-use paper bags distributed to the public. The San Francisco Environment Department estimated that bags distributed at San Francisco supermarkets in 2004 consisted of 90 percent plastic bags and 10 percent paper bags.<sup>7</sup> A study produced more recently for the City of Seattle estimated that, based on statistics garnered from waste characterization studies, roughly 80 percent of single-use grocery bags distributed without charge are plastic and 20 percent are paper.<sup>8</sup> A similar study done for the City of San José estimated that 88 percent of the single-use bags given away are plastic and 12 percent are paper.<sup>9</sup>

It is likely that single-use bag distribution in Carpinteria is less than in some, perhaps even most, cities, because one of the City's two major chain grocery stores, Albertsons, does not provide customers with single-use bags. On a percentage basis, the Albertsons grocery store represents roughly 40% of retail grocery sales in Carpinteria and therefore a similar proportion of the single-use bag distribution. Local Albertsons store management estimates that 1 million single-use plastic bags a year were being distributed at the store prior to their elimination. Also, the public education efforts of Carpinteria Beautiful, the City, and Albertsons, along with a growing public awareness in the region of the environmental benefits of reusable shopping bags, are likely contributing to a decline in single-use bag distribution. Based on the information above, staff estimates that prior to the elimination of single-use bags at Albertsons 2.5 million single-use plastic bags were being distributed annually in Carpinteria. This amounts to approximately 6,850 bags daily. Another 300,000 paper bags are estimated to be distributed annually, or just over 800 daily.

#### **B. Environmental concerns created by single-use/carry-out bag use.**

As discussed in the February 25, 2008 City Council staff report, single-use bags have been identified as a major contributor to litter and marine debris. According to the EPA, 30 million tons of plastic waste was generated in 2009. Of this, the United States generated 13 million tons of plastics as containers and packaging, including single-use plastic bags.

There is a significant amount of research demonstrating that single-use plastic bags and other plastics have a significant impact on the environment and public health. For example, in Assembly Bill 2449, which mandated that certain retail stores provide in-store plastic bag recycling for customers, the California State Assembly made findings that illuminated the importance of the issue for the State of California. These findings included the following:

1. On a global level, the production of plastic bags has significant environmental impacts each year, including the use of over 12 million barrels of oil and deaths of thousands of marine animals through ingestion and entanglement.
2. Most plastic carryout bags do not biodegrade; instead these bags photo-degrade, breaking down into smaller and smaller toxic parts that contaminate the soil and waterways and enter the food web when animals ingest those materials.

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<sup>7</sup> San Francisco Department of the Environment. *November 18, 2004 Bag Cost Analysis: Costs Associated with Paper and Plastic Bags*. November 18, 2004. Available at: [http://www.ci.sf.ca.us/site/sfenvironment\\_page.asp?id=28374](http://www.ci.sf.ca.us/site/sfenvironment_page.asp?id=28374).

<sup>8</sup> Herrera Environmental Consultants, Inc. *Alternatives to Disposable Shopping Bags and Food Service Items: Volume 1*. January 29, 2008.

<sup>9</sup> Herrera Environmental Consultants. *City of San José Single-Use Carryout Bag Fee Fiscal Analysis – Final Report*. June 22, 2010.

The production and disposal of single-use bags is a major use of resources, particularly fossil fuels. Packaging also affects the environment as litter. Plastic bags are third among the ten most commonly found items in coastal cleanups each year; single-use paper bags also made the list at number ten. Although some single-use plastic bags are recyclable, the actual number recycled is fairly low, due in part to the fact that these items are often used to house food or waste product, leading to contamination and resulting in them being discarded as waste.<sup>10</sup>

Even when properly disposed of, single-use plastic bags often end up as coastal debris due to their light weight and expansive characteristics, being either windblown from waste receptacles and waste hauling trucks or picked out by scavenging animals. Handling this windblown material increases street cleaning and park maintenance costs. Litter on streets and sidewalks that is not removed immediately commonly ends up first in the City's storm drains and then in local creeks and beaches, eventually becoming ocean water pollution. Marine animals often mistake plastic for food and, as a result of ingesting plastic, can starve or suffocate.<sup>11</sup>

The local nonprofit Carpinteria Beautiful has reported that single-use plastic bags and other plastics make up a significant portion of the litter that its volunteers collect conducting litter pick-up throughout Carpinteria.<sup>12</sup> This observation has also been made by staff through organizing and overseeing local creek and beach cleanup events. It is important to note that these single-use bags found in the waste stream can be identified as having come from all types and sizes of markets, not just the larger stores.

### **C. Options for regulating single-use/carry-out bags.**

California cities and counties have adopted different approaches in addressing key elements of single-use bag regulations. Understanding the different approaches taken by cities can be helpful in the City's determination of the approach that is appropriate for Carpinteria. Attachment B to this report is a table that summarizes some of the key provisions in regulations adopted by 13 California cities and counties that now regulate single-use bags and two with ordinances under consideration. The common options identified are laid out in more detail below, along with a staff recommendation for each. Staff suggests that the City Council evaluate each of these options as a part of its direction to staff for preparing a draft ordinance.

#### **1. What should be regulated and how?**

Most of the 13 regulations reviewed ban single-use plastic bag distribution and require certain stores to charge a fee for paper bags. Many of these local jurisdictions also require that all single-use paper bags have minimum recycled paper content. A few of the local jurisdictions that regulate plastic bags do not have set regulations for paper bags. Those local jurisdictions that include paper bags along with plastic in single-use bag regulations cite the need to reduce all single-use bag waste and to discourage a shifting of use from plastic to paper bags, thus preventing any potential increase in methane emissions associated with decomposition or other potential environmental impacts that could be associated with the shift to paper bags.

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<sup>10</sup> The Ocean Conservancy 2011 *Marine Debris Report*

<sup>11</sup> United States Environmental Protection Agency, *Marine Debris Facts*, epa.gov

<sup>12</sup> Testimony from a telephone conversation with Donna Jordan, Carpinteria Beautiful, 09-27-11

As compared to plastic bags, paper bags generally do not create the severity of local environmental impacts, e.g., they are not found as frequently in local creeks and the ocean -- because paper bags are used less than plastic and biodegrade. Also, paper bags are more easily recycled, and therefore do not present the same waste stream issues that plastic bags do. However, single-use paper bags share some of the characteristic problems of single-use plastic bags including becoming litter, polluting local waterways, and contributing to the waste stream, as previously mentioned. Also, paper bags are relatively expensive compared to plastic, and may have other negative environmental impacts associated with their production and transportation. For these reasons staff has concluded that the best option for reducing the amount of single-use bag material that enters the waste stream and winds up in the environment as litter and water pollution is an option that results in the greatest reduction in all single-use bag distribution in Carpinteria.

The Environmental Impact Report prepared by the City of San Jose as a part of its consideration of single-use bag regulations, also concluded that a ban on all single-use carryout bags was the environmentally superior alternative because limiting access to all single-use carryout bags, plastic and paper, would do more to reduce litter on the streets, material in the waste stream, and pollution in the environment. It also concluded that less energy would be used and less greenhouse gas emissions produced through the production and transportation of paper bags required to meet store demand in San Jose. The Manhattan Beach case concluded that, from the standpoint of the CEQA, any impacts associated with a shift from plastic single-use bags to paper bags that could result from banning plastic bags, would be de minimis and that no environmental assessment of such potential impacts need be conducted by a City the size of Manhattan Beach, which is larger than Carpinteria. Therefore, whether the City of Carpinteria elects to regulate just plastic bags or both plastic and paper and applying the reasoning in the Supreme Court's Manhattan Beach case, either action would likely qualify for an exemption under CEQA.

The predominant type of single-use plastic bag distributed at point-of-sale in Carpinteria and other California cities is the high density polyethylene (HDPE) bag shown in Photo 1, below. The bag in the picture weighs approximately five grams. The most common type of single-use paper grocery bag is made of unbleached kraft paper, shown in Photo 2(a).

State legislation (AB2449) defines "reusable" plastic bags as being "durable", with a minimum thickness of 2.25 mils and with handles. Photo 3 illustrates a plastic bag that conforms to the state definition of reusable. The bag weighs 35 grams, and is made from low density polyethylene (LDPE). Photo 4 shows a non-plastic reusable bag sold to customers for 35 cents at the Carpinteria Albertsons grocery store.

The City of Santa Monica's regulations on single-use plastic bags define "Single-use plastic carryout bag" as any bag "that is less than two and one-quarter mils thick and is made predominately of plastic derived from petroleum or from bio-based sources, such as corn or other plant sources". This definition is similar to that included in AB2449, is used by other jurisdictions, and in California has become the standard. Most single-use paper bags include at least 40% post-consumer recycled content and include an identifying label as shown in Photo 2(b). Cities that regulate single-

use bags will typically require paper bags to meet this common standard for recycled content. Higher recycled content bags are more difficult and expensive to acquire.

Staff suggests defining single-use and reusable bags as described above as a part of single-use bag regulations in Carpinteria, and requiring minimum 40% post-consumer recycled content for single-use paper bags.

**Recommendation:** *In order to meet its purpose/objective in regulating in this area, staff recommends that the City Council direct that both plastic and paper single-use bags be regulated and that all single-use paper bags permitted to be distributed in Carpinteria be limited to those that meet a standard for minimum post-consumer recycled content of 40%.*



Photo 1 – HDPE Plastic Bag

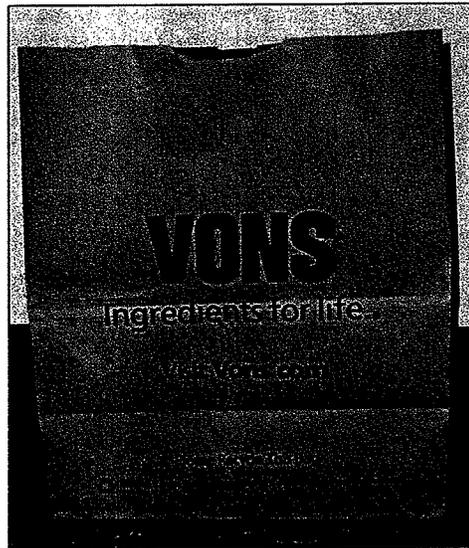


Photo 2a –Single-use Paper Bag

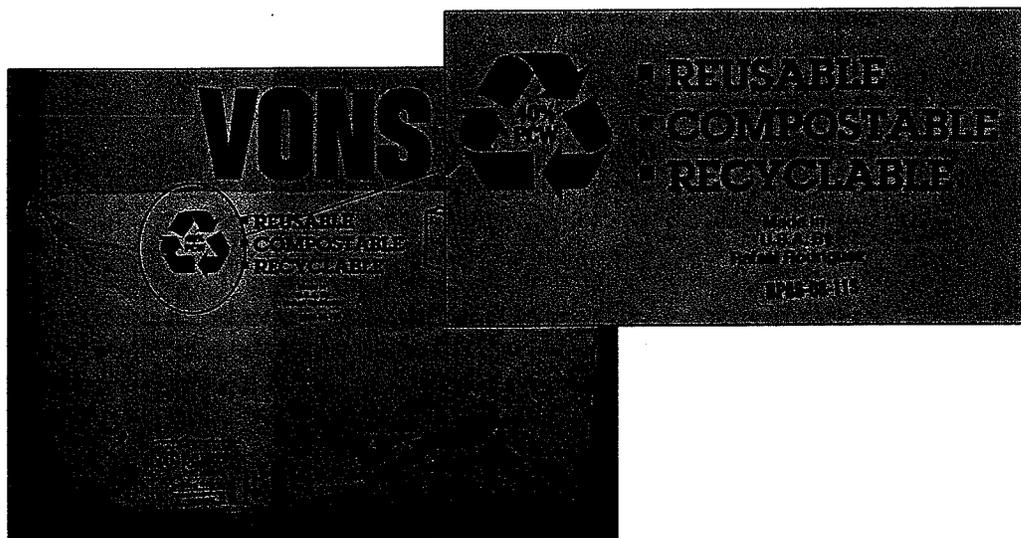


Photo 2b – Recycled Content Label on Single-use Paper Bag

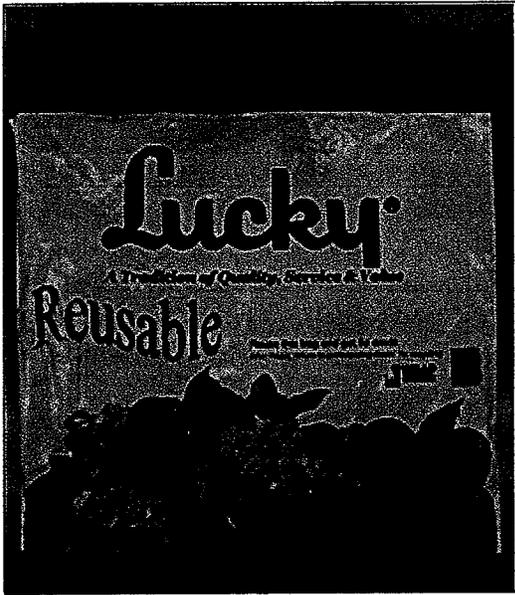


Photo 3 – LDPE Reusable Plastic Bag

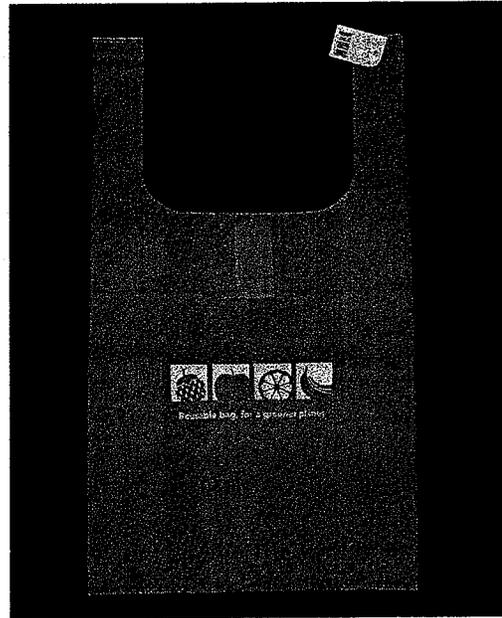


Photo 4 – 35 cent Reusable Bag from local Albertsons store

## 2. How would the regulations be applied?

The local governments that regulate single-use bags have applied a variety of approaches. The single-use plastic bag bans of some local governments, such as Los Angeles County and Marin County, applied initially to larger supermarkets and stores of 10,000 square feet or more with a pharmacy, with a phased-in approach for smaller markets. Other jurisdictions, including the City of Manhattan Beach, apply their ban to all grocery stores, food vendors, pharmacies, restaurants and city facilities.

In Carpinteria, there are two major grocery chains, Albertsons and Vons, occupying about 20,000 and 29,000 square feet respectively, two drug stores, CVS and Rite Aid, that occupy approximately 15,000 and 7,000 square feet respectively, and many smaller markets, convenience and liquor stores. All of these stores except Albertsons distribute single-use plastic bags, and many also distribute single-use paper bags. Staff believes that, in order to be effective in minimizing waste stream, litter and environmental pollution issues related to single-use plastic bags, regulations need to address all of these store types and sizes.

Further, as discussed earlier in this report, single-use paper bags present some of the same waste stream, litter and environmental pollution issues as plastic bags. And, in Carpinteria, Albertsons has already established a successful precedent for the elimination of all single-use bags at its store that represents about 40% of retail grocery sales in Carpinteria.

Albertsons' success in gaining customer cooperation and eliminating its use of all single-use bags suggests that a much more aggressive goal of eliminating all single-use bag waste generated by larger Carpinteria retailers is feasible in Carpinteria.

This would make the Carpinteria community a leader in California, and perhaps the nation, in reducing this type of waste and would have the greatest impact in litter reduction and environmental pollution.

Smaller grocery/convenience store retailers inherently have a higher percentage of customers making spontaneous purchases and purchasing just a few items, e.g., bottled water and a pack of gum. For these retailers it is more likely that their customers would not have a reusable bag handy because convenience store purchases are often not planned. Also, purchasing of a reusable bag at the store is less cost effective in conjunction with small purchases. At the same time, as stated earlier in this report, creek clean-up and litter pick-up efforts in the community have demonstrated that single-use plastic bags are found in the environment from all store types in Carpinteria, including the smaller size single-use plastic bags that are commonly used at convenience stores. For these reasons staff suggests including smaller retail stores in the ban on single-use plastic bags but allowing single-use paper bags for these same stores.

***Recommendation: Staff recommends requiring that all retail stores 10,000 square feet or greater in size be limited to providing their customers reusable bags. It is recommended that stores of less than 10,000 square feet be prohibited from distributing single-use plastic bags.***

3. What exceptions should be considered?

The bans approved by Los Angeles, Marin, and Santa Clara counties, and the cities of Calabasas, Long Beach, San Jose and Santa Monica, carry exemptions for WIC and certain other public welfare customers. Product bags (the thin bags used for dry cleaning, meat and produce) are also exempt from most plastic bag bans in California. While all of the above bans apply to large grocery stores, there are differences in exemptions and sizes and types of stores covered, as well as the fee imposed for single-use paper bags. Several of the bans already in place, including those in the counties of Los Angeles, Marin, and Santa Clara and the cities of Calabasas, Fairfax, Long Beach and Santa Monica, have also included penalty provisions.

Restaurants are also exempt from many of the above listed agencies, with the exception of Fairfax, Malibu, Manhattan Beach, Santa Cruz and Santa Monica. The bans of counties of Los Angeles and Marin, and the cities of Calabasas, Long Beach, San Francisco and Palo Alto apply to stores with gross annual sales of \$2 million or more. The Calabasas, Palo Alto, Marin and Los Angeles County bans initially only apply to grocery type stores over a certain size; Calabasas, Long Beach, Los Angeles County and San Francisco all have phased approaches that include smaller grocery marts and pharmacies at a later date. For a more detailed analysis, please refer to the table attached as Attachment B.

***Recommendation: Staff recommends exception be allowed for produce/vegetable bags, charitable reuse stores such as the St. Joseph's church thrift store, and that temporary exemptions be considered if a store can demonstrate undue hardship. Staff also recommends appropriate exceptions be established for certain public welfare customers.***

4. When should the regulations go into effect? What other considerations apply?

To effectively implement a regulation such as a single-use bag ban, an intensive education outreach campaign is necessary. As shown in the attached table, most agencies' implementation policies went into effect six months to a year after the ordinance was passed. This allows time for public education, as well as giving business owners time to review alternatives to single-use bags for consumers.

Carpinteria has the advantage of having local support in considering a single-use bag ban. As previously indicated, on April 27, 2011, the Carpinteria branch of Albertsons grocery store went bagless, eliminating all single-use carry out bags. Product bags, the thin bags used for produce and meat, are still provided, but all single-use plastic and paper carryout bags have been eliminated. In preparation for this ban, the local Albertsons worked closely with Carpinteria Beautiful to increase awareness and encourage people to get into the habit of bringing reusable bags.

Carpinteria Beautiful has campaigned extensively over the last four years to increase awareness on the negative environmental impacts of single-use bags, particularly single-use plastic bags. This local non-profit has handed out over 1,000 reusable bags as part of this campaign, and worked tirelessly preparing the community for Albertsons' self-imposed bag ban. Using storyboards, speaking with shoppers, and handing out reusable bags outside of the City's two major grocery stores were all part of the education outreach campaign. According to Albertsons' management and the representative of Carpinteria Beautiful, the biggest hurdle for most shoppers in adjusting to the elimination of single-use bags, was simply remembering to bring their reusable bags. Although there was an initial drop in customers at Albertsons when single-use bags were eliminated, within 2-3 weeks of the change customer patronization at the store returned to prior levels.

Through implementation of the City's Food Container Regulations in 2009-10, staff found that the 12 month grace period established in the regulations was sufficient time for a successful public/business education effort in cooperation with the Chamber of Commerce. Staff found that, with very few exceptions, the business community was cooperative if not supportive. Carpinteria Beautiful has expressed their support for a single-use plastic bag ban and should the Council decide to move forward, its volunteers are prepared to help with a public education campaign, much like the effective one they coordinated with Albertsons<sup>13</sup>. Carpinteria Beautiful representatives have stated that the organization believes that local legislative action is the best way to reduce the amount of single-use bags in the waste stream and environment.

***Recommendation: Staff recommends adoption of a program implementation date that is 12 months after the effective date of the Ordinance.***

- D. Environmental Clearance. Adoption of an ordinance banning the use of most single-use plastic bags in the City and limiting the use of single-use paper bags would likely qualify for a CEQA exemption under the analysis applied by the Supreme Court in the recent Manhattan Beach case. The key factors supporting this determination are (1) the City is

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<sup>13</sup> Testimony through telephone conversation with Donna Jordan, 9-27-2011

already a leader in transitioning away from plastic and paper bags in at least one of its largest retailers and in conducting extensive educational programs and outreach, (2) the City with approximately 14,000 residents is even smaller than Manhattan Beach, and (3) Carpinteria is a beach community, and single-use plastic bags that are easily picked up in the wind or stormwater and brought to the ocean where they do not biodegrade raise a problem particularly important for local citizens.

### **III. POLICY:**

The City of Carpinteria has an interest in protecting local waterways, the ocean, and sensitive habitat areas from pollution. The City's General Plan includes a number of policies that call for the City to protect our local environment, including conserving all water resources, and protecting the quality of water (Objective OSC-10). Further, the California Coastal Act, which locally is implemented through the City's General Plan, includes requirements for protecting Carpinteria Creeks and other environmentally sensitive habitat areas.

California cities are under increasing pressure from the State Water Board to keep litter out of receiving waters or remove it before it is discharged to waters of the State. Through the City of Carpinteria Stormwater Management Plan and Solid Waste Program, the City has established programs aimed at reducing the amount of waste generated as well as the amount diverted through reuse and recycling efforts.

### **IV. LEGAL:**

Based on the Manhattan Beach case, a negative declaration or exemption is likely the appropriate level of CEQA review, but this determination will not be made until the draft ordinance is prepared. The City's police power is broad enough to encompass and authorize this type of regulation with the provisions discussed above.

If the Council wants to avoid a potential challenge under Proposition 26, it would be wise to avoid including any provision requiring retailers to charge for paper bags. A number of the ordinances that have been adopted or proposed in California, including the Los Angeles County ordinance, ban plastic bags and then require stores to charge a 5 or 10 cent fee for the use of paper bags. Stores then must use the money collected for educational programs, cost associated with complying with the ordinance, and purchase of the bags. Agencies have included this fee provision in their ordinances in an attempt to discourage stores and customers from converting from single-use plastic bags to single-use paper bags. Petitioners, however, are challenging the Los Angeles County ordinance (which requires charges of 10 cents per paper bag) for violating Proposition 26, claiming (a) that the fee is an improper tax being collected (and spent) by the retailers under the direction of the County and (2) that governmental fees charged are only supposed to cover the value of the service provided and the Los Angeles fee does not.

### **V. FINANCIAL CONSIDERATIONS:**

Much of the costs associated with establishing single-use bag regulations have already occurred as City staff and the City's Attorney's office researched the issue and prepared and presented staff reports for City Council consideration over the past several years. Staff anticipates that implementation of single-use bag regulations would be conducted in the same

way that the City implemented the Food Container regulations in 2009-10, and would result in similar start-up and annual costs. Nearly all of the costs for implementation of the Food Container program related to staff time for personnel already on the City payroll. The work included hand-delivering and mailing notices about the new program to about 60 take-out food outlets in Carpinteria, preparing educational materials, compliance forms, and website information, conducting a workshop in cooperation with the Chamber of Commerce, handling initial mandatory compliance filings, and assisting those few restaurants that requested hardship waivers to allow for more time to come into compliance. The total cost associated with the start-up effort is estimated at approximately \$7,500. Annual costs are much less as mandatory annual compliance filings are made electronically.

**VI. ATTACHMENTS:**

Attachment A: Prior Staff Reports and Meeting Minutes.

Attachment B: Summary of California Ordinances Regulating Single-Use Plastic Bags.

**Attachment A**

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**STAFF REPORT**  
**COUNCIL MEETING DATE:**  
**February 25, 2008**

**ITEM FOR COUNCIL CONSIDERATION:**

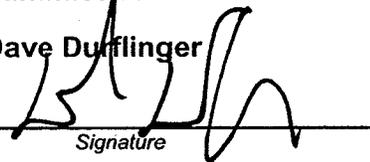
Report on local regulation of certain polystyrene containers and plastic shopping bags within the City of Carpinteria.

Report prepared by: Kat McCormick

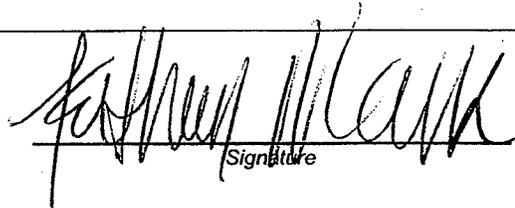
Department: Administration

Reviewed by: Dave Dufflinger

City Manager



Signature



Signature

**STAFF RECOMMENDATION:**

Receive report and direct staff as determined appropriate.

**I. EXECUTIVE SUMMARY:**

A presentation to the City Council last year by the Santa Barbara City College Sustainability Workshop identified environmental impacts associated with the pervasive use of expanded polystyrene (EPS)<sup>1</sup> food containers and plastic shopping bags and advocated for local regulation in order to minimize or eliminate these products in the waste stream and environment. In response, the City Council requested that City staff research the matter further and report back at a future meeting. The City has reviewed environmental, financial and legal issues associated with enacting a ban on the use of EPS and/or plastic bags by local retailers. The City also has followed the reactions of other City's to this emerging public policy issue.

There are currently 11 California cities that have bans of either EPS or plastic bags in California, a relatively small number considering that there are well over 400 cities in the state; however, most of the 11 cities that have enacted bans are on or near the coast.

With respect to banning the use of EPS food containers, staff's research shows that the potential for considerable environmental benefits could be realized when enacted where a

<sup>1</sup> EPS is often referred to by the product name Styrofoam.

compost food program is in place that can properly process the biodegradable alternative containers. Without such a program the benefits of an EPS ban are difficult to assess because biodegradable food containers would be disposed of in the regular waste stream and readily available alternative containers, e.g. hard plastic or petroleum treated cardboard, also have environmental impacts. There is currently not a compost food program available to the public in Carpinteria. Furthermore, the City Attorney's office indicates that a ban on EPS food containers could draw legal challenge from organized industry groups and that there is active litigation against cities in this area. For these reasons, staff believes that it may be prudent to wait rather than advance regulation on EPS containers at this time. In time the City's options could benefit from improved alternative container products, expanded recycling options, and clarity on the legal issues.

With respect to a plastic bag ban, in light of the active state level regulation in this area, staff has determined that regulation in this area could be duplicative. Accordingly, staff determined that at this time the most effective program would involve education and the promotion of reusable bags.

## **II. BACKGROUND:**

On July 9<sup>th</sup>, 2007, the Santa Barbara City College Sustainability Workshop identified the benefits related to adoption of a local ordinance banning foam containers and plastic shopping bags. Several cities and jurisdictions have implemented similar bans. The Council requested that City staff analyze this issue and prepare additional information regarding the financial and economic impacts that a ban might have.

Staff began their research by gathering information from the SBCC Sustainability Workshop, other municipalities who have enacted a ban, Carpinteria Beautiful, and EJ Harrison about the implications of a local ban on Styrofoam and plastic bags. Staff then used local, state, and national studies to enrich the information already gathered, relying on environmental organizations and government agencies that specialized in research relating to plastics or waste. Particularly important was the report: "The Use and Disposal of Polystyrene Waste in California prepared by the Integrated Waste and Management Board", as well as information collected by Californians Against Waste and Heal the Bay, two environmental organizations, all of which have done extensive research on the effects of plastic on our waste stream or on our environment.

Both expanded polystyrene (EPS), often referred to as Styrofoam™, and plastic grocery bags are made of plastic. Expanded polystyrene is made from air being "blown" into polystyrene, a brittle plastic, to form foam. The Santa Barbara City College Sustainability Project targeted these two materials because they are used for a very short amount of time but create harmful environmental effects. These two packaging materials raise the same environmental concerns:

- 1) Large source of litter for the City
- 2) Harmful to marine animal life
- 3) Not recycled
- 4) Impact capacity of landfills
- 5) Detrimental to human health

The issues of both EPS and plastic bags in the waste stream are growing in national importance and in particular for coastal cities in California. To date, eleven cities have passed a ban on Styrofoam in California, some dating back to 1990. Two cities have passed bans on plastic bags in California. After the Council reviews this report, staff is interested in receiving direction regarding the appropriate action for the City of Carpinteria in regards to EPS containers as well as plastic bags.

### III. ANALYSIS:

#### A. ISSUES RELATED TO EXPANDED POLYSTYRENE

Issues of litter are particularly important for coastal communities. The City of Santa Barbara Environmental Services Division reports that 15% of EPS used becomes litter in streets and beaches. Plastic has a lasting impact on our environment because it does not decompose for hundreds of years<sup>2</sup>. When EPS or plastic bags reach the ocean they break into smaller pieces but do not decompose completely. These materials are harmful to the marine animals that often ingest them or become entangled with them after mistaking them for food. For coastal cities, litter clean-up is costly but is important for the health of the animals that can die from ingesting plastic or foam. According to Heal the Bay, a non-profit environmental organization, 60-80% of all marine debris is plastic, and 90% of all floating debris is plastic. Plastic is also mistaken for plankton by marine life, often with fatal results. Plastic now outnumbers Plankton in the oceans 6 to 1.<sup>3</sup> Coastal cities in California have banned EPS and plastic bags to stop these problems from worsening.<sup>4</sup>

While it is possible to recycle EPS in special facilities, they currently are not accepted through most cities recycling programs, including Carpinteria. Gold Coast Recycling facilities do not accept EPS for recycling. Statewide, foam packaging peanuts and other transportation EPS packaging materials are recycled at 19-23%.<sup>5</sup> Food containers are limited to one time use making them a target from many organizations, such as the SBCC Sustainability Project, who wish to limit consumer waste and make consumers change their behavior.<sup>6</sup>

Eleven cities in California have adopted a ban on EPS since 2004. These bans originally presented themselves in the late 1980s and early 1990s when there were concerns that Styrofoam was harmful to the ozone layer.<sup>7</sup> When business practices changed in response to public opinion the bans were not considered for the rest of the decade. Now bans are being considered in response to harmful effects polystyrene has on the environment and in particular the ocean. More cities, particularly on the California coast, are considering these bans and legislation has been introduced at the state level, though the bill is currently inactive.<sup>8</sup>

The ordinances enacting bans on EPS function in many different ways. Styrofoam takeout containers can simply be banned from use. This allows businesses to still use paper or plastic products. Smaller cities, such as Calabasas, and Malibu have adopted such a ban. The other alternative is to only allow businesses to use recyclable or compostable products. This is an environmentally superior alternative, but it imposes a higher burden on businesses. The City of San Francisco adopted such a ban. Both are effective, but the latter forces businesses to truly use environmentally renewable materials. Another alternative is to enact a voluntary ban, such as that put in place in Santa Cruz in 1992, which requires no enforcement but can serve as an

<sup>2</sup> Heal the Bay. Overview of the Pacific Protection Initiative.

<sup>3</sup> Heal the Bay. Overview of the Pacific Protection Initiative.

<sup>4</sup> The City Ordinances of all ten cities, reflect their concern for these environmental issues.

<sup>5</sup> California Integrated Waste Management Board. *Use and Disposal of Polystyrene in California*. December 2004

<sup>6</sup> Correspondence between Staff and Kathi King on October 2, 2007. King stated that a major benefit of a ban on Styrofoam would be to make consumers think through every decision they are making in regards to disposal containers.

<sup>7</sup> Oakland City. *Berkeley 1990 Ordinance: Chapter 11.60 Polystyrene Foam, Degradable and Recyclable Food Packaging*.

<sup>8</sup> League of California Cities. *AB 904: 2 Year Inactive File*. This bill is not a watched bill by the League of California Cities and became inactive in July 2007. Heal the Bay has linked this legislation with several others in their Pacific Protection Initiative, which lists four pieces of legislation in various stages that they would like to see passed as part of a program to protect the oceans from waste.

education program. Another alternative available for the City is to increase enforcement of anti-litter laws and trash clean-up efforts in storm channels or beaches.

Any ban on polystyrene products serves as much to educate a community on the harmful effects of EPS as to actually stop businesses from using it. Enforcement can be costly and thwarted if businesses do not to comply. Most often, enforcement is done through a fine system which relies on the public to report businesses that are not in compliance with the City Ordinance. Fines vary among those cities with bans, but first time offenses are usually below \$100. The City of Malibu addressed the issue of enforcement by expanding an existing contract for storm water and recycling activities to include EPS compliance for no more than \$3000 in a year.<sup>9</sup>

Most of the cities that have already put a ban in place stated that businesses worried about a higher operation cost. However, some businesses, such as the Oakland Coliseum, have stated that they have made money rather than lost it through a Styrofoam™ ban. The Coliseum was able to save money by sending all of their waste to a compost facility rather than having to pay the cost of sending it to a landfill.<sup>10</sup> Consumers may also react positively to businesses that are environmentally friendly.

Alternatives to EPS containers can cost up to twice as much, but these containers only cost 2-3 cents each depending on the food container.<sup>11</sup> For example: a Styrofoam cup costs approximately 3 cents while both the paper and biodegradable alternative cost approximately 7 cents. The information below is taken from the Ventura County report on alternative products and gives an overview of the alternative food containers to EPS.

The alternatives:

1) Paper- Made from virgin paper that takes a great deal of resources to produce. Most of these products are then coated with a polythene coating (petroleum based) and are considered not recyclable.

2) Rigid Plastics- Made from the same non-renewable products as EPS and have the same problems of not being biodegradable.

3) Bioplastics- There are new alternatives made from renewable ingredients. There is a great deal of variance within these products, though none have been perfected. These products look similar to plastic and paper products but are made out of biodegradable materials such as corn starch or sugar cane. Once they enter a compost facility they decompose. They often cost more; they can cost up to 300% of the Styrofoam alternative, but their impact on the environment is minimal. Businesses often worry about the availability of these products.

It is important to note that bioplastic containers biodegrade only after reaching a compost facility. Without the high temperatures conducive to decomposing, the containers made out of renewable materials may take as long to disintegrate as polystyrene containers and may emit harmful emissions into the air, negating much of the positive environmental impacts. They are, however, still much better for marine life if they are littered since they contain no toxic materials.

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<sup>9</sup> Correspondence between Staff and Jennifer Voccola, the Environmental Program Director for the City of Malibu, on August 7, 2007.

<sup>10</sup> Press Release from Cereplast Inc. "The Coliseum's maintenance Director, George Valerga of SMG, stated that he is saving over \$100,000 per year on its garbage bill."

<sup>11</sup> City of Calabasas. Comparison of products cost. Spreadsheet made available to Staff through correspondence with the City of Calabasas

<sup>13</sup> Health Care Without Harm. *Choosing Environmentally Preferable Food Service Ware: Reusable and Sustainable Biobased Products.*

<sup>13</sup> Maximizing the environmental benefits of a policy that replaced EPS with bioplastics would require the creation of an organic waste collection or a compost program. No such program is currently available for Carpinteria since EJ Harrison currently only has the facilities for yard waste. For similar reasons, when the City of Santa Barbara considered a ban on Styrofoam, it ultimately decided to pursue an educational program until an organic waste collection program is developed.

Understanding the options is important to understanding what possibilities and changes a ban can offer. Most likely businesses will use the conventional alternatives such as paper and rigid plastic, which while being somewhat better for the environment are not likely a long term solution. Education is essential for businesses to realize the variety of products available.

### Cost-Benefit Chart for the Options to Decrease EPS Use

Options	Benefits	Costs/Issues
Voluntary Ban	Educate the community about the harmful effects of EPS and may help to decrease litter. Can be done at little cost to the City. It could educate through its newsletter, the Trash Flash and direct mailings to businesses such as restaurants.	With no enforcement, most business will continue with their same business practices. There could be little to no change in the amount of EPS used within the City.
Enforced Ban on EPS	This ban allows businesses to use the alternative product of their choice and bans only Styrofoam. Alternative products would be easy for businesses to locate.	Enforcement can be difficult and the City would have to pay the cost. Would still allow products that are made from non-renewable resources with negative environmental benefits. Would also require, to be most effective, a compost food program. Enforcement would rely on the public. Could be subject to litigation which would delay any change.
Enforced Ban on EPS and non-recyclable or renewable products	It would have the greatest positive environmental impact because all products that would have to go to a landfill are banned.	This ban would include most paper and plastic containers as well, making it the hardest on local businesses. Would require a great deal of education for local businesses. Would require a compost food program to be effective.
Increase Anti-Litter Laws enforcement	Enforcement of these laws that are already in place would benefit the marine habitat without affecting local businesses.	This would still have increased costs for the City, would be very difficult, and benefits would likely be nominal. There would be no education for the entire community.
Increase in Beach and Streets Clean-up	Already existing local organizations such as Carpinteria Beautiful (Adopt-A-Spot) could be supported. Can be very effective in reducing environmentally damaging litter. Storm drain filters and street sweeping and similar Best Practices are already in use and can be supplemental.	This is not a solution to the human behaviors but treats the symptom instead. Would not address source of problem
Ban EPS at City functions and on City property	This can be done at little to no cost, and would decrease the amount of EPS used within the City. Could raise awareness to residents and businesses alike. The City would be setting an example. The City is already in the process of implementing this as administrative policy.	Other than on City property there may be no behavior change or education.

Creation of a Compost Food Program	Allow for landfill diversion. Allow for the proper disposal of biodegradable containers.	Could be very costly and would require a great amount of planning and study before such a program could be created.
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## B. ISSUES RELATED TO PLASTIC BAGS

According to the EPA, 380 billion plastic bags are used in the United States each year. Because the process in which these bags are made utilizes petroleum they are particularly harmful to the environment. These bags do not biodegrade, but rather break into smaller pieces causing litter problems for the City and the ocean.

A quarterly newspaper prepared by EJ Harrison identified litter problems associated with plastic bags and suggested that reducing the amount of plastic bags at the landfill would be beneficial. Similarly, Carpinteria Beautiful - a local group of volunteers that conduct various beautification programs including the Adopt-a-Spot litter pickup program throughout the City - reports that plastic bags are the most visually obvious and egregious material that the volunteers collect.

San Francisco and Oakland have both instituted plastic bag bans. Similar bans are being considered in Los Angeles and New York City. These bans stop only large grocers and pharmacies, those that are making more than one million dollars a year, from using plastic bags.<sup>15</sup> The California Grocers Association opposed the ban in San Francisco and warned that such a ban would lead to higher prices.<sup>16</sup> Instead the organization suggested that San Francisco should bolster anti-litter laws and their enforcement to decrease litter. Grocers stated that such a ban would most likely cause them only to use paper bags, which may increase waste and are also costly. The City of Oakland is currently defending its ban in a lawsuit by the Coalition to Support Plastic Bags. The ordinance is being challenged on the basis that it will have unexplored negative environmental effects, in light of the increased use of available alternatives.

Other alternatives may reduce consumers' use of polystyrene bags. For example, some businesses charge consumers for plastic bags. Ikea now charges 5 cents for each plastic bag and they have seen a 95% reduction in the use of plastic bags with a similar program in the UK, according to the IKEA website. While charging a tax for each bag has been successful in Ireland<sup>17</sup>, cities may be precluding from enacting such a tax in light of state law in this area. The main idea behind these programs is to make consumers think through each bag they are using rather than thinking of them as free.

The County of Los Angeles Board of Supervisors recently enacted a new program that was developed with input from industry and environmental groups. This program sets benchmarks that Supermarkets would have to meet or else a ban would be put in force. The benchmarks look for a 30% reduction in use by 2010 and a 65% reduction in use by 2013.<sup>18</sup> The Supervisors adopted a program that will lead to an automatic ban on plastic bags if these benchmarks are not met. While this program is promising its efficacy is currently unknown and it may also present preemption issues.

Alternatives to plastic bags are already available in stores. Paper bags decompose and are much easier to recycle but take more energy to produce. The debate over "paper vs. plastic" has brought many different sources to different conclusions, but most sources agree that re-

<sup>15</sup> City of San Francisco Ordinance No. 295-06

<sup>16</sup> Gonzales, Richard. *San Francisco Nears Ban on Plastic Grocery Bags*. NPR

<sup>17</sup> BBC News. *Irish Bag tax hailed success*. August 2, 2002

<sup>18</sup> County of Los Angeles Chief Executive Office. Report for Agenda January 22, 2007

usable bags are the best solution.<sup>19</sup> New products which look similar to plastic bags but are made out of biodegradable material and do not use petroleum byproducts are also available but not yet stocked in most stores because of the cost. The cost of biodegradable bags ranges between 10 to 25 cents per bag. Polystyrene bags cost grocers about 2 cents a bag and paper bags 5 cents a bag, making the cost of biodegradable bags about a 500 % price increase.<sup>20</sup> The benefit of plastic versus paper bags as well as the economic viability of biodegradable bags is a highly debated topic.

While biodegradable bags are better for the environment, they need to go to a compost facility to decompose. However, EJ Harrison stated that it is currently too hard to determine the difference between plastic bags and the biodegradable bags. Because of this, they would not be able to use them in their compost facility, which mostly focuses on yard waste.

The chain grocery stores in Carpinteria have recycling sites for plastic grocery bags as required by California state law, though recycling of these bags nationwide has stalled at 1-4 %, and recycling the bags uses a lot of energy<sup>21</sup>.

#### A Cost-Benefit Chart of the Options to Decrease Plastic Bag Use

Programs	Benefits	Costs/Issues
Tax on every Plastic Bag	The City could propose a tax on any plastic bag used by businesses. This would allow businesses and customers who want to use the bags to continue but help consumers to recognize the costs of these bags. Would also produce revenue to cover the costs of enforcement or help with other environmental projects such as storm water management.	The tax could be hard to enforce and could be considered a hardship by the businesses. The City is not able to enact such a tax because of the At-Store Recycling Program.
Ban all Plastic bags	Help litter within the City. Force businesses to use environmentally better alternatives.	Could have legal repercussions. Costly for businesses and consumers. Could force businesses to use paper bags which are not necessarily better for the environment. The legal precedence of the City in enacting a ban is questionable since the State of California has ongoing regulations in this area.
Set benchmarks that Supermarkets must meet to prevent a ban from going into place	Expects a change in consumer behavior as well. Gives incentive to the Supermarkets to change without banning plastic bags entirely.	The legal precedence of the City in enacting such a program is questionable since the State of California has ongoing regulations in this area. This program may not be successful as it is a new idea. It also does not create as much environmental benefits as an outright ban.

<sup>19</sup> Reusablebags.com. *Paper Bags are Better than Plastic, Right?*

<sup>20</sup> Using prices found off the internet for Biodegradable bags:

[http://www.biodegradablestore.com/cip/cip\\_bags.html#BioShopper\\_Grocery\\_Bags](http://www.biodegradablestore.com/cip/cip_bags.html#BioShopper_Grocery_Bags) and information from Raymond McCaffrey of the Washington Post for the cost of paper and plastic bags.

<sup>21</sup> Californians Against Waste. *The Problem of Plastic Bags.*

Voluntary Ban on Plastic Bags	This type of ban would serve as an education program that would alleviate any of the economic hardships that businesses might experience, while still serving the community. Could be pared with the re-usable bags program.	May not be accompanied by any change of behavior and therefore could have a negligible environmental benefit.
Provide re-usable bags	A program which makes these available to residents could serve as educational tool and would provide the best environmental benefits. There would be no costs associated with enforcement and it could help to reduce plastic bag litter. Many grocery stores already provide such bags as an option. Vons sells reusable bags for \$1.00	The feasibility of this is difficult to assess. The City would need to consider partnering with other organizations to design such a program. There would be no enforcement. Reusable bags are not available in all situations, so other bags would still be used.
Increase anti-litter laws	An increase in penalties could serve as a deterrent to those who might litter bags.	Catching people in the act of littering is difficult as evidenced by the variety of citations written for existing litter law violations. Many believe plastic bag litter is largely from accidental or come about from bags being blown out of containers/trash.
Promote recycling programs	Since the large retail changes in town already have a recycling program, this could be done at little cost.	Many people already know about these programs, so this may not produce a change. There is a huge cost, environmentally and financially in recycling plastic bags and EJ Harrison does not currently recycle plastic bags.

#### **IV. FINANCIAL CONSIDERATIONS:**

Predicting the cost of adopting either ban is difficult. With respect to an EPS ban, none of the cities with currently enacted bans have conducted a cost study. When the city of Malibu instituting an EPS ban, it estimated it would require staff to commit 30 hrs/wk to provide education, inspections, and enforcement for the first year, for an estimated total of \$55,597 and 15 hrs/wk for every year after for an estimated total of \$25,799 from the 2nd year on. To avoid that expenditure, Malibu instead expanded an inspection contract for storm water and recycling, ensuring the Styrofoam ban enforcement costs stay under \$3,000 a year. With respect to the cost of adopting a plastic bag ban, neither of the cities with enacted bans has conducted cost studies. However, they believe they are saving money through a decreased litter clean up cost. It is also difficult to calculate the amount of work done by volunteers within the City and the labor they contribute to clean-up costs. No attempts have been made to calculate the costs to businesses if a ban is put in place, though these costs would most likely be paid for by the consumer through an increase in the costs of the goods they were purchasing.

#### **V. LEGAL ISSUES:**

There are a number of legal issues to consider. When adopting an ordinance to regulate the use of either EPS or plastic bags the City as the Lead Agency under the California Environmental Quality Act (CEQA) must determine what level of environmental review is appropriate. The

Cities of Santa Monica, Alameda, and Emeryville all found that their ordinances banning polystyrene were exempt from CEQA because there was no possibility of a negative environmental impact. The City of Carpinteria may conclude that adoption of such a ban is exempt from CEQA review. Alternatively, the City could conduct more comprehensive environmental review if there is reason to believe a negative environmental impact could result from the ordinance. The County of Los Angeles in enacting a ban intends to follow this approach and prepare an environmental impact report. Regardless of the level of environmental review conducted, there is always a risk that the review will be challenged. For example, the City of Oakland is currently in defending a CEQA challenge by the Coalition to Support Plastic Bag Recycling (CSPBG) which claims Oakland ignored the unintentional adverse environmental effects of a plastic bag ban. This case is currently being argued and the results are still unknown.

If the City were to adopt a ban on plastic bags, it would also need to take care to draft a regulation that avoids conflicts with existing state law. The At-Store Recycling Program Law created in 2007 requires certain identified "supermarkets" to have a recycling program for plastic bags in the store.<sup>22</sup> Under California Pub. Res. Code Section 42254 (a), local government is prohibited from adopting, implementing or enforcing any ordinance that imposes a fee or tax on plastic carryout bags or requires a store that is in compliance with the At-Store Recycling program Law to collect, transport or recycle carryout bags until January 1, 2013. While there is arguably room for cities to regulate plastic bags in ways that do not conflict with the At-Store Recycling Program Law, when the state has spoken on a particular issue it is common for local governments to avoid regulation of the same subject matter out of an abundance of caution. For example, due to the prohibition by this law on City regulation of plastic carryout bags, the staff for the City of Santa Monica recommended to its City Council that it take no action to address plastic carryout bags. (Santa Monica City Council Meeting Minutes Oct. 23, 2006.)

#### **VI. OPTIONS:**

1. Choose to ban either EPS or plastic bags or both. If the City Council chooses to instate one of these bans, it will need to decide the nature of the ban. The Council should then direct staff to prepare a resolution/ordinance
2. Ban use of EPS and plastic bags on City Property and at City functions. This can be done at little to no cost, and will lessen the environmental impact made by the City's employees.
3. Create an education program about polystyrene and/or plastic bags for the community. This is what several businesses suggested as a solution to the environmental problems in the City of San Francisco and Santa Barbara.
4. Take no action.

#### **VII. PRINCIPAL PARTIES EXPECTED AT MEETING:**

Representative of the Santa Barbara City College Sustainability Workshop

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<sup>22</sup> "Supermarket" means a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items. (Cal. Pub. Res. Code Section 14526.5.)

can turn their 13% profit they won't leave. He said that a proposed ordinance is not about Vons or Albertsons but rather any so called "big box" store.

The City Council agreed that there was no need to direct the preparation of a moratorium ordinance at this time.

Motion was made by Councilmember Stein and seconded by Councilmember Clark to direct staff to prepare an ordinance for consideration that will restrict any retail businesses larger than 30,000 square feet from being built in Carpinteria and require a conditional use permit and an extensive review of building plans for all proposed stores larger than 20,000 square feet.

Ayes: Clark, Stein, Carty  
Noes: Armendariz  
Absent: Ledbetter

COUNCIL  
DIRECTS STAFF  
TO PREPARE  
ORDINANCE  
RESTRICTING  
SIZE OF RETAIL  
BUSINESSES

7. Consideration of a report on local regulation of certain polystyrene containers and plastic shopping bags within the City of Carpinteria

STAFF RECOMMENDATION: That the City Council receive the report and direct staff as determined appropriate.

DOCUMENTS:

Staff Report dated February 25, 2008 prepared by Kat McCormick, Administrative Intern

The City Manager explained that a presentation to the City Council last year by the Santa Barbara City College Sustainability Workshop identified environmental impacts associated with the pervasive use of expanded polystyrene (EPS) food containers and plastic shopping bags and advocated for local regulation in order to minimize or eliminate these products in the waste stream and environment. In response, the City Council requested that City staff research the matter further and report back at a future meeting. The City has reviewed environmental, financial and legal issues associated with enacting a ban on the use of EPS and/or plastic bags by local retailers. The City also has followed the reactions of other City's to this emerging public policy issue.

There are currently 11 California cities that have bans of either EPS or

REPORT ON  
LOCAL  
REGUATION OF  
CERTAIN POLY-  
STYRENE  
CONTAINERS  
AND PLASTIC  
SHOPPING BAGS

plastic bags in California, a relatively small number considering that there are well over 400 cities in the state; however, most of the 11 cities that have enacted bans are on or near the coast.

With respect to banning the use of EPS food containers, staff's research shows that the potential for considerable environmental benefits could be realized when enacted where a compost food program is in place that can properly process the biodegradable alternative containers. Without such a program the benefits of an EPS ban are difficult to assess because biodegradable food containers would be disposed of in the regular waste stream and readily available alternative containers, e.g. hard plastic or petroleum treated cardboard, also have environmental impacts. There is currently not a compost food program available to the public in Carpinteria. Furthermore, the City Attorney's office indicates that a ban on EPS food containers could draw legal challenge from organized industry groups and that there is active litigation against cities in this area. For these reasons, staff believes that it may be prudent to wait rather than advance regulation on EPS containers at this time. In time the City's options could benefit from improved alternative container products, expanded recycling options, and clarity on the legal issues.

With respect to a plastic bag ban, in light of the active state level regulation in this area, staff has determined that regulation in this area could be duplicative. Accordingly, staff determined that at this time the most effective program would involve education and the promotion of reusable bags.

The Administrative Intern detailed the research she did on issues related to expanded polystyrene and plastic bags as detailed in her written staff report. She explained the alternative products available for both products.

The City Manager and Administrative Intern responded to questions from the Council.

Natasha Lohmas, local resident and employee of the Department of Fish and Game, spoke regarding the protection of creeks and watersheds. She said she sees too many plastic bags in the creeks and watershed areas and they wash out to sea and are extremely detrimental to sea and wildlife.

NATASHA  
LOHMAS

Judy Mulford, representing Carpinteria Beautiful, said that they would like to partner with the City on a proposed ban EPS and plastic bags. She commended the Administrative Intern on the very thorough staff report. She said that the most simple and cost effective solution is Option 2 banning the use of EPS and plastic bags on City property (i.e., Farmers

JUDY MULFORD

Market, Avocado Festival, Triathlon, etc.) and at City functions. This can be done at little to no cost, and will lessen the environmental impact made by the City's employees.

Donna Jordan, representing Carpinteria Beautiful, said that in California 600 plastic bags per second are being discarded and most are being discarded improperly. She said this is a global issue and the damage to the environment is everywhere. She encouraged the Council to do anything possible to move in the direction of a full ban. She said that Carpinteria Beautiful wants to work with the City on this issue.

DONNA JORDAN

Nancy VanAntwerp, representing Carpinteria Beautiful, said that to encourage people to use reusable bags, they have purchased 1,000 polypropylene reusable bags to distribute to residents, free of charge, to help towards eliminating the use of plastic bags. She gave a bag to each of the Councilmembers and staff.

NANCY VAN  
ANTWERP

Kathy King, Environmental Studies Department, Santa Barbara City College, commended the City for moving forward with the feasibility study and commended Kat McCormick for her excellent report. She urged the Council to consider a full ban on Polystyrene containers.

KATHY KING

Betty Songer, local resident, urged the Council to consider a full ban on plastic bags with an education component.

BETTY SONGER

Evangelina Diaz, local resident, commended the Administrative Intern on her very thorough staff report.

EVANGELINA  
DIAZ

Councilmember Stein said that initially he supports Option 2 (banning the use of EPS and plastic bags on City Property and at City functions). He suggested deferring until the Federal, State and Santa Barbara local governments acts first. He said he could not support a tax on local businesses.

Vice Mayor Carty said it is important to educate stores and places that are using these products that in the not to distant future they won't be allowed.

Councilmember Clark said that voluntary programs have been in place for a very long time and they don't work. He said in terms of education, the way you change behavior, and sometimes a legal solution is the most fast and effective method. He said he supports directing staff to prepare an ordinance for a full ban.

Councilmember Armendariz said that he supports either Options 2 or 3 as

a good starting point.

Vice Mayor Carty said he agreed with Councilmember Clark that banning plastic bags at super markets and markets as soon as possible.

Ms. McCormick clarified that in San Francisco and Oakland, the grocery stores say a significant increase in the use of paper bags.

Councilmember Stein questioned what the legal impacts would be if the Council adopts a full ban?

The Deputy City Attorney explained that Oakland is in a lawsuit over their enactment of a ban on the use of plastic bags. The basis of the lawsuit is related to CEQA. The challenge is that in adopting the ordinance they did not adequately analyze the environmental side effects of adopting the ban and thereby moving towards the paper bag option. The claim is that the paper bags are either equally or more environmentally harmful for various reasons and that was not adequately considered when Oakland adopted their ban. She said that the case has been argued in court and we are awaiting the decision.

The City Attorney stated that he does not know of any other precedent in the State of California for banning both plastic and paper bags.

Discussion followed.

Councilmember Stein said that if the City bans plastic bags, we would have to look at the alternative of paper bags, and the ban would need to be citywide (all businesses). The City would need to allow some time for the businesses to "retool" and change their protocols.

Councilmember Armendariz questioned if there would be any benefit to forming a blue ribbon committee to study this issue at the local level and meet with some of the retailers?

Councilmember Clark concurred with Councilmember Stein's comments that instead of a blue ribbon commission the City should have Carpinteria Beautiful, the Chamber of Commerce and others to partner with the City to help the community prepare for a ban at the end of the year.

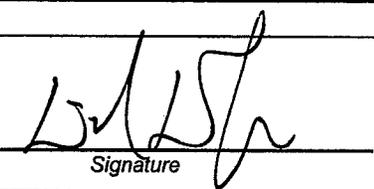
The City Attorney said that there should be a decision in the Oakland case fairly soon. He said that if the Council wants staff to proceed forward with initiating some sort of regulation an environmental clearance will need to be done.

**STAFF REPORT**  
**COUNCIL MEETING DATE:**  
**July 9, 2007**

**ITEM FOR COUNCIL CONSIDERATION:**

Initiating a City staff study of local regulations banning certain polystyrene containers and plastic shopping bags.

City Manager

  
Signature

**STAFF RECOMMENDATION:**

Direct staff to prepare appropriate analysis of issues related to a ban on certain polystyrene containers and plastic shopping bags.

**I. BACKGROUND:**

The City Council received a presentation on June 25, 2007, by students participating in the Santa Barbara City College (SBCC) Sustainability Workshop. The Workshop is advocating that cities ban polystyrene food service containers and plastic shopping bags as a measure aimed at protecting the environment.

Following the presentation, the City Council requested that staff schedule the matter as an agenda item in order to consider initiating a formal analysis of a local ban.

**II. DISCUSSION:**

Some of the environmental impacts from polystyrene containers and plastic bags that were reported by the SBCC Sustainability Workshop group include increased litter on roads, creeks and beaches, impacts on environmentally sensitive habitats, and health impacts on plant and animal species caused by decomposition of such plastics in the ecosystem.

The State of California has recently passed legislation (AB 2449) in 2006 that requires retailers greater than 10,000 square feet to provide in-store recycling of plastic shopping bags. Although the legislation became effective as of July 1, 2007, most stores, including both in Carpinteria have provided the service for some time.

Several cities in California, including Berkeley, Oakland and Santa Cruz, have banned the polystyrene containers and many more in California and the rest of the U.S., are moving toward

adopting bans on plastic shopping bags. The City of Santa Barbara recently asked its Solid Waste Committee to review and analyze the issue. The California Grocer's Association and other grocers in the U.S. are against such bans, according to news reports, due to the purportedly higher cost of alternative bags such as paper and biodegradable plastic, and claims that alternative bags may have greater environmental impacts than the plastic bags.

Staff is recommending that the City Council direct staff to prepare a report on the subject so that, prior to drafting of regulations, legal, business, and logistical issues can be analyzed for City Council consideration. This process will also permit the City to solicit input from interested parties in the community.

OTHER BUSINESS

5. Consideration of initiating a City staff study of local regulations banning certain polystyrene containers and plastic shopping bags

STAFF RECOMMENDATION: That the City Council direct staff to prepare appropriate analysis o issues related to a ban on certain polystyrene containers and plastic and plastic shopping bags.

DOCUMENTS:

Staff Report dated July 9, 2007 prepared by Dave Durflinger, City Manager

The City Manager explained that the Council received a presentation on June 25, 2007, by students participating in the Santa Barbara City College (SBCC) Sustainability Workshop. The workshop is advocating that cities ban polystyrene food service containers and plastic shopping bags as a measure aimed at protecting the environment.

Some of the environmental impacts from polystyrene containers and plastic bags that were reported by the SBCC Sustainability Workshop group include increased litter on roads, creeks and beaches, impacts on environmentally sensitive habitats, and health impacts on plant and animal species caused by decomposition of such pastics in the ecosystem.

The State of California has recently passed legislation (AB 2449) in 2006 that requires retailers greater than 10,000 square feet to provide in-store recycling of plastic shopping bags. Although the legislation became effective as of July 1, 2007, most stores, including both in Carpinteria have provided the service for some time.

Several cities in California, including Berkeley, Oakland and Santa Cruz have banned the polystyrene containers and many more in California and the resto fthe U.S., are moving toward adopting bans on plstic shopping bags. The City of Santa Barbara recently asked its Solid Waste Committee to review and analyze the issue. The California Grocer's Association and other grocers in the U.S. are against such bans, according to news reports, due to the purportedly higher cost of alternative bags such as paper and biodegradable plastic, and claims that alternative bags may have greater environmental impacts than the plastic bags.

Cathi King and Jim Griffin, Santa Barbara City College Sustainability Workshop, urged the City Council to direct staff to move forward in

CONSIDERATION  
TO INITIATE  
STAFF STUDY OF  
LOCAL  
REGULATIONA  
BANNING  
CERTAIN  
PLASTIC  
CONTAINERS  
AND BAGS

CATHI KING AND  
JIM GRIFFIN

collecting more information on the issues. She said that her group has done a lot of study into the matter and would be happy to share the information with the City.

Councilmember Armendariz said that concerns have been raised that alternative bags, such as paper and/or biodegradable plastic, may have greater environmental impacts than plastic bags.

Ms. King responded that paper bags are far more detrimental to the environment than petroleum based plastic bags. The potato starch based plastic bags that are being used to replace petroleum based plastic bags, biodegrade which will have much less impact on wildlife.

Vice Mayor Carty said that he would like to see the foam packaging "peanuts" included in any analysis the staff does.

Councilmember Armendariz said that he supports staff preparing an analysis of issues related to a ban. He said that any analysis should include information on the financial and economic impacts that a ban might have, particularly related to the cost of groceries.

Motion was made by Councilmember Clark and seconded by Vice Mayor Carty to direct staff to prepare appropriate analysis of issues related to a ban on certain polystyrene containers and plastic shopping bags.

The motion was unanimously adopted by voice vote (Stein absent).

COUNCIL  
DIRECTS STAFF  
TO PREPAR  
ANALYSIS

6. Consideration of Resolution No. 5070 adopting the Santa Barbara Countywide Integrated Regional Water Management Plan

STAFF RECOMMENDATION: That the City Council adopt the proposed resolution and appropriate \$1,327.81 as the City's shared cost for preparing the Santa Barbara county wide Integrated Regional Water Management Plan

DOCUMENTS:

Staff Report dated July 9, 2007 prepared by Dale Lipp, Public Works Director with attached Resolution No. 5070 adopting the Santa Barbara Countywide Integrated Regional Water Management Plan and Executive Summary of the Santa Barbara Countywide Integrated Regional Water Management Plan

The Public Works Director explained that In November 2002, California

ADOPTION OF  
SANTA  
BARBARA  
COUNTYWIDE  
INTEGRATED  
REGIONAL  
WATER  
MANAGEMENT  
PLAN

Motion was made by Councilmember Stein and seconded by Councilmember Clark to direct staff to prepare regulations banning certain polystyrene containers and plastic shopping bags within the City of Carpinteria to become effective by the end of the year pending any outcomes that are found and an environmental impact report and applicable CEQA analysis.

COUNCIL  
DIRECTS STAFF  
TO PREPARE  
ORDINANCE  
BANNING  
POLYSTYRENE  
CONTAINERS  
AND PLASTIC  
BAGS

The motion was unanimously adopted by voice vote (Ledbetter absent).

8. Consideration of the Service Cost Update report prepared by Revenue & cost Specialists (RCS), reviewing and updating the Master Fee Schedule

SERVICE COST  
UPDATE TO  
MASTER FEE  
SCHEDULE

STAFF RECOMMENDATION: That the Council following consideration of the report, adopt Resolution No. 5105 updating the City's Master Fee Schedule as appropriate.

DOCUMENTS:

Staff Report dated February 25, 2008 prepared by John Thornberry, Administrative Services Director with attached Service Cost Update for the City prepared by Revenue and cost Specialists, LLC and Resolution No. 5105

The Administrative Services Director explained that on November 14, 2006 the City entered into an agreement with RCS to conduct a study and update of the City's Master Fee Schedule as required by CMC 3.34. That study has now been completed. Attached is the report including an Executive Summary, a comparison of existing and recommended fees, a summary of fee revenue and costs for fee financed services, a schedule of revenues and costs for each city-provided service and a schedule of fully burdened hourly rates for City staff. The general methodology of the study is to identify all services provided by City staff for which a fee can be charged, estimate the number of units of service that are provided and the cost of providing the service. Using the cost recovery percentages specified in the Municipal Code a recommended fee is then developed. The study deals only with fee financed services as opposed to services funded by taxes such as law enforcement. A copy of the complete report is available in the City Clerk's office.

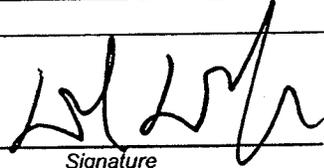
Pages 1 thru 19 of the report show comparisons between the current and recommended fees for each service. Many of the fee-financed services of the City are financed by charging a fully burdened hourly personnel rate

**STAFF REPORT**  
**COUNCIL MEETING DATE:**  
**September 22, 2008**

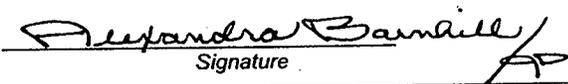
**ITEM FOR COUNCIL CONSIDERATION:**

Local regulations to ban the use of plastic carry-out bags and expanded polystyrene take-out food containers.

City Manager

  
Signature

City Attorney

  
Signature

**STAFF RECOMMENDATION:**

Receive the progress report and provide direction concerning the drafting of the subject regulations.

**I. BACKGROUND/DISCUSSION:**

At its regular meeting of February 25, 2008, the City Council directed staff concerning its interest in establishing regulations to prohibit local businesses from providing customers with carry-out plastic bags and expanded polystyrene take-out food containers. The action followed a presentation by the Santa Barbara City College Sustainability Workshop and public testimony in July 2007, on the need and purpose of such local bans, and a staff report and analysis at the February 2008 meeting, all of which provided the Council with information and references identifying issues related to the use of both plastic carry-out bags and expanded polystyrene take-out food containers. Specifically, the City Council directed:

1. That draft regulations (that would ban certain carry-out plastic bags and take-out food containers) be prepared for City Council consideration
2. That staff work with the Chamber of Commerce and Carpinteria Beautiful to prepare the community for the bans
3. That an appropriate environmental review/disclosure document, i.e., Notice of Exemption, Negative Declaration, or Environmental Impact Report, be prepared

4. That the regulations become effective by the end of 2008, pending the outcome of staff analysis and determination of the appropriate environmental review/disclosure document.

The following is a report on work completed to date:

1. Draft Regulations: Staff has reviewed the regulations from many other cities, several reports, environmental clearances, and legal issues, and has identified several alternatives for City Council consideration/direction. For the purpose of evaluating regulations, staff found the regulations established by the City's of Malibu and Manhattan Beach, most valuable. The alternatives are discussed in Section IV of this report.
2. Community Outreach: This past July the City Council authorized funding to support Carpinteria Beautiful efforts to distribute 5,000 reusable bags in the community. This follows prior distribution by Carpinteria Beautiful of 1,000 reusable bags earlier in the year. On September 11, the Carpinteria Valley Chamber of Commerce and the City co-hosted a meeting with business owners/operators intended to educate the business community on the bans, their purpose and how they work, and to solicit feedback to be used by the City Council in considering regulations. All retail and restaurant businesses in the City were provided a direct mail invitation to the meeting and an advertisement was also run the week prior in the Coastal View News. Approximately 23 persons attended the meeting. In addition to business owners/operators, representatives of E.J. Harrison & Sons, the City's franchise trash hauler, attended and provided information to the group on recycling programs in Carpinteria and the challenges in recycling plastic bags and EPS food containers. A manufacturer of biodegradable products, including food containers spoke to the group about products available and the future of the industry (a list of product vendors was provided to participants with other material including sample ordinances from another city). Finally, a representative of CKE (the parent company of the Carl's Jr. Restaurant chain and a Carpinteria based company) attended and spoke about details of that company's efforts to transition to non-plastic packaging. A list of bullet notes from the meeting is attached to this report.
3. Environmental Review: Staff has reviewed a variety of approaches taken by California cities complying with the California Environmental Quality Act (CEQA), and monitored related litigation. The Legal section of this report provides an update and recommendation.
4. Legislation: The state legislature has considered several bills on this issue including an amendment to the Levine bill (AB 2449) that would establish mandatory plastic bag recycling benchmarks for grocery stores. Through this process there has been some discussion that one or more of these bills could include provisions that would preempt cities from establishing local regulations. None of the bills have passed to date.
5. Amortization Period: The alternatives outlined in this report include options related to the effective date of the regulations, amortization, phasing, etc.

The purpose of this meeting is to update the City Council on the work done to date and to gain direction for the drafting of regulations. The date that the draft regulations are brought before the City Council for consideration will be a function of the type of

environmental document determined necessary through the City's environmental assessment process.

## II. POLICY:

There is a significant amount of research, some of which was identified in the prior February staff report on this matter, demonstrating that plastic bags and foam have a significant impact on our local environment and health. For example, in establishing recent law (AB 2449, Levine) mandating that certain retail stores provide in-store plastic bag recycling opportunities for customers, the California State Assembly Committee made findings that illuminate the importance of the issue for the State of California. An excerpt of those findings is included here:

*The people of the State of California do enact as follows:*

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) On a global level, the production of plastic bags has significant environmental impacts each year, including the use of over 12 million barrels of oil, and the deaths of thousands of marine animals through ingestion and entanglement.

(2) Each year, an estimated 500 billion to 1 trillion plastic bags are used worldwide, which is over one million bags per minute, and of which billions of bags end up as litter each year.

(3) Most plastic carryout bags do not biodegrade which means that the bags break down into smaller and smaller toxic bits that contaminate soil and waterways and enter into the food web when animals accidentally ingest those materials.

(b) It is the intent of the Legislature, in enacting Chapter 5.1 (commencing with Section 42250) Part 3 of Division 30 of the Public Resources Code, to encourage the use of reusable bags by consumers and retailers and to reduce the consumption of single-use bags.

Unlike paper bags and cups which can be made from a renewable resource, plastics are made from fossil fuels (natural gas and petroleum) which are non-renewable resources. Generally, the use of non-renewable resources has greater impacts on the environment than the use of renewable resources.<sup>1</sup>

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<sup>1</sup>The following description of renewable v. non-renewable resources is provided on the website [wiki.answers.com](http://wiki.answers.com). "...'renewable resource' is something that we use to make everyday products that is replaced faster than we use it up. A 'non-renewable resource' is something that we use to make everyday products that is replaced much more slowly than we consume it.

Solar energy is considered a renewable source of energy because no matter how much energy we use from the sun, it will continue to shine just as it did before. Trees are often considered a renewable resource, but that is only true in certain circumstances. If a forest is well managed, then the trees can grow back faster than we cut them down. However, in many parts of the world (including in the US), forests are being cut much much faster than they regrow, and this is therefore not considered renewable.

A good example of a non-renewable resource oil. It is used to make gasoline and other fuels, as well as plastics, such as plastic grocery bags. We are using billions of gallons of oil every year, but it takes millions of years to be replaced. We are using up oil much much faster than it is being produced. Once we use up oil from the earth, more will not be generated for a LONG time

Plastic packaging also affects the environment as litter. Plastic carryout bags and EPS food service containers are among the most commonly littered items in our community. While, some plastic bags and EPS containers are capable of being recycled, the recovery rate for such items is very low. This is due in large part to the fact that these items are used to house food which often contaminates the plastic bags and containers and result in the user discarding them in the trash or littering them.

Even when plastic bags and foam products are properly disposed or placed in recycling containers, many do not reach the landfill or processing facility. Instead, many of those items are dispersed due to their light weight and poor handling in transit. Such windblown or discarded plastic packaging makes up much of the litter in our parks and streets. Handling this material increases the costs of street cleaning and of parks and facilities maintenance. The litter that is not removed promptly moves into the City's storm drains, and then to our creeks and the ocean. A significant proportion of the waste collected from our creeks and beaches is composed of plastic packaging.

Carpinteria Beautiful (a group of volunteers that undertake public beautification projects and programs including litter pick-up throughout the City) reports<sup>2</sup> that plastic bag and other plastic waste is a major component of the litter found in Carpinteria and a significant problem. Further, results of local creek and beach litter clean-up efforts by the Carpinteria Watershed Coalition and Carpinteria Creeks Committee, include plastic bags and other plastic and foam debris as a component of waste removed annually from creeks and beaches in the City.<sup>3</sup>

Plastic trash does not decompose like paper. Instead, it takes years to break down into small plastic particles that are not biodegradable or digestible by animals. Studies have shown that plastic debris soaks up high concentrations of toxins and are ingested by marine wildlife. Many marine animals mistakenly eat plastic bags and floating plastic pellets, resulting in their starvation and allowing toxins to concentrate in the food chain.

Central Coast cities are under increasing pressure from the Regional Water Quality Control Board to keep litter out of the stormwater system or to remove it before it is discharged to waters of the State. The City has established programs aimed at reducing the amount of waste in creeks and the ocean as a part of the implementation of its Storm Water Management Plan (SWMP). The SWMP is mandated by the State of California as a part of its compliance with the National Pollution Discharge Elimination System (NPDES). Taking actions that can reduce the amount of plastic and foam waste in City creeks, estuaries, tidelands, etc., could be undertaken as a component of the City's ongoing SWMP efforts. The City also has programs aimed at diverting waste material from landfills. This effort is also based in State law (AB 939) that mandates cities undertake recycling and other such programs to minimize the amount of waste going to landfills. Actions taken to reduce the amount of certain waste material generated in the City can be found to be consistent with the City's waste stream reduction efforts.

The City's General Plan/Local Coastal Plan includes policies, objectives and implementation measures aimed at protecting unique coastal resources found in Carpinteria, and of benefit to the entire State of California. These include a variety of Environmentally Sensitive Habitat Areas (ESHA) protected by State and local laws. ESHA areas identified in the City's General Plan/Local Coastal Plan (Table OSC-1, page 96, Open Space, Recreation & Conservation Element), include Wetlands, Marine Mammal Rookeries and Hauling Grounds, Subtidal Reefs, Kelp Beds, Creeks and Riparian Habitat. Given information available that suggests

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<sup>2</sup> Testimony and telephone conversation with Donna Jordan of Carpinteria Beautiful; 9-16-08

<sup>3</sup> Telephone Information provided by Mauricio Gomez of the Carpinteria Watershed Coalition; 9-16-08

that both light weight plastic carry-out bags and EPS containers have impacts on the kinds of habitat areas the City aims to protect, regulations to ban such materials in the community can be found to be consistent with the City General Plan/Local Coastal Plan.

**III. LEGAL:**

As noted in staff's February report on this matter, adopting an ordinance to regulate the use of carryout plastic bags or EPS carries some risk of litigation. The Coalition to Support Plastic Bag Recycling has successfully invalidated the City of Oakland's plastic bag ban, and has initiated lawsuits against similar bans recently passed by Manhattan Beach and the County of Los Angeles. Typically these lawsuits allege that the city failed to conduct an adequate level of environmental review under the California Environmental Quality Act.

As the lead agency, the City must determine what level of environmental review is appropriate. Often in adopting legislation, a city will find that the action it is taking is not a project because it has no potential to cause a significant effect on the environment. (See e.g., CEQA Guidelines §§ 15061(b)(3), 15378(a).) If the action is considered a project, cities often find that setting policy and procedure is expressly exempt from CEQA. (See, e.g. CEQA Guidelines § 15378(b)(2).) A city's action to regulate public behavior in order to protect natural resources or the environment is also exempt from CEQA. (See e.g. CEQA Guidelines §§ 15307, 15308.) Based on the foregoing, most California cities and counties that have adopted EPS and/or plastic carryout bans have relied on CEQA exemptions. The City of Malibu recently relied on an exemption from CEQA in adopting its plastic bag ban and that ordinance has not been challenged.

Where adoption of an ordinance has potential to cause a significant effect on the environment, a lead agency will conduct an initial study to identify areas of potential environmental impact and will then will analyze those impacts in either an negative declaration, mitigated negative declaration, or an environmental impact report, as appropriate. The City of Manhattan Beach, presumably in response to the outcome of the *Coalition to Support Plastic Bag Recycling v City of Oakland*, conducted more thorough environmental review by preparing an initial study and a negative declaration. However, Manhattan Beach was nevertheless sued by the Coalition to Support Plastic Bag Recycling, on the theory that a full environmental impact report was necessary.

Upon receiving direction from your Council on the type of materials it seeks to regulate and the methods it will use to enforce that regulation, City staff and the City Attorney's office will work together to determine the potential environmental impacts of adopting the regulation and conduct the appropriate level of environmental review.

In directing staff, the Council should also consider giving direction on enforcement of the ordinance(s). Some enforcement options include requiring self-reporting, establishing an inspection program, or instituting a hotline for public to report violations.

**IV. ALTERNATIVES:**

The City's policy options on this matter are shaped by its location along the coast and its related responsibilities for helping to improve and maintain water quality in local creeks, estuaries and the ocean. A 2006 report by the California Coastal Commission recommends,

among other things, that bans and limits on use of specific products that contribute to marine debris and litter be established<sup>4</sup>.

In February 2008, after learning of the harmful environmental and socially undesirable impacts of certain plastic bags and take-out food containers, the Council considered a variety of optional policy responses. Policy responses were reviewed that would be likely to have some effect on reducing the environmentally harmful and undesirable effects related to the distribution and use of carry-out plastic bags and EPS take-out food containers in the City. These options included any combination of the following: public education programs, increased enforcement of existing litter laws and maintenance activity such as street sweeping, increased recycling opportunities and composting, taxing non paper bags, and the establishment of benchmark requirements for businesses to meet to avoid a future ban on the products. After deliberation, the City Council elected to have regulations drafted that would ban certain carry-out plastic bags and take-out food containers.

Since the City Council's February meeting, Staff has identified several other policy options (variations on the themes previously considered) that cities have taken and which are briefly described below:

1. **Deferred Ban:** This program adopted by the City of Los Angeles this past July would result in a City ban should the State fail by 2010 to enact legislation to establish a (minimum) 25 cent per bag charge for single use bags. The program was enacted by a non-legislative action of the City Council and would presumably need to be revisited prior to 2010 for a formal action on a ban.
2. **Composting:** The City of Santa Barbara determined, as an alternative to enacting a ban to explore a composting program for the City that could ultimately allow for the use of compostable food containers and plastic bags as a replacement for EPS and regular single use plastic bags. A pilot program is currently in the making.
3. **Private Recycling Program:** A few cities have contracted with private companies to place plastic bag recycling bins at strategic locations within their jurisdictions. The company operates the recycling centers and recycles the material for use in plastic products such as alternative wood products used for decking, etc. The idea here is that recycling of the material is more convenient/available to residents.
4. **Ballot Initiative:** Citizens in the Town of Fairfax have qualified a ballot initiative that would mandate the use of reusable or recycled paper bags. This initiative was qualified for the ballot after the Fairfax City Council determined not to enact a local plastic bag ban.

As staff prepares draft regulations there are a variety of alternative approaches to the ordinance elements to be considered. Below is a discussion and proposal for major elements of both regulations addressing plastic bags and EPS food containers.

#### Plastic Carryout Plastic Bag Ban Ordinance

##### 1. Purpose

The City's regulations routinely include a statement of Purpose and occasionally ordinance provisions include a preamble of legislative Findings. Staff recommends the Council consider the following Purpose statement:

*The purpose of these provisions is to promote:*

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<sup>4</sup> Eliminating Land-based Discharges Of Marine Debris In California: A Plan of Action from The Plastic Debris Project; California Coastal Commission, Los Angeles Regional Water Quality Control Board, June 2006

- a. *The protection of unique Coastal Resources found in Carpinteria and identified for protection as a part of the City's General Plan/Local Coastal Plan including the Carpinteria "El Estero" Salt Marsh, Beaches, Tidelands, and Offshore Reefs, Harbor Seal Hauling Grounds, and Creekways and Riparian Habitat.*
- b. *Compliance with federal and state mandates for Clean Water (NPDES) and waste stream reduction (AB 939)*
- c. *A reduction in the amount of waste/debris in City creeks, estuary, and the ocean, and the amount of material going to landfills.*
- d. *Conservation of non-renewable resources and energy.*

This purpose statement reflects the policies of the General Plan/Local Coastal Plan and City implementation programs concerning storm water management/clean water, and waste stream reduction. Finally, the purpose statement suggests that the regulations are intended to reduce reliance on non-renewable resources and to conserve energy. The efficacy of plastic bag bans in meeting this type of objective is a part of an ongoing public policy debate, and in the context of conducting an environmental assessment pursuant to state law, is the subject of litigation initiated against a number of cities by, The Coalition to Support Plastic Bag Recycling. This is discussed in more detail in the Legal section of this report. Staff has determined that a ban on plastic bags along with ongoing public education efforts and the promotion of reusable bags will serve to further the purpose statement as applied to Carpinteria.

## 2. Definitions

*"Plastic carryout bag" means a plastic carryout bag provided by a store to a customer at the point of sale.*

*"Reusable bag" means either of the following:*

*(1) A bag made of cloth or other machine washable fabric that has handles.*

*(2) A durable plastic bag with handles that is at least 2.25 millimeters thick and is specifically designed and manufactured for multiple reuse.*

These definitions are from current State law that mandates in-store recycling for retail stores greater than 10,000 square feet or doing \$1 million or more in sales. One approach is to prohibit the use of Plastic carryout bags while exempting Reusable bags as defined. This approach would ban all of the very light weight plastic bag varieties. A search of plastic bag providers on the internet suggests that some very heavy plastic ice bags are 2.5 -3 millimeters in thickness. At this thickness and with handles, reuse of such bags is encouraged and much more probable.

Other approaches include that taken by the City of Manhattan Beach. Manhattan Beach regulations seem to ban all plastic bags including those constructed of plastic products intended to be compostable. It does not establish a gauge criterion, i.e., bag thickness, but rather simply exempts bags that are made of "other durable material suitable for reuse". Again, this suggests that under these regulations no plastic bags, regardless of thickness, would be allowed under that City's ban. The Manhattan Beach ban seems to also encourage paper bags as an alternative to plastic bags where the paper bag meets the definition of Recyclable Paper Bag.

The City of Malibu specifically excludes from its definition of plastic bags, compostable plastic products. The State definition provided above would prohibit any plastic bags

including compostable bags. This may be important to the City since the City currently does not have a composting program, nor any way to separate compostable bags from regular plastic, and therefore all plastic bags are treated the same in the waste stream.

### **3. Applicability**

Most city regulations reviewed by Staff apply to any retail establishment in the city limits. Some cities have accomplished this through a section that states what the prohibition applies to and others by defining "Affected Retail Establishments". However, alternatives to this approach may also be found to be appropriate where it is determined that certain business types, sizes, or other characteristics contribute in an important way to the impacts that the ban is addressing. The State grocery store bag recycling legislation (AB 2449) focused only on retailers of 10,000 square feet or more or doing \$1million or more in business. The City could similarly identify businesses by either size or type that may contribute uniquely to the problems identified.

Also, exceptions are typically made. For example, plastic bags used to transport produce within the store to the check-out/register line are typically not regulated. Also, plastic wrap and other plastic product packaging for food sold in stores is typically not regulated under the definitions described. The Manhattan Beach regulations, for example, clarify that its ban applies "only to Plastic Carry-Out Bags provided at the point of sale for the purpose of carrying away goods." It should be noted that some cities, such as Manhattan Beach, apply the ban also to Restaurants, Vendors or Non-Profit Vendors. This would apply the ban to vendors at festivals/special events, such as the Avocado Festival, whether for profit or not.

Staff is recommending the following language:

*This section shall apply to any retail, restaurant, or vendor located within or doing business within the geographical limits of the City of Carpinteria, and only to Plastic Bags (as defined herein), provided by such establishment at the point of sale for the purpose of carrying away goods.*

### **4. Prohibition**

As mentioned previously, most regulations reviewed include some exceptions, but otherwise the language establishing the prohibition is direct. Here is the section from the City of Malibu:

"No Affected Retail Establishment, Restaurant, Vendor or Non-Profit Vendor, shall provide Plastic Bags or Compostable Plastic Bags to customers."

### **5. Effective Date**

Both Malibu and Manhattan Beach established operative dates of six months after the effective date for grocery stores, food vendors, restaurants, pharmacies, and City facilities, and one year for all other affected establishments. It was apparent at the workshop on this matter, held for local business owners and operators, that timing was important and there was an interest in phasing out existing bag stock, finding appropriate alternative products, etc.

Because larger chain stores have the flexibility to move plastic bag stock to another location, those types of establishments may be able to transition more quickly and easily to an alternative product than smaller stores.

## Expanded Polystyrene (EPS) Take-Out Food Container Ban Ordinance

### 1. Purpose

Similar to the Plastic Bag regulation, the City may include a statement of purpose for the regulations in order to give the regulations context and promote consistent interpretation. The statement of purpose could be similar to that for a plastic bag ban.

*The purpose of these provisions is to promote:*

- a. The protection of unique Coastal Resources found in Carpinteria and identified for protection as a part of the City's General Plan/Local Coastal Plan including the Carpinteria "El Estero" Salt Marsh, Beaches, Tidelands, and Offshore Reefs, Harbor Seal Hauling Grounds, and Creekways and Riparian Habitat.*
- b. Compliance with federal and state mandates for Clean Water (NPDES) and waste stream reduction (AB 939)*
- c. A reduction in the amount of waste/debris in City creeks, estuary, and the ocean, and the amount of material going to landfills.*
- d. Conservation of non-renewable resources and energy.*

### 2. Applicability

Bans on these products are typically aimed at takeout food containers and are applied to restaurants, food packagers, food vendors, special event operators, and persons authorized to use a public facility for any event or function.

### 3. Definition

*"Expanded Polystyrene" means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Co. trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this chapter, the term "polystyrene" shall not include clear polystyrene known as "oriented polystyrene."*

This definition does not address all plastic take-out food containers, only a specific type that is non-recyclable and creates significant environmental issues due to its light weight and how it breaks down.

### 4. Prohibition

As with the plastic bag regulations above, the regulations are aimed at the operator of the business and would prohibit certain establishments from providing food containers to customers that were made of Expanded Polystyrene. The following is language from the City of Malibu regulations:

*A. No Restaurant, Food Packager, Retail Food Vendor, Vendor or Non-Profit Food Provider shall provide Prepared Food to its customers in any Food Packaging that utilizes Expanded Polystyrene.*

*B. The City of Malibu shall prohibit the use of Expanded Polystyrene Food Packaging at all City facilities. The City of Malibu shall not purchase or acquire Expanded Polystyrene Food Packaging.*

*C. The use or distribution of Expanded Polystyrene Food Packaging at special events sponsored or cosponsored by the City of Malibu shall be prohibited. This prohibition shall apply to the event organizers, agents of the event organizers, event Food Vendors and any other party (including nonprofit organizations) who enter into an agreement with one or more of the co-sponsors of the event to sell Prepared Food at the event or otherwise provide an event-related service.*

*D. All facility rental agreements for any City-owned property or facility shall include a provision requiring contracting parties to assume responsibility for preventing the utilization and/or distribution of Expanded Polystyrene Food Packaging at the associated function. The facility rental agreement shall indicate that the violating contractor's security deposit will be forfeited if the Parks and Recreation Director, or his/her designee, determines that Expanded Polystyrene Food Packaging was utilized in violation of the rental agreement.*

Exceptions would also likely be appropriate for any ban on EPS containers. For example, exceptions for packaging conducted outside of the City, exceptions for coolers and ice chests, etc. Staff has also found that most cities provide for the possibility of granting temporary exemptions from the provisions, e.g. 6 months or 1 year, for situations where an affected business is able to demonstrate undue hardship do to, for example, no acceptable alternative packaging being available at that time, or a situation where an individual's legally protected right would be violated by the application of the law.

## **5. Effective Date**

It is also common for bans on EPS containers to be phased in or to become effective after a certain period of time, e.g., 6 months or a year. This allows time for inventory to be exhausted or for a purchasing contract to run.

## **Enforcement and Penalties**

Cities that have established regulations to ban plastic carryout bags and/or EPS take-out food containers typically establish the violation of these local laws as infractions subject to citation and fines or administrative fines. Enforcement would typically be conducted via on-site inspections and/or an annual certification by signature with the business license renewal that such products are not in use. The City of Malibu conducts business inspections in conjunction with regular inspections related to the City's storm water management program. A form used by the inspector to check for compliance on a variety of storm water management program items also includes a box for the inspector to check if the business is in compliance with the ban on plastic bags and EPS containers. If the business is found to not be in compliance the matter is forwarded to the Code Enforcement division for follow-up. It would be expected that voluntary compliance would be sought in most cases prior to the issuance of a citation.

**V. PARTIES EXPECTED:**

Representatives of E.J. Harrison & Sons  
Representatives of Carpinteria Beautiful  
Local Business owners/operators

**VI. ATTACHMENTS:**

- A. Excerpt from Assembly Committee Comments on AB 2449
- B. Notes from Chamber/City Business Meeting

Assembly Committee Comments upon initiation of legislation:

COMMENTS :

1)Background According to Californians Against Waste, the bill's sponsor, over 19 billion disposable plastic bags are generated in California every year, resulting in over 147,000 tons of waste. An estimated sixty percent of these bags are generated by grocery stores. As these bags are non-biodegradable and extremely light weight, they represent a disproportionately large share of litter and marine debris. A 1999 study on litter conducted by the Department of Conservation found that plastic bags represent some of the most commonly littered items.

According to the US Environmental Protection Agency, marine debris has become a problem along shorelines, coastal waters, estuaries, and oceans throughout the world. It is commonly defined as any man-made, solid material that enters our waterways directly or indirectly. Improperly handled plastic bags are a significant contributor to marine debris. In addition to being unsightly, it poses a serious threat to everything with which it comes into contact. Marine debris can be life threatening to marine organisms and humans and can wreak havoc on coastal communities and the fishing industry.

In general, there are two types of marine debris that pollute our ocean and coastline in California. The first is from ocean sources, and includes galley waste and other trash from ships, recreational boaters and fishermen and offshore oil and gas exploration and production facilities. The second, and by far more potent type of marine debris, is from the land. This type of debris includes stormwater runoff, landfills, solid waste, rivers and streams, floating structures, poorly maintained garbage bins and dumps. Marine debris also comes from combined sewer overflows and storm drains. Land based litter constitutes nearly 80% of the marine debris found on our beaches and oceans, and 90% of it is plastic.

Californians Against Waste also points out that the amount of trash in oceans increased tenfold every two to three years in the 1990's. There is now six times the mass of plastic debris than zooplankton in the Mid-Pacific Gyre; of the identifiable particles, 29 percent of the pieces were thin, plastic film such as that found in plastic bags. When debris from the land reaches the beaches and ocean, marine life is often threatened because they easily confuse the debris for food. Small pieces of plastic cups, bags and cigarette filters are often found in the stomachs of fish, birds, whales, and other marine creatures. Sea turtles often mistake plastic bags for jellyfish and ingest them-blocking their digestive system and slowly killing them.

2)Total Maximum Daily Loads According to the USEPA, a TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. Water quality standards are set by states. They identify the uses for each waterbody, for example, drinking water supply, contact recreation (swimming), and aquatic life support (fishing), and the scientific criteria to support that use. A TMDL is the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources. One of the smaller categories of pollutants that affect

TMDLs is "trash TMDLs" or waterbodies that are considered to be impaired due to trash. Under a consent decree, the US EPA must establish TMDLs for trash in all impaired waters in the state. TMDLs have already been established by the Los Angeles Regional Water Quality Control Board for the Los Angeles River and the Ballona Creek Watershed requiring that the amount of trash be drastically reduced to protect water quality and beneficial uses. Because marine debris from land is widely seen as the more significant form of pollution, trash TMDLs have become one of the few effective ways to control marine debris.

3) Recycling Challenges for Plastic Bags According to the sponsor, efforts to include plastic bags in conventional curbside collection programs have proven costly and ineffective, as "plastic bags defy existing mechanical sorting techniques." Preliminary studies by the City of San Francisco found that the city spent approximately \$8.5 million addressing plastic bag waste, or 17 cents per bag. Curbside collectors indicate that plastic bags are a costly contaminant in curbside recycling.

4) Purpose of the Bill According to the author's office "plastic bags are becoming a costly and growing environmental hazard to our coasts and marine life and are littering our beaches, parks, and streets." This bill attempts to create a convenient in-store recycling program that allows consumers to return plastic bags to the store with the intent of increasing recycling and reducing the number of plastic bags in the waste stream and that wind up in our waterways.

#### Assembly Comments when Concurring in Senate Amendments

COMMENTS : According to Californians Against Waste, this bill's sponsor, over 19 billion disposable plastic bags are generated in California every year, resulting in over 147,000 tons of waste. An estimated 60% of these bags are generated by grocery stores. As these bags are non-biodegradable and extremely light weight, they represent a disproportionately large share of litter and marine debris. A 1999 study on litter conducted by the Department of Conservation found that plastic bags represent some of the most commonly littered items. Improperly handled plastic bags are a significant contributor to marine debris, which has become a significant problem along shorelines, coastal waters, estuaries, and oceans throughout the world. In addition to being unsightly, it poses a serious threat to marine organisms, coastal communities, and the fishing industry. The most significant type of marine debris is from land. This type of debris originates from storm water runoff, litter, landfills, rivers and streams, and poorly maintained garbage bins. Land based litter constitutes nearly 80% of the marine debris found on our beaches and oceans, and 90% of it is plastic. This bill attempts to create a convenient in-store recycling program that allows consumers to return plastic bags to the store to increase recycling and reduce the number of plastic bags in the waste stream and that enter the state's waterways.

***City of Carpinteria and the Carpinteria Valley Chamber of Commerce  
September 11, 2008 Workshop in Council Chambers, City Hall, 6-7 pm  
Plastic Bag and Expandable Styrofoam Container Ban***

**\*The following community workshop information is taken from flip sheet which logged all public comments, expressed after a brief presentation by City officials and the CVCC regarding a potential ban ordinance in the City of Carpinteria.**

**\*'Carpinteria Beautiful' remarked that it is committed to working with the City and other public agencies to offer FREE or very low cost re-useable shopping/grocery bags to Carpinteria citizens currently and in the future.**

**\*E. Harris (The City of Carpinteria's trash and recycle hauler) has offered a FREE educational tour of their Ventura disposal facility to acquaint Carpinterians with the process of recycling from a purveyor's point of view, i.e., what is recycled and what causes problems with the machines, etc. Several folks at the meeting did sign up for the tour. The Harris spoke at the meeting, noting that the cost of recycling should also consider the use of water, compost and taking the toxins out of the waste product.**

**\*CKE sites the cost of working towards an EPS alternative, and has considered using an additive to help the EPS containers be more compostable. CKE says the difference at this time, i.e., working with alternative products such as those offered by Biosphere is about \$18,000 per month for the entire corporation.**

**\*Bill the 'hot dog man' mentioned that he was disappointed that no grocery stores were represented at the meeting and that these stores, including the local drug stores are the highest users of the type of plastic that the City is considering in the ban.**

**\*Those in attendance remarked that Carpinteria cannot wait for Calif. State legislation to come up with a plastic bag ban.....it's time to move with a green city initiative as soon as possible.**

**\*Biosphere CEO stated that his local company already is a multi-million \$ operation in the production of EPS alternatives, and if you consider the cost of disposing non-recyclables, the composting ability of his products will save the vendor and the City \$\$\$.**

**\*Those in attendance mentioned the need more information on what may be a transition between what we do now and what the city would like to do in the future, i.e., how much time would transpire, what products are available that cost the least, etc.**

**\*Retail clothiers have already been asking customers if they would pay more for items, if the store were to continue to be more "green." Customers were all for it. The use of a BYOB, 'bring your own bag' seems to be okay with most Carpinterians and visitors.**

*Page 2*

\*It was announced that by Oct. 6 'Carpinteria Beautiful' will be offering more re-useable bags (they recently spent about \$5K on their last order), to those who request them. They encourage users to contact them to get a lower price per bag, if they order more than 100 of them.

\*Those in attendance added that the community is ready for more education regarding recycling and re-using.

\*Some mentioned that it would be good for the City of Carpinteria to work with other cities on the process, i.e., best practices. Also, it was said that they would like to have the local coastal cities join together to offer recycling at a lower cost, etc.

\*According to CKE and those at the meeting, who were in the food business, there is nothing available that is an alternative to EPS, which works as good as the clamshell container. The cost, lack of food spillage and the ease of use are a big factor.

\*One restaurant owner was concerned that when he switched to a more recyclable type cup for coffee and other take out drinks, the cup cost more than the coffee and/or the drinks.

***Names of those in attendance, who wish to work with the City of Carpinteria to draft a plastic bag/ EPS ban that is a win-win for the community:***

***\*Doralee Jacobson <doraleej@bagelnet.com***

***\*Debbie Stevens (805) 637-1316***

***\*Alan Monroe (805) 684-5783***

***\*Rachael Nunez (805) 566-4990***

***# # #***

***Please Note: Attached to this report are the actual flip sheets from the meeting and the sign-in sheet. It should be noted that a star on the sign in sheet indicates that those attendees would like to be included on a tour of the City's contract trash hauler, who was at the meeting as per invitation from the City Manager. Those individuals need to be connected with the trash hauler, so this can be facilitated.***

14. Consideration of local regulations to ban the use of plastic carry-out bags and expanded polystyrene take-out food containers

STAFF RECOMMENDATION: That the City Council receive the progress report and provide direction concerning the drafting of the subject regulations.

DOCUMENTS:

Staff Report dated September 22, 2008 prepared by Dave Durlinger, City Manager, with attached excerpt from Assembly Committee Comments on AB 2449 and Notes from Chamber/City Business Meeting

The City Manager explained that at its regular meeting of February 25, 2008, the City Council directed staff concerning its interest in establishing regulations to prohibit local businesses from providing customers with carry-out plastic bags and expanded polystyrene take-out food containers. The action followed a presentation by the Santa Barbara City College Sustainability Workshop and public testimony in July 2007, on the need and purpose of such local bans, and a staff report and analysis at the February 2008 meeting, all of which provided the Council with information and references identifying issues related to the use of both plastic carry-out bags and expanded polystyrene take-out food containers. Specifically, the City Council directed:

1. That draft regulations (that would ban certain carry-out plastic bags and take-out food containers) be prepared for City Council consideration
2. That staff work with the Chamber of Commerce and Carpinteria Beautiful to prepare the community for the bans
3. That an appropriate environmental review/disclosure document, i.e., Notice of Exemption, Negative Declaration, or Environmental Impact Report, be prepared
4. That the regulations become effective by the end of 2008, pending the outcome of staff analysis and determination of the appropriate environmental review/disclosure document.

The following is a report on work completed to date:

1. Draft Regulations: Staff has reviewed the regulations from many other cities, several reports, environmental clearances, and legal issues, and has identified several alternatives for City Council consideration/direction. For the purpose of evaluating regulations, staff found the regulations established by the City's of Malibu and

REGULATIONS  
RE BAN ON  
PLASTIC CARRY  
OUT BAGS AND  
EXPANDED  
POLYSTYRENE  
TAKE OUT FOOD  
CONTAINERS

Manhattan Beach, most valuable. The alternatives are discussed in Section IV of this report.

2. **Community Outreach:** This past July the City Council authorized funding to support Carpinteria Beautiful efforts to distribute 5,000 reusable bags in the community. This follows prior distribution by Carpinteria Beautiful of 1,000 reusable bags earlier in the year. On September 11, the Carpinteria Valley Chamber of Commerce and the City co-hosted a meeting with business owners/operators intended to educate the business community on the bans, their purpose and how they work, and to solicit feedback to be used by the City Council in considering regulations. All retail and restaurant businesses in the City were provided a direct mail invitation to the meeting and an advertisement was also run the week prior in the Coastal View News. Approximately 23 persons attended the meeting. In addition to business owners/operators, representatives of E.J. Harrison & Sons, the City's franchise trash hauler, attended and provided information to the group on recycling programs in Carpinteria and the challenges in recycling plastic bags and EPS food containers. A manufacturer of biodegradable products, including food containers spoke to the group about products available and the future of the industry (a list of product vendors was provided to participants with other material including sample ordinances from another city). Finally, a representative of CKE (the parent company of the Carl's Jr. Restaurant chain and a Carpinteria based company) attended and spoke about details of that company's efforts to transition to non-plastic packaging. A list of bullet notes from the meeting is attached to this report.
3. **Environmental Review:** Staff has reviewed a variety of approaches taken by California cities complying with the California Environmental Quality Act (CEQA), and monitored related litigation. The Legal section of this report provides an update and recommendation.
4. **Legislation:** The state legislature has considered several bills on this issue including an amendment to the Levine bill (AB 2449) that would establish mandatory plastic bag recycling benchmarks for grocery stores. Through this process there has been some discussion that one or more of these bills could include provisions that would preempt cities from establishing local regulations. None of the bills have passed to date.
5. **Amortization Period:** The alternatives outlined in this report include options related to the effective date of the regulations,

amortization, phasing, etc.

The purpose of this meeting is to update the City Council on the work done to date and to gain direction for the drafting of regulations. The date that the draft regulations are brought before the City Council for consideration will be a function of the type of environmental document determined necessary through the City's environmental assessment process.

The City Manager reviewed the work that has been completed to date (i.e., draft regulations, community outreach, environmental review, legislation, and amortization period) all of which is detailed in the written staff report.

The Deputy City Attorney said that as noted in staff's February report on this matter, adopting an ordinance to regulate the use of carryout plastic bags or EPS carries some risk of litigation. The Coalition to Support Plastic Bag Recycling has successfully invalidated the City of Oakland's plastic bag ban, and has initiated lawsuits against similar bans recently passed by Manhattan Beach and the County of Los Angeles. Typically these lawsuits allege that the city failed to conduct an adequate level of environmental review under the California Environmental Quality Act.

As the lead agency, the City must determine what level of environmental review is appropriate. Often in adopting legislation, a city will find that the action it is taking is not a project because it has no potential to cause a significant effect on the environment. (See e.g., CEQA Guidelines § 15061(b)(3), 15378(a).) If the action is considered a project, cities often find that setting policy and procedure is expressly exempt from CEQA. (See, e.g. CEQA Guidelines § 15378(b)(2).) A city's action to regulate public behavior in order to protect natural resources or the environment is also exempt from CEQA. (See e.g. CEQA Guidelines §§ 15307, 15308.) Based on the foregoing, most California cities and counties that have adopted EPS and/or plastic carryout bans have relied on CEQA exemptions. The City of Malibu recently relied on an exemption from CEQA in adopting its plastic bag ban and that ordinance has not been challenged.

Where adoption of an ordinance has potential to cause a significant effect on the environment, a lead agency will conduct an initial study to identify areas of potential environmental impact and will then will analyze those impacts in either an negative declaration, mitigated negative declaration, or an environmental impact report, as appropriate. The City of Manhattan Beach, presumably in response to the outcome of the *Coalition to Support Plastic Bag Recycling v City of Oakland*, conducted more thorough environmental review by preparing an initial study and a negative

declaration. However, Manhattan Beach was nevertheless sued by the Coalition to Support Plastic Bag Recycling, on the theory that a full environmental impact report was necessary.

Ms. Barnhill provided information concerning various legislation on this matter which has failed but there is a potential for future statewide legislation which could pre-empt or conflict with whatever action the Council might take now or in the future.

Ms. Barnhill said that the City of Fairfax adopted a ban on plastic bags but when threatened with litigation they voluntarily withdrew the ban. As a result the members of the community produced an initiative that has been placed on the November ballot banning the use of plastic bags. If the ballot measure passes the measure will not be susceptible to the same claims that other cities have been because an initiative passed by the people is exempt from CEQA.

The plastic bag industry groups have threatened to litigate all potential plastic bag bans and encourage instead anti-litter and recycling programs.

Upon receiving direction from your Council on the type of materials it seeks to regulate and the methods it will use to enforce that regulation, City staff and the City Attorney's office will work together to determine the potential environmental impacts of adopting the regulation and conduct the appropriate level of environmental review.

In directing staff, the Council should also consider giving direction on enforcement of the ordinance(s). Some enforcement options include requiring self-reporting, establishing an inspection program, or instituting a hotline for public to report violations.

Doralee Jacobson, owner of Jacks Bistro and Bagels, said that there are no equivalent bags available to businesses like hers that are cost effective. She said that the plastic bags she uses biodegrade in a more timely manner but are still in fact plastic bags. She suggested that using a rating system for the types of plastic bags used might be something to consider. She said there is not currently a product on the market that works for taking out hot food other than the Styrofoam clam. She urged the Council to consider the costs that will be passed on to the consumer from a ban.

DORALEE  
JACOBSON

Donna Jordan, representing Carpinteria Beautiful, expressed appreciation to the Council for partnering with CB for education and the distribution of reusable grocery bags.

DONNA JORDAN

Mrs. Jordan, speaking as a private citizen, spoke to the costs to the

environment, wildlife and to nonrenewable petroleum resources from the use of plastic grocery bags. She spoke to the premature loss of landfill space from plastic bags and the need of each community to meet the federal clean water standards. She urged the Council to move forward with a ban, public education and the promotion of reusable bags.

Foster Markhoff, local resident, thanked the City Manager for the comprehensive outstanding staff report which addresses all the issues, exposures and recommendations. He said the City should work to put together a well studied, creative ban that will eliminate the use of plastic grocery bags.

Pat Kistler, representing the Carpinteria Valley Chamber of Commerce, said the problems related to plastic grocery bags have been well stated and are unquestionably a concern. She said the concern is for small businesses that use either plastic bags or expanded Styrofoam clam being able to get something comparable to use at a comparable price. She said that thus far alternative products to expanded Styrofoam are very expensive. She urged the Council to remember the small businesses when making a decision concerning a ban.

Sarah Monjay, local resident, spoke to the health problems that plastic creates and urged the Council to consider these when making a decision.

Ahmed Jahadmy, representing Albertsons Grocery Store, spoke to the seriousness with with Albertsons takes the environment and recycling. He detailed all the facets of their extensive recycling program currently in place in each store. He urged the Council to be careful in what they do with regard to a ban and rather suggested working to create culture, education and conservation together.

Direction of Environmental Stewardship, Albertsons Market, spoke about sustainability and encouraged the use of reusable bags. He said they do not believe that a total ban is the way to go at this time. He said that Albertsons wants to work with the City to help in educating and training the public to use reusable bags.

Jennifer Forkish, representing Progressive Bag Affiliates of the American Chemistry Council, spoke in support of the Council's goal of reducing litter and believe that the most environmentally responsible solution to addressing plastic bag litter disposal is a program aimed at recycling plastic bags to that they may be used in the production of other products such as new bags, pallets, containers, crates and pipes. She said that bans on plastic bags do have negative unintended consequences such as increased

FOSTER  
MARKHOFF

PAT KISTLER

SARAH MONJAY

AHMEND  
JAHADMY

ALBERTSONS  
MARKET REP.

JENNIFER  
FORKISH

use of paper bags and litter will still be a problem. She said they would like to partner with the City to enhance public awareness of recycling, examine ways to improve the recycling infrastructure and increase recycling opportunities in the City.

Ms. Forkish responded to questions from the Council.

Matthew Dodson, California Grocers Association, said that CGA wants customers to have as much choice as possible, that just putting a ban in place on the use of plastic bags is not going to solve the problem, that paper bags are made from a renewable resource and that a full ban creates an unfair situation for the stores. He said that consumer behavior has to change. He said if the City is going to move forward with a ban they would recommend a ban on all types of single-use bags.

MATTHEW  
DODSON

Bryan Swarm, Assistant Manager, Vons Market, said that Vons basically agrees with many of the statements made by the representative of Albertsons. He urged the Council to look carefully before putting a full ban in place.

BRYAN SWARM

Nan Drake, representing E.J. Harrison and Gold Coast Recycling, spoke describing their recycling program wherein they take plastics nos. 1 through 7. She said that there is currently not one facility in the state of California that is recycling polystyrene. She said it is too light, difficult to bale and is definitely a nuisance particularly in coastal cities. She said Harrison suggests that customers reuse their plastic bags and/or place them in the recycle bins at the markets.

NAN DRAKE,  
HARRISON IND.

Jim Harrison said that their goal is to change the entire waste stream to a reusable waste stream and recycle everything. He said that currently the plastic grocery bags are not recyclable and are therefore a big problem because there is no where to take them. He said that his company is working toward obtaining the required licenses and facilities to compost plastic bags.

JIM HARRISON,  
HARRISON IND.

Ms. Drake and Mr. Harrison responded to questions from the Council.

There were no additional speakers from the audience.

Mayor Ledbetter said that enactment of ordinance seems to be very problematic for the legal reasons reported by the Deputy City Attorney.

DISCUSSION

Councilmember Clark questioned if there is any litigation history related by the ban of expanded polystyrene.

The Deputy City Attorney responded that to date there has not been any litigation.

Councilmember Clark suggested that if the City moves in the direction of some sort of action to restrict or ban or try to reduce the subject products, it would seem to make good sense to separate expanded polystyrene from plastic bags.

Councilmember Stein said that some restaurants in the community have stopped using polystyrene containers and a good education process will be important to aide the remaining restaurants/food chains. He suggested the City moving forward with a ban on expanded polystyrene first and phase in the plastic bag issue.

Councilmember Armendariz said he would like to see an ad hoc committee of the City and the Chamber of Commerce further study the ramifications of how a ban will effect small business owners in the community. He said he supports as much community discussion and dialogue as possible.

Mayor Ledbetter said he concurred that we should involve community in the draft ordinance.

Vice Mayor Carty said that the City should look at all single use bags.

Councilmember Clark said he agreed that we should consider banning all single use bags and maybe an ad hoc committee would be appropriate to look at how we can get there and to set some benchmarks.

Discussion followed.

Motion was made by Mayor Ledbetter and seconded by Councilmember Stein to direct staff to return in one month with a draft ordinance banning the use of expanded polystyrene containers and that staff conduct community outreach during that time with the Chamber of Commerce to ascertain if there is community support for a further ban on single use containers.

The motion was unanimously adopted by roll call vote.

The City Manager said that on either of the matters environmental clearance will be necessary and could involve an EIR which would take longer than the one month stipulated by the Council. He said that based on the steps that we must go through to do an EIR, staff will report back to the Council on what the time frame looks like.

COUNCIL  
DIRECTS STAFF  
TO BEGIN  
PREPARATION  
ON A BAN OF  
THE USE OF  
EXPANDED  
POLYSTYRENE  
CONTAINERS

**STAFF REPORT**  
**COUNCIL MEETING DATE:**  
**October 13, 2008**

**ITEM FOR COUNCIL CONSIDERATION:**

An amendment to the Carpinteria Municipal Code, prohibiting the use of certain non-recyclable plastic food containers.

City Manager

  
Signature

City Attorney

\_\_\_\_\_  
Signature

**STAFF RECOMMENDATION:**

Approve on first reading Ordinance No. 634, an amendment of the Carpinteria Municipal Code, Title 8, Health and Safety, adding Chapter 8.50, a prohibition on the use of certain non-recyclable plastic food containers.

**I. BACKGROUND/DISCUSSION:**

At its regular meeting of September 22, 2008, after receiving a staff report on the subject, considering public testimony and deliberating, the City Council directed staff to prepare draft regulations concerning a prohibition on the use of expanded polystyrene (EPS) food containers within the incorporated area of Carpinteria. This meeting was preceded by a community workshop on September 11, 2008, where all restaurants and similar businesses were invited by direct mail invitation to participate in a discussion on the possibility of the City banning EPS food containers.

The City Council had also previously considered the matter on February 25, 2008 and in July 2007, when a presentation was made by the Santa Barbara City College Sustainability Workshop on the need for and purpose of local EPS and plastic bag

bans. Cumulatively, the staff reports, public testimony and deliberation has provided the Council with information identifying issues and policy options concerning the use in the community of both plastic carry-out bags and EPS take-out food containers.

In response to the direction of the City Council, staff has drafted regulations that respond to the public health, safety and welfare concerns identified in the record of City Council meetings concerning EPS products. The draft Ordinance is modeled after successful programs from other California cities (see attached Table I, dated 9/26/08)) and takes into account Carpinteria's unique local conditions and policies concerning the protection of public health, environmental resources, and the local economy. Should the Council approve the draft Ordinance on this first reading, a second reading of the ordinance will be held at the next regular meeting of the City Council, October 27, 2008. If approved on second reading, Ordinance No. 634 will go into effect 30 days thereafter. Ordinance No. 634 has a proposed commencement date of September 1, 2009.

## II. POLICY:

Expanded Polystyrene (EPS) foam, commonly referred to by its trade name Styrofoam, is an inexpensive, lightweight, petroleum-based plastic material with good insulation properties that is used by restaurants and other food providers to keep food hot or cold. The typical take-out containers include clamshell products, plates, cups, bowls, trays, cartons, and other items designed for one-time use. While EPS is an effective food service ware product, it is not compostable, biodegradable, recyclable, or reusable.<sup>1</sup> Since it is lightweight, it is easily carried by the wind, floats in water, and breaks into small pieces creating litter in streets, parks, waterfront, waterways, and open spaces. As a result, EPS collects in the City's storm drainage system blocking catch basins and arch culverts, and increasing the time and expense to the Public Works maintenance crews during storm events.

The City's General Plan/Local Coastal Plan includes policies, objectives and implementation measures aimed at protecting unique coastal resources found in Carpinteria, and of benefit to the entire State of California. Among those unique coastal resources are a variety of Environmentally Sensitive Habitat Areas (ESHA) protected by State and local laws. ESHA areas identified in the City's General Plan/Local Coastal Plan (Table OSC-1, page 96, Open Space, Recreation & Conservation Element), include Wetlands, Marine Mammal Rookeries and Hauling Grounds, Subtidal Reefs, Kelp Beds, Creeks and Riparian Habitat. Given information available that suggests that EPS containers have impacts on the kinds of habitat

<sup>1</sup>. See e.g., the California Integrated Waste Management Board's publication "The Use and Disposal of Polystyrene in California: A Report to the California Legislature December 2004, available online at <http://www.ciwmb.ca.gov/Publications/Plastics/43204003.doc>.

areas the City aims to protect<sup>2</sup>, regulations to ban such materials in the community can be found to be consistent with the City General Plan/Local Coastal Plan.

The City of Carpinteria is currently working with the Central Coast Water Board to update the City's Storm Water Management Plan (SWMP). Staff has determined that efforts that serve to reduce particularly problematic types of litter such as EPS, are an effective means to implement objectives of the City's SWMP that are aimed at reducing litter in streams, the salt marsh, and ocean tidelands.<sup>3</sup> The SWMP is mandated by the State of California as a part of its compliance with the National Pollution Discharge Elimination System (NPDES).

The City also has programs aimed at diverting waste material from landfills. This effort, also based in State law (AB 939), mandates that cities undertake recycling and other such programs to minimize the amount of waste going to landfills. Staff has determined that the regulations to ban EPS as proposed would help to reduce the amount of this particularly problematic waste material generated in the City, and can be found to be consistent with the City's waste stream reduction efforts.

As indicated above, the City of Carpinteria is within the Coastal Zone of California and the entire area of the City is subject to the provisions of the California Coastal Act. The Act requires cities to take actions as appropriate to both protect sensitive habitat areas of the coast and to promote public access. By prohibiting the use of EPS the City will mitigate the amount of EPS polluting local creeks, the salt marsh and tidelands, and will promote a clean and healthy local environment that promotes visitorship and supports the local tourism economy. To that end, this regulation is consistent with the General Plan policies that seek to enhance the "small beach town" community by reducing the visual blight on the community of a commonly littered product.

Finally, there is evidence suggesting that EPS under certain conditions, e.g., when wet and/or heated, may represent a human health hazard.<sup>4</sup> Since reasonably priced

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<sup>2</sup> Eliminating Land-based Discharges of Marine Debris In California: A plan of Action from the Plastic Debris Project; California Coastal Commission, Los Angeles Regional Water Quality Control Board, June 2006

<sup>3</sup> EPS food containers are a major component of litter in storm drains. See e.g., the California Integrated Waste Management Board's publication "The Use and Disposal of Polystyrene in California: A Report to the California Legislature December 2004, available online at <http://www.ciwmb.ca.gov/Publications/Plastics/43204003.doc>. According to a 1998-2000 California Department of Transportation study, Styrofoam and polystyrene food containers in particular are found to comprise 15% of storm drain litter.

<sup>4</sup> A number of studies and news articles have detailed increased concerns about the cumulative effects of trace chemicals and suspected carcinogens on the human body, especially among children. See e.g. <http://www.ejnet.org/plastics/polystyrene/index.html> and <http://www.ejnet.org/plastics/polystyrene/health.html>. The National Bureau of Standards Center for Fire Research identified 57 chemical byproducts released during the combustion of polystyrene foam. See e.g. Earth Resource Foundation <http://www.earthresource.org/campaigns/capp/capp-styrofoam.html>. Benzene, a chemical component of polystyrene foam, is a known carcinogen and enters the human body either through the skin or respiratory system. US Occupational and Health Administration <http://www.osha.gov/SLTC/benzene/index.html>. The EPA and FDA state that chemical components of polystyrene may leach from food containers into food and drink; the FDA

alternative food containers are available<sup>5</sup>, a prohibition on the use of EPS food containers in the City would be a prudent measure for the protection of public health.

### III. ANALYSIS:

The following sections describe the basic provisions of the ordinance, including who will be affected, what products will be banned, what alternatives products can be used, what exceptions there are to the ordinance, when the ordinance will become effective, how it will be enforced, and what the next steps for its implementation are.

#### Who Is Affected by the Ordinance:

The proposed regulations would apply to two groups of users: (a) food providers and (b) users of any City Facilities, City-managed concessions and City sponsored events. Under the ordinance, a food provider refers to the following:

*"Food Provider" means any establishment, located or providing food within the City of Carpinteria, which provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, super market, delicatessen, catering truck or vehicle, or any other person who provides prepared food; and any organization, group or individual which regularly provides food as a part of its services.*

Based on this definition, all restaurants and similar businesses as well as mobile food providers will be subject to the ordinance.

The ordinance also applies to users of City Facilities, City-managed concessions and City sponsored events. Thus, the City itself; the City's franchisees, contractors and vendors doing business in the city (e.g. at events such as the Avocado or St. Joseph's Festivals); and those entities that use the City's facilities such as the Veteran's Hall, City parks, sports and recreation areas, must all comply with the ordinance.

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recommends that plastic takeout containers never be microwaved for this reason. See, Environmental Protection Agency

[http://www.epa.gov/safewater/contaminants/dw\\_contamfs/styrene.html](http://www.epa.gov/safewater/contaminants/dw_contamfs/styrene.html); Food and Drug Administration, [http://www.fda.gov/fdac/features/2002/602\\_plastic.html](http://www.fda.gov/fdac/features/2002/602_plastic.html).

<sup>5</sup> The following websites provide information about the availability and cost of alternative products: <http://www.oaklandgreenware.com/Page791.aspx>

[http://www.smgov.net/epd/business/container\\_regs.htm](http://www.smgov.net/epd/business/container_regs.htm)

[http://www.cityofcalabasas.com/environmental/PDF/EPS\\_ban\\_brochure.pdf](http://www.cityofcalabasas.com/environmental/PDF/EPS_ban_brochure.pdf)

<http://www.cawrecycles.org/files/Distributors%20of%20compostable%20or%20recyclable%20food%20ware%206-08-2007.pdf>

<http://www.cawrecycles.org/files/Approved%20food%20ware%20product%20list%206-11-07.pdf>

[http://www.cawrecycles.org/files/sf\\_foodpackagingpricing.xls](http://www.cawrecycles.org/files/sf_foodpackagingpricing.xls)

<http://www.ciwmb.ca.gov/FoodWaste/Compost/Biodegrade.htm>

[http://www.cawrecycles.org/issues/polystyrene\\_main/compbio](http://www.cawrecycles.org/issues/polystyrene_main/compbio)

## **What Does the Ordinance Regulate:**

The proposed regulations would prohibit the above mentioned groups from dispensing prepared food to customers in disposable food service containers made entirely or in part from non-recyclable plastic. As defined by the ordinance, "disposable food service container" means:

*single-use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers. This does not include straws, cup lids, or utensils, nor does it include single-use disposable packaging for unprepared foods, or coolers and ice chests that are intended for reuse.*

For the purposes of the ordinance, non-recyclable plastic means:

*any plastic which cannot be feasibly recycled by a municipal recycling program available in the City of Carpinteria, including expanded polystyrene.*

As written, these definitions include not only restaurants and other vendors of food but manufacturers located in Carpinteria that package ready-to-consume foods or beverages, even if the products are shipped outside the City. Also, it should be noted that this definition would allow for the use of EPS if and when recycling of EPS is available in Carpinteria. The City's residential and commercial, curbside recycling programs currently accept numbers 1-7 plastics<sup>6</sup>, with the exception of expanded polystyrene and plastic film, e.g., most thin gauge plastic grocery bags, dry cleaning bags, etc. This range of plastics is very broad and covers many, if not all, plastic disposable food container products available. It does not include biodegradable or compostable plastic alternatives such corn starch containers.

## **What Alternative Products Can Be Used:**

As a result of this ordinance, the regulated entities must replace non-recyclable plastic disposable food service containers with alternative products.

Alternative products are widely available and commonly used in other cities with polystyrene foam bans. These alternative materials include: uncoated paper, coated paper, cardboard, aluminum, other recyclable plastics, and bio-products which are typically made from corn starch, sugar cane, or a combination of bamboo, tapioca, and water.

In general, alternatives to non-recyclable plastics (including EPS) cost slightly more per item and vary in price with the product type, weight, and durability<sup>7</sup>. The actual

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<sup>6</sup> The resin identification coding system of the Society of Plastics Industry, Inc., is embossed on all plastic containers and other plastic products for the purpose of identifying the type of plastic for recycling purposes.

<sup>7</sup> There are myriad products available. A comparison done on the Nextag Comparison Shopping website (<http://www.nextag.com/All-zztake+out+food+containerz1zBiz5---html?nxtg=152e50a1c0537-8016A80E9D044460>) revealed the following unit prices for comparably sized containers: Foam 10.5

cost to a food vendor to switch to an alternative product will be largely dependent on the amount and types of disposable food service ware that the food vendor currently uses. While EPS is currently the least expensive food service ware available, the cost is expected to rise due to increasing crude oil prices. In addition, the true cost of using EPS is not fully quantifiable due to costs passed on to the public through litter, blight, increased storm drainage maintenance, reduced quality of life, and associated environmental and possible health impacts.

#### **What Exceptions Exist:**

Certain events and activities would be exempt from the provisions. For example, the ban would not apply to food packaged outside the City and, during a locally declared emergency, the regulations would be suspended.

There is also a "hardship" provision that would allow for the City Manager to temporarily exempt an affected food provider from the regulations. Examples of circumstances where a temporary exemption may be appropriate include where a contractual obligation requires the use of a prohibited container or where no other alternative container is available. An application explaining the reason for the request would be required to be submitted for consideration. These hardship waivers would be valid for up to a one year period.

#### **When will the Ordinance Go Into Effect:**

The regulations are proposed to commence on September 1, 2009. Considering a potential effective date of Ordinance No. 634 of November 26, 2008, the proposed commencement date would provide local food providers approximately nine months to use any already purchased EPS products and find an alternative. This delay in applicability of the ordinance is meant to provide an amortization period for regulated entities. Information from the community workshop suggested that regulated entities generally do not keep more than a few months worth of disposable food service containers on hand. Information from that meeting also suggested that nine months is ample period for regulated entities to identify and obtain alternative sources of packaging. This period is also consistent with the amortization period provided by other cities in adopting similar ordinances.

#### **How will the City Enforce this Ordinance:**

The regulations propose that, commencing on January 1, 2010, affected businesses use a City provided form to self-certify compliance with the regulations. It is expected that this self-certification program would be supplemented by Code Enforcement staff efforts similar to those used for enforcement of Municipal Code provisions that require graffiti implements to be kept under lock and key. Violation of the subject provisions is proposed as an infraction. First time violators would be given a warning. Staff expects to ordinarily seek voluntary compliance prior to issuance of a citation.

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cents; foil with paper lid 11 cents; bio-degradable material 31 cents; hard plastic 45 cents; Chinese food box 32 cents. At the September 11, 2008 workshop, a representative of the locally based CKE Corporation (operator of Carl's Jr. Restaurants) stated that the switch to alternative products cost the corporation about \$18,000 a year. Also, the owner of a Carpinteria manufacturer of alternative food containers represented that such containers are readily available in the local market and that unit costs are coming down over time.

**What are the next steps:**

City staff will continue its educational outreach to Carpinteria food vendors and anticipates developing a Frequently Asked Questions handout, as well as a list of vendors and products that are appropriate for use in Carpinteria. Staff will also work with the local waste hauler to inform regulated entities about which products can be recycled.

**IV. LEGAL:**

The City has a duty to protect the public's health, safety and welfare. Regulations that restrict the use of products that harm the public's health, safety and welfare, such as the Ordinance proposed, are squarely within the City's police powers. It is understood that disposable food service containers made from non-recyclable plastic enters our waste stream, our storm drains, our watershed and waterfront; adversely affects our fragile ecosystems; causes blight; impacts the health of humans and wildlife; and results in cleanup and economic costs. The City of Carpinteria may exercise environmental stewardship by reducing the amount of polystyrene foam and non-recyclable plastic food service ware that enters out waste stream, our storm drains, watershed and waterfront.

City staff and the City Attorney's office have reviewed the potential environmental impacts of adopting the proposed ordinance and determined that the ordinance is not subject to the California Environmental Quality Act since this ordinance does not constitute a project, as defined by Public Resources Code section 21065. It has been also determined that even if the proposed action did constitute a project, it would be exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) and 15378(a) in that it is not a project that has the potential for causing a significant effect on the environment. The action is also exempt under section 15378(b)(2) in that it concerns general policy and procedure making, and 15183 since it is consistent with the City's General Plan. Furthermore, this Ordinance is exempt under CEQA Guidelines sections 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and section 15308 (Actions by Regulatory Agencies for Protection of the Environment).

**V. PARTIES EXPECTED:**

Representatives of E.J. Harrison & Sons  
Representatives of Carpinteria Beautiful  
Local Business owners/operators

**VI. ATTACHMENT:**

Draft Ordinance No. 634  
Table I, September 26, 2008

**ORDINANCE NO. 634**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA,  
CALIFORNIA, ESTABLISHING CHAPTER 8.50 OF THE CARPINTERIA  
MUNICIPAL CODE PERTAINING TO A BAN ON CERTAIN NON-RECYCLABLE  
PLASTIC FOOD CONTAINERS.**

**WHEREAS**, the City of Carpinteria ("City") pursuant to its police powers has the authority to enact laws which promote the public health, safety and general welfare of its residents; and

**WHEREAS**, the City is required under state and federal law to implement policies and programs to protect unique coastal resources and environmentally sensitive habitat areas (California Coastal Act), reduce the amount of waste generated in the community that goes to landfills (AB 939), and prevent storm water runoff from polluting creek and ocean waters (National Pollutant Discharge Elimination System Permit Program and the State Municipal Storm Water Permitting Program); and

**WHEREAS**, the Carpinteria community is attractive to residents, businesses, and visitors due to a local economy and quality of life that is centered on a clean and healthy environment, including but not limited to, parks, public open spaces, creeks, estuary, tidelands and the ocean; and

**WHEREAS**, there are approximately 53 restaurants and other food service operators in the City of Carpinteria and most currently use expanded polystyrene (EPS) take-out food containers; and

**WHEREAS**, the City Council of the City of Carpinteria has held publicly noticed meetings on February 25 and September 22, 2008, and jointly hosted a community workshop on September 11, 2008, in order to discuss issues and alternative responses to the use of EPS in the City; and

**WHEREAS**, The City Council received testimony and other information documenting the fact that EPS products often find their way into the local environment since EPS breaks down into smaller pieces and is so light that it floats in water and is easily carried by the wind, even when it has been disposed of properly; and

**WHEREAS**, numerous studies have documented the prevalence of EPS debris in the environment, including in storm drains and on beaches, negatively impacting the local environment and creating clean-up costs for the City;

**WHEREAS**, EPS can contain potentially harmful constituents such as phthalates, bisphenol A, styrene, vinyl chloride and flame retardants. Research is being conducted to determine whether water leaches these constituents out of plastic products, presenting a threat to the health of humans and wildlife. For example, styrene, is a known hazardous substance and a suspected carcinogen and neurotoxin. Medical evidence and the Food and Drug Administration suggest that styrene may penetrate into food and drink stored in polystyrene containers which could potentially threaten the health of humans and wildlife; and

**WHEREAS**, recycling of EPS is currently not available through the City's franchise waste hauler or anywhere in the region and it is not financially feasible for the City to develop such a program;

WHEREAS, there are alternatives to EPS food containers available, and

WHEREAS, it is in the City's interest to establish programs and services that reduce the amount of litter in the environment, in particular beach litter and marine pollution, which increase the quality of life from the City of Carpinteria residents and visitors and protect local wildlife habitat.

NOW, THEREFORE, the City Council of the City of Carpinteria does hereby ordain as follows:

**SECTION 1. INCORPORATION OF RECITALS**

The City Council finds and determines that the above recitals are incorporated herein and are each relied upon independently by the City Council for its adoption of this Ordinance.

**SECTION 2. CREATION OF CHAPTER 8.50**

Chapter 8.50 of the Carpinteria Municipal Code shall hereby be created and shall read as follows:

**8.50.010 Title.**

The title of this chapter shall be "Food Container Regulations"

**8.50.020 Purpose**

The purpose of these provisions is to promote:

- A. The protection of unique coastal resources found in Carpinteria and identified for protection as a part of the City's General Plan/Local Coastal Plan including the Carpinteria "El Estero" Salt Marsh, Beaches, Tidelands, and Offshore Reefs, Harbor Seal Hauling Grounds, and Creekways and Riparian Habitat.
- B. To protect the public health, safety and general welfare.
- C. Compliance with federal and state mandates for Clean Water (NPDES) and waste stream reduction (AB 939)
- D. A reduction in the amount of waste/debris in City parks, public open spaces, creeks, estuary, tidelands and the ocean, and the amount of material going to landfills.

**8.50.030 Definitions.**

The following definitions shall govern the construction of this chapter:

- A. "City Facilities" refers to buildings, structures, parks and open spaces, streets and other rights-of-way, owned or leased by the City of Carpinteria.
- B. "Disposable Food Service Container" means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers. This does not include single-use disposable items such as straws, cup lids, or utensils,

nor does it include single-use disposable packaging for unprepared foods, or coolers and ice chests that are intended for reuse.

C. "Expanded Polystyrene" (EPS) means polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid foam.

D. "Food Provider" means any establishment, located or providing food within the City of Carpinteria, which provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, super market, delicatessen, catering truck or vehicle, or any other person who provides prepared food; and any organization, group or individual which regularly provides food as a part of its services.

E. "Municipal Recycling Program" means the collection, transport, and processing of recyclable materials generated in the City of Carpinteria for reuse.

F. "Non-Recyclable Plastic" refers to any plastic which cannot be feasibly recycled by a municipal recycling program available in the City of Carpinteria, including expanded polystyrene.

G. "Polystyrene" means and includes expanded polystyrene which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). The term "polystyrene" also includes clear or solid polystyrene which is known as "oriented polystyrene".

H. "Prepared Food" means any food or beverage prepared for consumption on the food provider's premises, using any cooking or food preparation technique. This does not include any raw uncooked meat, fish or eggs unless provided for consumption without further food preparation.

I. "Recyclable" means any material, e.g., glass, paper, plastic, which can be recycled, salvaged, composted, processed, and/or marketed through a Municipal Recycling Program, such that the material is not placed in a land-fill or incinerated.

J. "Recyclable Plastic" means any plastic which can be feasibly recycled by a municipal recycling program available in the City of Carpinteria. Recyclable plastics comprise those plastics with the recycling symbols #1 through #7, including certain polystyrenes, but excluding non-recyclable plastic.

#### **8.50.040 Prohibition and Reporting Requirement.**

A. Commencing September 1, 2009, Food providers are prohibited from dispensing prepared food to customers in disposable food service containers made entirely or in part from Non-Recyclable plastic.

B. Commencing on September 1, 2009, users of any City Facilities, City-managed concessions, and City sponsored events, including but not limited to, City franchises, contractors and vendors doing business in the City, are prohibited from using disposable food service containers made entirely or in part from Non-Recyclable plastic.

C. Commencing on January 1, 2010, each food provider shall report on or before January 1, 2010 and the first business day of each calendar year thereafter, a written certification, signed under the penalty of perjury by one authorized to bind the food provider, stating that the owners and operators of the establishment are aware of the requirements of this chapter and comply with it. Such reports may be on a form provided for that purpose by the City.

#### **8.50.050 Exemptions.**

- A. During a locally declared emergency, the City, emergency response agencies operating within the City, users of City facilities, and food providers shall be exempt from the provisions of this Chapter;
- B. Items packaged outside the city, whether sold at retail within the city or elsewhere, are exempt from the provisions of this ordinance.
- C. The City Manager or his/her designee, may exempt a food provider from the requirements herein for a one year period, upon showing by the food provider that the application of the provisions herein would cause undue hardship. In determining whether undue hardship exists the City Manager or his/her designee shall consider:
1. Situations unique to the food provider where there are no reasonable alternatives to non-recyclable plastic disposable food service containers and compliance with this Chapter would cause significant economic hardship to that food provider;
  2. The existence of franchise or other contractual obligations which require a food provider to use disposable food service containers that are not in compliance with this Chapter;
- D. The decision of the City Manager or his/her designee to grant or deny an exemption shall be final. Exemptions granted under the provisions of this section are valid for one year. A food provider granted an exemption by the City must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.
- E. An exemption application shall include all information necessary for the City to make its decision, including but not limited to documentation showing the factual support for the claimed exemption

#### **8.50.060 Penalties and Enforcement.**

- A. The presence on the premises of a food provider of non-recyclable plastic shall constitute a rebuttable presumption that such packaging is being dispensed.
- B. Violations of this ordinance shall be enforced as follows:
1. For the first violation, upon a determination that a violation of this chapter has occurred, shall issue a written warning notice to the food provider which will specify the violation and the appropriate penalties in the even to of future violations.
  2. Thereafter any person violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction punishable pursuant to Chapter 1.08 of this code.
  3. Each and every sale or other transfer of non-recyclable plastic food packaging shall constitute a separate violation of this ordinance.
  4. The city attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- C. The remedies and penalties provided in this chapter are cumulative and not exclusive of other remedies and penalties available under other provisions of applicable law.

#### **8.50.070 Construction; Preemption**

This chapter and any provisions thereof shall be null and void upon the adoption of any state or federal law or regulation imposing the same or essentially the same limits on the use of prohibited products as set forth in this chapter. This chapter is intended to be a proper exercise of the City's police power, to operate only upon its own facilities and other food providers acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

**SECTION 3. CEQA FINDINGS.**

The adoption of this Ordinance is not subject to the California Environmental Quality Act, as this ordinance does not constitute a project, as defined by Public Resources Code Section 21065 and even if it is determined that the proposed action constitutes a project, the project would be exempt pursuant to CEQA Guidelines §§15307 [exemptions for actions to protect natural resources] , 15308 [exemptions for actions to protect the environment], 15378(b)(2) [exemption for policymaking], and 15183 [actions consistent with the general plan].

**SECTION 4. EFFECTIVE DATE.**

This Ordinance shall be in full force and effect thirty (30) days following a second reading of the ordinance; and before the expiration of fifteen (15) days of its passage shall be published once with the names of the City Council voting for and against the same in the Coastal View, a newspaper of general circulation, published in the City of Carpinteria.

**SECTION 5. SEVERABILITY.**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or application thereof to any person or circumstances, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed such section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases may be declared unconstitutional or invalid or ineffective.

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**PASSED, APPROVED, AND ADOPTED** this            day of            , 2008, by the following called vote:

**AYES: COUNCILMEMBERS:**

**NOES: COUNCILMEMBERS:**

**ABSENT: COUNCILMEMBERS:**

\_\_\_\_\_  
Mayor of the City of Carpinteria

**ATTEST:**

\_\_\_\_\_  
City Clerk, City of Carpinteria

*I hereby certify that the foregoing Ordinance was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held the this            day of            , 2008.*

\_\_\_\_\_  
City Clerk, City of Carpinteria

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Clerk, City of Carpinteria

TABLE I  
9/26/08

City	Excluded Product	Required Replacement Product	Effective Date	Affected parties	Phased Implementation	Exemptions	Penalties
Alameda	Polystyrene Foam	Biodegradable, compostable preferred, reusable food service ware encouraged, non-polystyrene foam allowed if no cost-neutral alternative is available	July 1, 2008	All food service vendors; City facilities, and franchises and contractor doing business in City	Six months	Food packaged outside City; no affordable biodegradable or compostable alternative exists; undue hardship; coolers/ice chests intended for reuse; all-aluminum service ware; and emergency supplies	Administrative citation procedure
Berkeley	Polystyrene Foam	Any non-polystyrene foam material. Requires that 50% by volume, be recyclable or compostable	1990	All food service vendors and all City facilities.	N/A	Undue hardship.	Initial written warning followed by escalating fines.
Calabasas	Polystyrene Foam	Returnable, recyclable, biodegradable, or degradable non-polystyrene.	July 1, 2007 for city facilities, March 31, 2008 for other	All food service vendors, City facilities and franchises and contractors doing business in city	Four months for City, Thirteen months for others	Food packaged outside City; no affordable alternative exists; undue hardship; and emergency supplies	Mandatory annual self-reporting. Failure to comply is an infraction, but falsely claiming compliance or failure to report is a misdemeanor.
Capitola	Polystyrene Foam	Biodegradable, compostable preferred, reusable food service ware encouraged, if no cost-neutral	Enacted December 2006, With 1 year follow up study	All food service vendors, City facilities and franchises and contractors doing business		Food packaged outside City; no affordable biodegradable or compostable alternative exists; undue hardship; coolers/ice chests intended for reuse; all-aluminum service ware; and	Initial written warning followed by escalating fines.

		alternative is not available may charge take out fee on biodegradable or compostable	required.	in city		emergency supplies	
<b>Emeryville</b>	Polystyrene Foam	Biodegradable, compostable, or recyclable based on City's curbside program.	January 2008	All food service vendors and all City facilities.	Nine months.	Food packaged outside the City, undue hardship, impacts a legally protected right.	Initial written warning followed by escalating fines.
<b>Laguna Beach</b>	Polystyrene Foam	Any non-polystyrene foam material.	July 1, 2008	All food service vendors, City facilities and franchisees and contractors doing business in city	Six months	Raw meats sold from a butcher or similar store, undue hardship, emergency supplies	Initial written warning followed by escalating fines.
<b>Malibu</b>	Polystyrene Foam	Any non-polystyrene foam material	2005	All food service vendors, City facilities and franchisees and contractors doing business in city	??	Food packaged outside City; no affordable alternative exists; undue hardship; coolers/ice chests intended for reuse; food packaging required to be purchased under contract (for a limited time)	Infraction
<b>Millbrae</b>	Polystyrene Foam and Polystyrene oriented (clear)	Biodegradable, compostable or recyclable based on City's curbside	January 2008	All food service vendors and all City facilities.	Three months.	Food packaged outside the City, undue hardship.	Initial written warning followed by escalating fines.

<b>Oakland</b>	plastics) Polystyrene Foam	program Biodegradable, compostable preferred, non- polystyrene foam allowed if no cost- neutral alternative is available	January 2007	All food service vendors; City facilities, departments, agencies and franchises and contractor doing business in City.	Six months.	Food packaged outside City; no affordable biodegradable or compostable alternative exists; undue hardship; coolers/ice chests intended for reuse; all- aluminum service ware; and emergency supplies.	Initial written warning followed by escalating fines.
<b>San Francisco</b>	Polystyrene Foam	Biodegradable, compostable or recyclable based on acceptable items in City's curbside program.	June 2007	All food service vendors and all City facilities.	Six Months	If no suitable affordable biodegradable/compostable or recyclable product is available as determined by the City Administrator.	Initial written warning followed by escalating fines.
<b>Santa Monica</b>	All polystyrene, both foam and non- recyclable clear plastic	Any non-polystyrene product	February 2007 for city facilities, February 2008 for others	All food service vendors; City facilities, and City permitted events.	N/A for City Facilities, twelve months for others	Undue hardship (e.g. no reasonable alternative and economic hardship),	Initial written warning followed by escalating fines.

The City Attorney noted that Deputy City Attorney Alexandra Barnhill will be representing the City Attorney's office in the following matter.

DEPUTY CITY  
ATTORNEY  
BARNHILL  
ENTERS MTG.

7. Consideration of an amendment to the Carpinteria Municipal Code, prohibiting the use of certain non-recyclable plastic food containers

AMENDMENT TO  
CMC  
PROHIBITING  
USE OF CERTAIN  
NON-  
RECYCLABLE  
PLASTIC FOOD  
CONTAINERS

STAFF RECOMMENDATION: That the City Council pass Ordinance No. 634 to second reading.

DOCUMENTS:

Staff Report dated October 13, 2008 prepared by Dave Durlinger, City Manager with attached draft ordinance and Table I dated September 26, 2008

The City Manager explained that at its regular meeting of September 22, 2008, after receiving a staff report on the subject, receiving public testimony and deliberating, the City Council directed staff to prepare draft regulations concerning a prohibition on the use of expanded polystyrene (EPS) food containers within the incorporated area of Carpinteria. This meeting was preceded by a community workshop on September 11, 2008, where all restaurants and similar businesses were invited by direct mail invitation to participate in a discussion on the possibility of the City banning EPS food containers.

The City Council had also previously considered the matter on February 25, 2008 and in July 2007, when a presentation was made by the Santa Barbara City College Sustainability Workshop on the need and purpose of local EPS and plastic bag bans. Cumulatively, the staff reports, public testimony and deliberation has provided the Council with information identifying issues and policy options concerning the use in the community of both plastic carry-out bags and EPS take-out food containers.

In response to the direction of the City Council, staff has drafted regulations that reflect issues identified in the record of City Council meetings concerning EPS products, adopted regulations from other California cities, and unique local conditions and policies concerning the protection of public health, environmental resources, and the local

economy. Should the Council approve the draft Ordinance on this first reading, a second reading of the ordinance will be held at the next regular meeting of the City Council, October 27, 2008. If approved on second reading, Ordinance No. 634 will go into effect 30 days thereafter. Ordinance No. 634 has a proposed commencement date of September 1, 2009.

The City Manager said that staff has provided studies, including the studies from the California Integrated Waste Management Board and the California Coastal Commission, that have found that plastic foam waste is a major problem in the environment impacting wildlife, environmentally sensitive habitat area, creeks, salt marsh, ocean, and landfill capacity. There are also studies referenced that suggest that there are human health risks associated with the use of expanded polystyrene food containers. Copies of all of the studies referenced in the written staff report are available with the City Clerk.

Locally, in Carpinteria we find EPS foam debris in storm drains, in drains, in the salt marsh and in and on the beaches. He reviewed City policies supporting the proposed ordinance and as described in the written staff report.

The City Manager detailed who is affected by the ordinance, what does the ordinance regulate, what alternative products can be used, what exceptions exist, when will the ordinance go into effect, and how will the City enforce the ordinance.

The Deputy City Attorney clarified the definition of "disposable food service container" and responded to questions from the Council.

The Deputy City Attorney discussed three major areas: the City Council's authority for imposing this type of ordinance, the level of environmental review that is conducted associated with the ordinance and any risk of litigation.

Harry Manuras, local resident, said that he is involved in many clean up activities in the community and that an ordinance, as proposed, will hopefully assist in the amount of polystyrene and plastic litter that is continually picked up. He spoke in support of the ordinance.

HARRY  
MANURAS

Pat Kistler, representing the Carpinteria Valley Chamber of Commerce, said that the Chamber has been involved from the early stages of this proposal working with the City meeting with the merchants. She said although they are concerned about the costs to merchants, they support the ordinance and will assist the City in educating the community.

PAT KISTLER

Steve McWhirter, local resident, spoke in support of the proposed ordinance and said that the way the ordinance is prepared it is very business friendly.

STEVE  
MCWHIRTER

Discussion followed.

Councilmember Clark questioned how to further pursue the issue of plastic grocery bags?

Mayor Ledbetter said that at the last meeting there was discussion of forming an ad hoc committee or wait for staff to advise the Council of any change in the status of the law in that the Council agreed that it did not wish to be at the forefront of litigation on the issue.

The Council, by unanimous consent, requested staff to provide continuing updates to the Council with respect to any changes in State law or case law with respect to plastic grocery bags.

Motion was made by Councilmember Clark and seconded by Vice Mayor Carty to pass to second reading Ordinance No. 634 entitled: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA, CALIFORNIA, ESTABLISHING CHAPTER 8.50 OF THE CARPINTERIA MUNICIPAL CODE PERTAINING TO A BAN ON CERTAIN NON-RECYCLABLE PLASTIC FOOD CONTAINERS", as read by title only, including each of the "Whereas" paragraphs (of the Ordinance) as separate findings for the ordinance, with the following two amendments:

ORDINANCE NO.  
634 PASSED TO  
SECOND  
READING AS  
AMENDED

a. That the definition of "Disposable Food container", Section 8.50.030B, be changed to make clear that bags and other items, not intended to be included in the definition, are excluded and that the definition be modified to include in the list of exclusions, bags and plastic film wrapping; and

b. That the penalties section refer to both CMC 1.06 and 1.08.

The motion was unanimously adopted by voice vote.

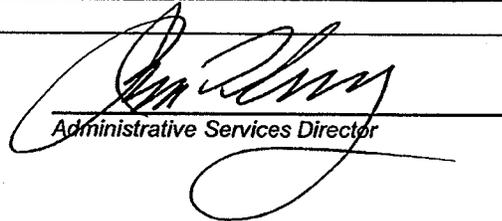
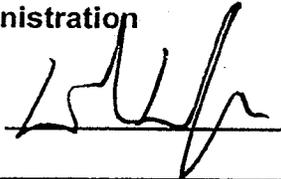
**STAFF REPORT**  
**COUNCIL MEETING DATE:**  
**May 11, 2009**

**ITEM FOR COUNCIL CONSIDERATION:**

**Update on litigation and state legislation concerning local regulations of light weight plastic shopping bags.**

Department: Administration

City Manager



Administrative Services Director

**STAFF RECOMMENDATION:**

**Receive this informational report.**

**I. BACKGROUND:**

The City Council requested a report on the status of cities' efforts to regulate the use of light weight plastic grocery type bags and state legislation of same. Initially, the City Council considered this matter along with a ban on non-recyclable plastic take-out food containers. In late 2008, the City Council determined to proceed with establishing City regulations on the use of non-recyclable plastic take-out food containers, and to monitor litigation and state legislation pertaining to cities efforts to regulate the use of plastic bags.

Staff and the City Attorney's office have been monitoring the climate related to local regulations of plastic bags. Staff finds that the development of local regulations would likely require the preparation, processing and certification of an Environmental Impact Report (EIR). There is very limited history of analysis of potential environmental impacts related to a local ban on plastic bags. EIR's are expensive (Manhattan Beach estimated the cost of preparation at \$100,000) and due to the controversial nature of plastic bag regulations and the lack of valid environmental analysis in the public record, it is likely that the development of an EIR would be especially costly and vulnerable to challenge. It also seems likely now that the California legislature will pass law

regulating the use of plastic bags by grocery stores and similar businesses and as a part of such legislation certain local regulations may be pre-empted. In the current climate, staff does not recommend changing the City's current strategy of postponing development and consideration of local legislation, and supporting programs that promote reusable bags.

## I. DISCUSSION:

### Litigation

In 2008, the Coalition to Support Plastic Bag Recycling filed suit under the California Environmental Quality Act (CEQA) against the City of Oakland after it adopted a ban on plastic bags. In April 2008, the Alameda Superior Court ruled that the City abused its discretion in relying on an exemption in adopting the ban because sufficient evidence in the administrative record raised a fair argument that the ban could result in an increased use of paper bags which could have a significant environmental effect. This decision rendered Oakland's ordinance invalid.

In July, 2008 the Save the Plastic Bag Coalition, an association of plastic bag manufacturers, filed a CEQA lawsuit against Los Angeles County for adopting a phased ban of plastic bags for failure to conduct adequate environmental review. The outcome of that case is yet to be determined.

In August, 2008 the Save the Plastic Bag Coalition files suit under CEQA for the City of Manhattan Beach's failure to prepare an environmental impact report (EIR) prior to adoption of an ordinance banning plastic bags. In February 2009, the Los Angeles Superior Court found that substantial evidence in the administrative record supported the Coalition's claim that an EIR must be created and invalidated Manhattan Beach's ordinance.

Plastic industry groups have also threatened to sue several other local agencies for moving to ban or reduce the use of plastic bags, including Fairfax, Morgan Hill, Mountain View, San Diego, San Jose, Santa Clara County, Santa Cruz, Santa Monica, and Palo Alto.

Several of the cities that were sued or threatened with litigation have retreated from plastic bag bans or fines. Many of those cities are opting instead to support local education campaigns and/or statewide legislation aimed at reducing the use of plastic bags.

### Legislation

The following status report on legislation is based on the latest information available. Active legislation often changes through the process and several of the referenced bills have evolved significantly through the process. The history of each bill can be found at the web links referenced.

*AB 68 (Brownley) – Would establish a 25 cent fee for single-use carryout bags of all types beginning in 2010. Would also preempt local governments from imposing a fee on plastic bags at stores complying with state law. The bill is active in the House and the*

status can be reviewed at the California Legislature web site:

[http://www.legislature.ca.gov/cgi-bin/port-postquery?bill\\_number=ab\\_68&sess=CUR&house=B&author=brownley](http://www.legislature.ca.gov/cgi-bin/port-postquery?bill_number=ab_68&sess=CUR&house=B&author=brownley)

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AB 1141 (Calderon) - Would establish a 0.001 cent manufacturing fee on plastic bags and a 50% recycling goal and mandatory reporting. Cities would be pre-empted from requiring stores that meet the law from implementing separate recycling programs or from imposing a fee on plastic bags. Originally this bill was drafted to prohibit local governments from banning single-use carryout bags.

[http://www.legislature.ca.gov/cgi-bin/port-postquery?bill\\_number=ab\\_1141&sess=CUR&house=B&author=charles\\_calderon](http://www.legislature.ca.gov/cgi-bin/port-postquery?bill_number=ab_1141&sess=CUR&house=B&author=charles_calderon)

SB 228 (DeSaulnier) This bill would require a manufacturer of a marine degradable or compostable plastic bag meeting those standards to ensure that the marine degradable or compostable plastic bag is readily and easily identifiable from other plastic bags.

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SB 531 (DeSaulnier) - This bill would establish the Single-use Carryout Bag Responsibility Act, that effectively adds details to pre-existing plastic bag manufacturer obligations regarding recycling education. [http://www.legislature.ca.gov/cgi-bin/port-postquery?bill\\_number=sb\\_531&sess=CUR&house=B&author=desaulnier](http://www.legislature.ca.gov/cgi-bin/port-postquery?bill_number=sb_531&sess=CUR&house=B&author=desaulnier)

**III. ATTACHMENTS:**

DailyBreez.com article regarding Manhattan Beach legislation, April 11, 2009

DailyBreeze.com

# Undeterred, Manhattan Beach looks to curb plastic

City looks for ways to limit disposable bags in spite of court ruling against ban.

By Andrea Woodhouse, Staff Writer

Posted: 04/11/2009 10:24:55 PM PDT

DAILY BREEZE BLOG » Green Around the Edges

A recent court rejection of Manhattan Beach's ban on plastic bags hasn't warmed the city any toward the synthetic carriers.

Already appealing the February ruling, Manhattan Beach is also pursuing other ways to reduce plastic in town, including backing two pieces of proposed state legislation that would impose in-store fees on paper or plastic carryout bags.

Under Assembly Bills 68 and 87, both recently endorsed by city leaders and set Monday for a state Assembly commission hearing, shoppers would pay a 25-cent fee on every plastic or paper carryout bag they get at a supermarket, pharmacy or convenience store chain.

Though the bills would not ban plastic bags, the legislation would encourage consumers to carry reusable totes - which was always the intention behind Manhattan Beach's ill-fated prohibition,

Mayor Portia Cohen said.

"I thought there might be some confusion with respect to us supporting legislation to charge for plastic bags," she said. "It sounds like a conflict, but it's really a dual tactic to discourage the use of plastic bags."

Assemblyman Mike Davis, D-Los Angeles, proposed AB 87, and Assemblywoman Julia Brownley, D-Santa Monica, introduced AB 68.

More than 70 miles of coast and wetlands make up Brownley's district, which prompted her to draft legislation that she believed could ease marine pollution, spokeswoman Linda Rapattoni said.

The language in the two bills is similar, both directing funds from their imposed fees to the abatement of litter from single-use bags. But AB 68, also supported by nonprofit environmental group Heal the Bay, explicitly states the legislation would not preempt a municipality from banning single-use bags, as Manhattan tried in July.

Superior Court Judge David Yaffe rejected the ban earlier this year, agreeing with a group of plastics manufacturers that Manhattan Beach should have studied how a proliferation of paper bags - a likely result of banning plastic carriers - might harm the environment.

Manhattan won't likely know the results of its appeal for a year, and the city has backed away from conducting an environmental impact report,

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which Cohen estimated could cost more than \$100,000.

Instead, Manhattan Beach hoped to piggyback onto an environmental analysis set to be conducted by Los Angeles County.

In January 2008, the county Board of Supervisors approved a program calling for supermarkets and large retailers to voluntarily reduce distribution of plastic carriers.

Should businesses not meet a 65 percent reduction goal by 2013, the county could impose an all-out ban on plastic bags.

Part of the supervisors' direction at the time included asking staff to prepare a draft ordinance banning plastic bags and study the possible environmental consequences of a prohibition by April 2010.

According to the Environmental Programs Division of the county Public Works Department, work has begun on the environmental study, which could take up to a year to complete. The analysis should also take a countywide scope, which would allow communities to incorporate its results into their own bans on plastic bags, Cohen said.

"Our ban would not be enforceable for at least a year, if not longer, which is fine because the ban was only a mechanism toward the real goal, which is influencing folks to use reusable bags," she said.

To that end, Manhattan Beach has opposed two other pieces of proposed state legislation that city leaders did not believe would encourage consumers to rely on reusable bags.

"My sentiment is these are all means to an end, and we will continue to persuade folks to use the reusable carryout bags," Cohen said. "I think time will help change behavior. I'm positive about it."

andrea.woodhouse@dailybreeze.com

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8. Consideration of update on litigation and state legislation concerning local regulations of light weight plastic shopping bags

STAFF RECOMMENATION: Receive informational report

DOCUMENTS:

Staff Report dated May 11, 2009 prepared by Dave Durflinger, City Manager with attached DailyBreez.com article regarding Manhattan Beach legislation, April 11, 2009

The City Manager explained that The City Council requested a report on the status of cities' efforts to regulate the use of light weight plastic grocery type bags and state legislation of same. Initially, the City Council considered this matter along with a ban on non-recyclable plastic take-out food containers. In late 2008, the City Council determined to proceed with establishing City regulations on the use of non-recyclable plastic take-out food containers, and to monitor litigation and state legislation pertaining to cities efforts to regulate the use of plastic bags.

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Litigation

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UPDATE ON  
LITIGATION AND  
STATE LEGIS-  
LATION RE  
REGULATION OF  
PLASTIC  
SHOPPING BAGS

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*AB 87 (Davis) – Would establish a 25 cent fee for single-use carryout bags of all types beginning in 2010. <http://www.legislature.ca.gov/cgi-bin/port->*

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The City Attorney provided some additional new information concerning the litigation going on in several Manhattan Beach and Palo Alto. He said he concurs with staff recommendation of not pursuing a ban at this time but rather to be watchful of the current litigation going on and to see what happens with the bills pending at the State level. He noted that it was likely that something will come out of Sacramento this year.

CITY ATTORNEY

The City Manager said that the Council has promoted the use of reusable bags through donations to Carpinteria Beautiful for their April campaign of education urging people to use reusable bags and their distribution of 6000 reusable bags to residents.

CITY MANAGER

Nan Drake, representing E.J. Harrison, spoke to the problems of dealing with plastic bags at their recycling facility and the regulations in place at the landfills. She said there is no market for recycled plastic grocery bags and stressed that recycling only works if there is a marketplace for the product. She discussed what the current status is for recycled goods. She

NAN DRAKE

urged the Council to write to our legislators and to the California Integrated Waste Management Board.

Councilmember Reddington said that more education needs to continue to be provided concerning the negative impacts of plastic grocery bags. She questioned how Malibu was able to adopt a ban on plastic bags without incurring litigation.

REDDINGTON

The City Attorney responded that Malibu apparently slipped through their ordinance and made it through the 30 day statute period.

CITY ATTORNEY

Vice Mayor Clark questioned have any cities enacted surcharges on plastic bags?

CLARK

The City Attorney responded no not that he is aware of.

CITY ATTORNEY

Councilmember Reddington said that she would like to be proactive and pursue a ban on plastic grocery bags now mirroring Malibu's ordinance.

REDDINGTON

Councilmember Stein said he was not prepared to adopt a ban at this time and would rather send letters to legislators and the Waste Management Board in support of action at the State level.

STEIN

Mayor Carty said that waiting is a better and safer route for the right now.

CARTY

Councilmember Armendariz said that he would have to have a very comprehensive report on the impacts of adopting a ban before he could consider an ordinance. He said that the education route should continue and the City should wait and see how the pending bills in Sacramento play out.

ARMENDARIZ

Vice Mayor Clark said that he supports banning plastic grocery bags but not at this time. He supports waiting to see what happens in Sacramento and sending letters now.

CLARK

Councilmember Reddington reiterated her position supporting a ban now and said that, if a ban is not feasible at this time, she would like to revisit the matter in the near future.

REDDINGTON

The City Manager briefly explained the CEQA process the City must follow in evaluating whether a project is exempt or not.

CITY MANAGER

Councilmember Armendariz questioned if a citizens group placed an initiative on the ballot banning plastic grocery bags would an

ARMENDARIZ

Environmental Impact Report be necessary?

The City Attorney responded that as a general rule citizens initiatives do not require environmental review.

The Council concurred to direct staff to prepare letters to the California Integrated Waste Management Board and to local legislators (particularly Assemblyman Pedro Nava) for signature by the Mayor.

Councilmember Stein suggested that staff make copies of the report prepared approximately one year ago that provided a comprehensive review of the pros and cons of a plastic bag ban, and provide them to the Council.

CITY ATTORNEY

COUNCIL  
REQUESTS  
STAFF TO  
PREPARE  
LETTERS TO  
LOCAL  
LEGISLATORS

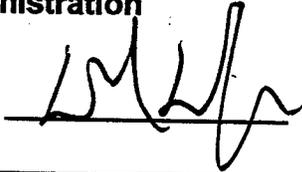
**STAFF REPORT**  
**COUNCIL MEETING DATE:**  
**July 28, 2008**

**ITEM FOR COUNCIL CONSIDERATION:**

**Request for financial support for the Bring Your Own Bag program of the Carpinteria Beautiful organization.**

**Department: Administration**

**City Manager**



*Administrative Services Director*

**STAFF RECOMMENDATION:**

**Authorize the City Manager to enter into an agreement with Carpinteria Beautiful that will provide a funding match of \$2,000 to support the purchase of reusable grocery bags as a part of the Bring Your Own Bag program.**

**I. BACKGROUND/DISCUSSION**

The local non-profit, volunteer organization, Carpinteria Beautiful, is proposing to establish a program in the City of Carpinteria that would encourage residents to use reusable shopping bags rather than plastic bags. The effort will be known as the "Bring Your Own Bag" program. A description of the program is included in the attached letter from Carpinteria Beautiful, dated July 14, 2008. The proposed program would include the purchase of 5,000 reusable grocery bags, which will be distributed to local residents. In addition, the program will undertake a variety of promotional activities aimed at educating the public and encouraging residents to get in the habit of using reusable grocery bags rather than plastic or paper.

The City is being asked to participate through, at a minimum, a contribution of \$2,000. That amount is proposed as a match of the financial commitment being made by the Carpinteria Beautiful organization. The total estimated cost of the program is \$8000

and Carpinteria Beautiful states that it also intends to solicit financial assistance from other agencies and organizations.

The proposed program would be the second effort to distribute reusable bags made by Carpinteria Beautiful and the organization intends to fashion the subject program based on what they learned in the prior, smaller, bag distribution. Staff believes that the Carpinteria Beautiful program would be complimentary to the City's own efforts to reduce the use of plastic bags and EPS food containers.

As the City Council is aware, it directed staff in February of this year to research and draft regulations that would ban plastic grocery store bags and EPS food containers, such as Styrofoam. At that time it was anticipated that draft regulations would be brought before the City Council for consideration within three to four months and that the transition to a ban could occur by the end of the year. However, the schedule has been delayed as important legal cases and legislation on the issue are being followed that will influence the City's efforts. For example, there are several pieces of State legislation pending that would limit the use of plastic bags in California. Some legislation being considered would also preempt local regulations. There have also been legal challenges to local regulations banning plastic bags by plastic and chemical industry groups<sup>1</sup>. City staff intends to bring the City Council a report on the plastic bag and EPS food container ban work on September 22.

The City Council also directed staff to work with the Chamber of Commerce in order to inform the business community about the proposed bans and to gain input from local businesses for consideration in the drafting of the regulations. The City Council/Chamber of Commerce Committee met once to discuss related issues and it was agreed that a business community meeting would be held. The form and date of the meeting are currently being discussed with the Chamber of Commerce and the meeting is expected to occur in early September.

The proposed Carpinteria Beautiful program and any City contribution would be independent of the ongoing research and drafting of regulations directed by City Council. An effective education program that encourages the use of reusable bags can serve as a compliment to local regulations and would allow for efforts to reduce the use of plastic bags in Carpinteria to begin much sooner than when it is expected local and/or statewide regulations will be able to take effect. For the reasons stated above, staff recommends that the Council authorize the City Manager to enter into an agreement with Carpinteria Beautiful that will provide a funding match of \$2,000 to support the purchase of reusable grocery bags as a part of the Bring Your Own Bag program.

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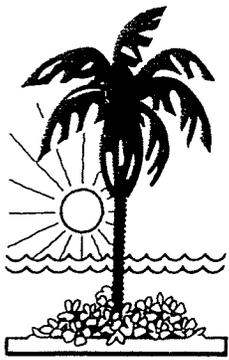
<sup>1</sup> In *Coalition to Support Plastic Bag Recycling v. City of Oakland*, the Alameda County Superior Court issued an injunction against enforcement of Oakland's plastic bag ordinance. The court determined that a more comprehensive environmental review should have been conducted. The City of Oakland has not yet decided whether it will conduct more comprehensive environmental review in order to re-adopt the ordinance. The City Attorney's office recently spoke with a City of Oakland representative who stated that they are estimating that a more comprehensive environmental review will cost over \$200,000. It appears that Oakland's City Council hopes to rely on State regulations rather than pursuing its own local ordinance. Recently, the Oakland City Council voted unanimously to support Assembly Bill 2058 (Levine), state legislation that seeks to curtail the use of plastic bags.

**II. FINANCIAL ISSUES:**

The City's adopted 2008-09 Budget includes \$10,000 in the Communication and Community Promotions Program for contract and/or project costs associated with City efforts to reduce energy consumption, litter, and the amount of material going to landfills. To date, \$600 has been appropriated for the City's participation in the County of Santa Barbara Green Business Program.

**III. ATTACHMENTS:**

Carpinteria Beautiful letter, dated July 14, 2008



**Carpinteria  
Beautiful**

**FILED  
CITY OF CARPINTERIA**

JUL 14 2008

**JAYNE DIAZ  
CITY CLERK**

July 14, 2008

Dear Mayor Ledbetter and City Council,

In February of this year, your Council began a legislative process that has as one aspect the reduction or elimination of one-use plastic grocery bags in Carpinteria.

Carpinteria Beautiful applauds and supports your action. The enormity of the environmental damage caused by the disposal of literally billions of these bags has now been recognized world-wide. Entire countries, such as China, Bangladesh and Rwanda are banning their use. Others, such as Ireland, have greatly reduced consumer demand by applying a tax to each bag. In California, the Legislature is working on ways to reduce impacts through enhanced recycling programs, and a number of California cities have enacted or are considering their own local bans.

Our organization is encouraged by these legislative actions but also realizes that additional steps may have to be taken to bring about the desired change, particularly in the area of consumer behavior. One approach would be to provide incentives for shoppers to voluntarily switch from plastic to reusable bags. Your February staff report stressed the importance of providing a rationale through public education and also suggested that making reusable bags available to the community would be a good motivational tool. It advised a partnership with local organizations to accomplish this.

It is in regard to these two components, public education and the motivation of shoppers to switch to reusable bags, that we write to you today.

Carpinteria Beautiful is designing a program to purchase and distribute – free - a minimum of 5000 reusable grocery bags, with a goal of reaching at least 50% of Carpinteria households. The bags will be a colorful royal blue, printed with the Carpinteria flag logo, including CARPINTERIA, in prominent lettering. The purpose of the distribution is to give shoppers a tangible head-start on making the switch away from plastic by giving them a bag they'll be motivated to carry.

As a lead-up to the distribution, there will be public outreach and an educational campaign utilizing the media and presentations to local service clubs. Posters will be created using a theme of BYOB, Bring Your Own Bag, to place in stores as reminders. The elementary schools will be asked to help get the message to parents.

The budget for this project is projected to be around \$8000. That would include the cost of the bags at \$1.15 each as well as an aggressive educational campaign. Carpinteria Beautiful has committed \$2000 to the project and asks that the City Council consider at least matching this amount. Supervisor Carbajal has indicated that he will help us solicit County funding and we plan to approach Harrison & Sons for their participation.

Carpinteria Beautiful envisions this project as a broad community effort. It is hoped that service club members, teachers, public employees and other active citizens will set an example and create interest through their own use of the Flag Bag. Merchants will help by prominently displaying the posters. The local media, newsletters from organizations and businesses, and the schools will help with information and encouragement. A partnership among government, concerned business interests and non-profits will provide the funding.

At this time, we respectfully ask that you place this item on your July 28<sup>th</sup> agenda to allow us to make a short presentation and to discuss the program with you in more depth. We feel not only that this is an action whose time has come, but also that it complements your proposed legislative program and will once again put Carpinteria in the forefront of addressing an important environmental issue.

I look forward to hearing from you.

Respectfully,

A handwritten signature in black ink that reads "Bill Crowley". The signature is written in a cursive style with a large, prominent "B" and "C".

Bill Crowley  
Co-chair, Reusable Bag Committee  
Carpinteria Beautiful

Bill Crowley  
1317 Trieste  
Carpinteria, CA 93013  
563-4023  
bcrowley@prusb.com

7. Consideration for financial support for the Bring Your Own Bag program of the Carpinteria Beautiful organization

STAFF RECOMMENDATION: That the City Council authorize the City manager to enter into an agreement with Carpinteria Beautiful that will provide a funding match of \$2,000 to support the purchase of reusable grocery bags as a part of the BYOB program.

DOCUMENTS:

Staff Report dated July 28, 2008 prepared by Dave Durflinger, City Manager with attached letter from Carpinteria Beautiful dated July 14, 2008

The local non-profit, volunteer organization, Carpinteria Beautiful, is proposing to establish a program in the City of Carpinteria that would encourage residents to use reusable shopping bags rather than plastic bags. A description of the program is a part of the attached letter from Carpinteria Beautiful, dated July 14, 2008. The proposed program would include the purchase of 5,000 reusable grocery bags to be distributed to residents as well as a variety of promotional activities aimed at educating the public and encouraging residents to get in the habit of using reusable grocery bags rather than either plastic or paper.

The City is being asked to participant through, at a minimum, a contribution of \$2,000. That amount is proposed as a match of the financial commitment being made by the Carpinteria Beautiful organization. The total estimated cost of the program is \$8000 and Carpinteria Beautiful states that it also intends to solicit financial assistance from other agencies and organizations.

The proposed program would be the second effort to distribute reusable bags made by Carpinteria Beautiful and the organization intends to fashion the subject program based on what they learned in the prior, smaller, bag distribution. Staff believes that the Carpinteria Beautiful program would be complimentary to the City's own efforts to reduce the use of plastic bags and EPS food containers.

As the City Council is aware, it directed staff in February of this year to research and draft regulations that would ban plastic grocery store bags and EPS food containers, such as Styrofoam. At that time it was anticipated

FINANCIAL  
SUPPORT FOR  
BRING YOUR  
OWN BAG  
PROGRAM

that draft regulations would be brought before the City Council for consideration within three to four months and that the transition to a ban could occur by the end of the year. However, the schedule has been delayed as important legal cases and legislation on the issue are being followed that will influence the City's efforts. The City Council also directed staff to work with the Chamber of Commerce in order to inform the business community about the proposed bans and to gain input from local businesses for consideration in the drafting of the regulations. The City Council/Chamber of Commerce Committee met once to discuss related issues and it was agreed that a business community meeting would be held. The form and date of the meeting are currently being discussed with the Chamber of Commerce and the meeting is expected to occur in early September.

City staff intends to bring the City Council a report on the plastic bag and EPS food container ban work on September 22. There are several pieces of State legislation pending that would limit the use of plastic bags in California. Some legislation being considered would also preempt local regulations. There have also been legal challenges to local regulations banning plastic bags by plastic and chemical industry groups<sup>1</sup>.

The proposed Carpinteria Beautiful program and any City contribution would be independent of the ongoing research and drafting of regulations directed by City Council. An effective education program that encourages the use of reusable bags can serve as a compliment to local regulations and would allow for efforts to reduce the use of plastic bags in Carpinteria to begin much sooner than when it is expected local regulations will be able to take effect.

Councilmember Clark questioned if the City has contacted anyone at the City of Manhattan Beach who recently passed an ordinance banning plastic grocery bags?

The City Manager responded that he will contact the City of Manhattan Beach.

Donna Jordan, representing the Reusable Bag Committee of Carpinteria Beautiful, spoke to the worldwide environmental disaster caused by plastic grocery bags in addition to many other problems they create. She shared a brief slide presentation demonstrating the negative effects of plastic grocery bags to the environment.

DONNA JORDAN

Mrs. Jordan said that Carpinteria Beautiful is interested in the voluntary side of bringing about the change we all desire via the use of education,

persuasion and setting good example to move consumers away from the use of plastic bags.

Bill Crowley, representing the Reusable Bag Committee, Carpinteria Beautiful, provided an overview of the program Carpinteria Beautiful initiated approximately three months ago wherein 1,000 bags were distributed free throughout the community. He detailed what was learned from the initial program and how it will be enhanced with the current project.

Nancy VanAntwerp, representing the Reusable Bag Committee, Carpinteria Beautiful, explained and showed a mock up of the new Carpinteria reusable "Flag Bag" which is modeled in the colors of the City flag. She said that Carpinteria Beautiful would like to distribute 5000 "Flag Bags" to the community.

Discussion followed.

Motion was made by Councilmember Armendariz and seconded by Vice Mayor Carty to authorize the City Manager to enter into an agreement with Carpinteria Beautiful that will provide a funding match of \$2,-000 to support the purchase of reusable grocery bags as a part of the Bring Your Own Bag program.

The motion was unanimously adopted by voice vote (Stein absent).

BILL CROWLEY

NANCY  
VanANTWERP

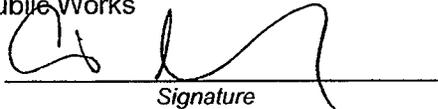
COUNCIL  
APPROVED  
REQUEST FOR  
FUNDING

**STAFF REPORT**  
**COUNCIL MEETING DATE:**  
**March 28, 2011**

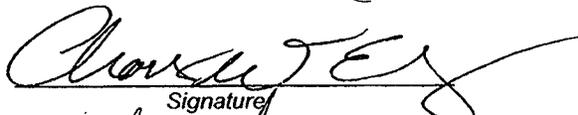
**ITEMS FOR COUNCIL CONSIDERATION:**

**Update on litigation and state legislation concerning local regulations of single use plastic bags**

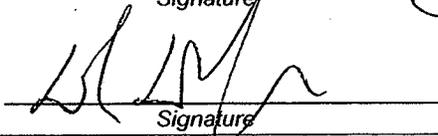
**Report prepared by:** Erin Maker, Environmental Coordinator  
**Department:** Public Works

  
Signature

**Reviewed by  
Public Works  
Director:**

  
Signature

**Reviewed by  
City Manager:**

  
Signature

**STAFF RECOMMENDATION:**

**Receive this informational report.**

**I. BACKGROUND:**

The City Council requested that staff keep it up to date on the status of cities' efforts and state legislation to regulate the use of single use and light weight plastic bags. In 2008, the City Council considered this matter along with a ban on non-recyclable take-out food containers. The City Council proceeded with establishing regulations on the use on non-recyclable take-out food containers and for staff to monitor litigation and state legislation pertaining efforts to regulate the use of plastic bags.

Staff and the City Attorney's office have been monitoring the legislative and legal climates related to local regulations of plastic bags. The development of regulations would likely require the preparation, processing and certification of an Environmental Impact Report (EIR). While EIR's can be complex and time consuming, an EIR can lower the risk of legal challenges to

regulations municipalities might consider. Recently, several municipalities in California have chosen to conduct EIR's for implementation under CEQA, including the City of Santa Monica, City of San Jose and the County of Los Angeles. These EIR's have been produced in response to challenges from organizations and the public of municipalities' ordinances. Lawsuits filed against the County of LA, City of Santa Monica and City of San Jose were dropped following completion of the Environmental Impact Report.

## II. DISCUSSION:

### Local Regulations

In 2008, the Save the Plastic Bag Coalition, the most active of groups challenging municipalities' efforts to reduce plastic bag usage, filed suit under CEQA for the City of Manhattan Beach's failure to prepare an EIR prior to adoption of an ordinance banning plastic bags. The Los Angeles Superior Court ruled in February 2009 that the City needed to complete and certify an EIR before Manhattan Beach's bag ban could be approved and implemented. Manhattan Beach appealed this decision, and in April 2010 the California Supreme Court announced it would hear this appeal. The case is currently before the Supreme Court and awaiting a hearing date.

In February 2011 the Save the Plastic Bag Coalition filed suit against Marin County under CEQA for failure to prepare an EIR. Marin County's ordinance, passed in January 2011, banned plastic bags and imposed a fee on paper bags. The Coalition has in the past filed formal legal objections against cities and counties proposing ordinances regulating plastic bag use, including the City of Palo Alto, the City of Encinitas, the City of San Jose, the City of Santa Monica and the County of Los Angeles. The base of these suits includes objections to language specific to those ordinances and/or failure by the agency to prepare an EIR.

The County of Los Angeles adopted an ordinance banning single-use plastic bags in November 2010. The ordinance also placed a ten cent charge on paper bags. Prior to adoption, an EIR was completed to cover the ordinance for the County of L.A. and similar ordinances in all 88 cities in the County. To date, there have been no challenges to the County's ordinance and the time to challenge the EIR has passed. Following the County of L.A.'s lead, and relying on its EIR, the City of Calabasas adopted a ban on plastic bags in March 2011.

The City of Santa Monica and City of San Jose also passed ordinances banning plastic bags following the completion of EIR's; the time to challenge both EIR's ran without suit being filed. The Save the Plastic Bag Coalition dropped all pending charges against the City of Santa Monica and the City of San Jose, as well as the County of Los Angeles, following completion of the EIR's.

In an effort to assist with implementation of these types of ordinances, Green Cities of California, a consortium of municipalities, and Heal the Bay have proposed a model ordinance for local governments. However, this model is not endorsed by the League of California Cities. Green Cities of California also commissioned a Master Environmental Assessment on single use and reusable plastic bags. This document could be used to assist municipalities in preparing EIR's to reduce the cost and staff time spent on preparation by reducing the need for independent research.

Among other legal issues faced by municipalities is the possibility of a challenge to an ordinance if the City imposes fees on plastic bag use. The applicability of Prop 26 to any particular ordinance would depend on its terms; City attorneys generally believe there are ways to charge fees on bags without it constituting a tax subject to voter approval under Prop 26. Agencies have argued that Prop 26 does not apply because it is not a government fee; stores levy the fee and collect the proceeds. However, there is a difference of opinion in this and it could play out in the court system.

### State Legislation

Legislation has been introduced regarding the regulation and/or ban of single use plastic bags. Below, the most current legislation is listed. Because active legislation often changes through the process, you can view the history of each bill [www.legalinfo.ca.gov](http://www.legalinfo.ca.gov).

#### **AB298**

In apparent response to concerns raised about reusable bags, Assembly Bill 298 was introduced to place certain restrictions on the manufacturing and distribution of reusable bags. Reusable bag manufacturers would be prohibited from selling or distributing bags in California unless they are made of a material that can be cleaned or disinfected and are free of heavy metals in toxic amounts.

#### **SB915**

Senate Bill 915 would require a reduction in plastic bag use, establish mandatory levels of recycled content in plastic bags, increase funding for recycling education and establish incentives for consumers to return or recycle plastic bags. This bill would suspend local plastic bag ordinances and prohibit local governments from taking certain actions regarding plastic bags.

The City's current strategy regarding plastic bags is to promote the use of reusable bags. To this end, the City provided financial support to Carpinteria Beautiful in its effort to distribute 5000 reusable bags in 2009, as well as educating the public on the importance of using reusable bags. Staff has recommended declaring April 2011 Reusable Bag Month and promoting reusable bags in conjunction with the Carpinteria Beautiful sticker distribution.

At this time, the City has several options regarding course of action to take.

1. Draft local regulations to ban plastic bag use and a supporting EIR. At this time, agencies that have passed ordinances regulating plastic bag use with a completed EIR to support the ordinance have not been challenged. However, EIR's are expensive and there is still a chance the City could face litigation.
2. Lobby other agencies in the County, or on the South Coast, to prepare a joint EIR that covers all agencies in Santa Barbara County, similar to the County of Los Angeles EIR covering all 88 cities within L.A. The cost of the EIR would then be distributed among the participating agencies.
3. Continue with the current stance by promoting reusable bags through declaring April reusable bag month and supporting education efforts by local organizations, as well as the City's own education efforts.

Albertsons has launched a pilot program at its Carpinteria location to 'go bagless', banning all single use bags by April 27, 2011. The attitude toward single use bags seems to be moving in this direction throughout the Central and South Coast, in which case spending funds on regulation in the City may not be necessary. There is also a chance state legislation will pass suspending all local ordinances regarding plastic bags. Plastic bag bans are still extremely controversial in nature and vulnerable to challenge.

**III. ACTION ITEMS:**

1. Direct staff to take one of the aforementioned actions of either developing an EIR to support a local ordinance regulating plastic bag use, lobbying other local agencies to prepare a joint EIR or continue promoting reusable bag use.
2. Do not select one of the above options and further direct staff.

the community before this date. He expressed his hope for everyone's support of the bagless effort.

### **AGENDA MODIFICATIONS**

Mayor Clark noted an agenda modification to move Item 13 at this time.

13. Update on Litigation and State Legislation Concerning Local Regulations of Single Use Plastic Bags

Erin Maker, Environmental Coordinator, presented the staff report.

Deputy City Attorney Alexandra Barnhill responded to a question regarding whether any legal challenges had been brought against citizen initiatives to ban plastic bags by stating that she was not aware of any legal challenges. She noted that a citizen initiative was not subject to the California Environmental Quality Act (CEQA) and therefore may resolve issues associated with these types of ordinances. She further responded to a question regarding whether the League of California Cities had endorsed the model ordinance for local governments by stating that the League of California Cities indicated they were not in support. She noted that staff submitted an inquiry regarding the specific reason; however, staff had not yet received a response.

Donna Jordan stated that Carpinteria Beautiful has been very interested in this subject for a number of years; however, at this point they would not ask the City Council to move forward with this legislation. She suggested waiting to see how the community reacts to their initiative to use only reusable bags and perhaps ask staff to bring back an update in three to four months.

Tom McBride noted that in the movie "The Graduate" Dustin Hoffman was informed that plastics would be the future in the business world. He stated that one of the worst things that people do is wrap trash and place dog waste in plastic bags. He suggested that this legislation be studied as it appeared it could be litigious, and he expressed his support in educating and reminding people about reusable bags.

A discussion ensued regarding supporting Former Mayor Jordan's suggestion to receive an update in a few months; educating the community and promoting reusable bags; lobbying other cities in the County to try to put together a consortium to prepare an environmental impact report regarding plastic bags; and the possibility of a citizens initiative as an approach as these types of initiatives appear to find safe harbor with respect to litigation and bypass the need for environmental impact reports.

**PUBLIC INFORMATION REPORTS AND ANNOUNCEMENTS:** None

**PRESENTATIONS BY CITIZENS/PUBLIC COMMENT**

**STAFF REPORT**  
**COUNCIL MEETING DATE:**  
**June 28, 2010**

**ITEM FOR COUNCIL CONSIDERATION:**

**Letter of support related to AB 1998, the Single-Use Bag Reduction Act.**

**Department: Administration**

**City Manager**

  
Dave Durrflinger

**STAFF RECOMMENDATION:**

**Authorize the Mayor to sign a letter supporting the passage of AB 1998, the Single-Use Bag Reduction Act.**

**I. BACKGROUND:**

The City Council has requested that staff monitor legislation and litigation related to the local regulation of single use plastic bags. Since the last report provided to the City Council in May 2009, two significant changes have occurred. Legislation is currently making its way through the State process that would ultimately prohibit the distribution of single use plastic shopping bags in California, including Carpinteria grocery and convenience stores. Also, a coalition of cities has completed a Master Environmental Impact Report that could serve as the basis for cities to evaluate and understand the environmental impacts of local regulations that prohibit the use of these types of bags.

The City Council will recall that it initially considered this matter along with a ban on non-recyclable plastic take-out food containers. In late 2008, the City Council determined to proceed with establishing City regulations on the use of non-recyclable plastic take-out food containers, and to monitor litigation and state legislation pertaining to cities efforts to regulate the use of plastic bags.

Previously, the City Council expressed an interest in establishing local regulations that would either serve as a significant disincentive to stores and/or customers use of plastic shopping bags, or to simply prohibit their use in Carpinteria. This interest was based on evidence provided to the City Council, including public testimony, that light weight plastic bags routinely end up on the environment as litter and can do significant harm to sensitive habitat areas and marine life.

Staff previously reported to the City Council that it felt that the State ultimately establish law regulating single use plastic bags in the State and that local regulations could be preempted. Based on the prior review of this matter by the City Council, Staff has determined that AB 1998 could further the City Council's interests by phasing out their use in Carpinteria and other California cities. A draft letter of support for AB 1998 is attached for the City Council's consideration.

**I. DISCUSSION:**

The following is an update on litigation and legislation associated with regulation of single-use plastic bags in California.

**Litigation.**

Adopting a ban on plastic bags still carries significant litigation risk. San Francisco adopted the first local ban in California in 2007, which was not challenged. Shortly thereafter, Oakland adopted a similar ban and deemed that action exempt from the California Environmental Quality Act. That ordinance was successfully challenged by the Coalition to Support Plastic Bag Recycling ("Coalition"). The lawsuit alleged that Oakland failed to conduct adequate environmental review under CEQA in light of the effect such a ban has on the increased use of alternative products like paper bags which have their own environmental consequences. The court determined the adoption of a ban could have environmental impacts so the City abused its discretion by relying on categorical exemptions and invalidated Oakland's ordinance.

Since winning the case against Oakland, the Coalition has brought suit against a number of other cities that have enacted plastic bags.

For example, in 2008 the Coalition challenged the City of Manhattan Beach's ban for failure to adequately evaluate environmental impacts of the ordinance. There the city prepared a negative declaration which found that any environmental impacts from an increased use in paper bags would be insignificant given the small size of the city and the disproportional replacement ratio. In 2009, the trial court agreed with the Coalition that in light of substantial evidence in the record a fair argument could be made that the ban would hurt the environment, which required a full environmental impact report. In January 2010, this decision was affirmed by the Court of Appeal. The California Supreme Court has agreed to review the case, which it is expected to hear in late 2010 or early 2011.

In July 2008, the Coalition filed suit against the County of Los Angeles' plastic bag ban, because the County did not prepare an EIR. LA County recently adopted a phased-in ban that starts out voluntary and only imposes enforcement mechanisms if 30% diversion is not achieved by 2010 and 65% diversion is not achieved by 2013. In March 2010, the Coalition settled the case with LA County. The settlement stipulates that the County is not committed to banning plastic bags, even if the 30% reduction goals are not met. The County also agreed to prepare an EIR.

In early 2009, the Coalition filed suit against the City of Palo Alto's plastic bag ban which was adopted with a mitigated negative declaration, not an environmental impact report. This case was eventually settled. The settlement agreement required the Palo Alto to agree not to ban plastic bags at any more stores without first preparing an environmental impact report.

Plastic industry groups have also threatened to sue several other local agencies for moving to ban or reduce the use of plastic bags, including Encinitas, Fairfax, Morgan Hill, Mountain View, San Diego, San Jose, Santa Clara County, Santa Cruz, and Santa Monica. Several of the cities that were sued or threatened with litigation have retreated from plastic bag bans or fines. Many

of those cities are opting instead to support local education campaigns and/or statewide legislation aimed at reducing the use of plastic bags.

Earlier this year, the City of Santa Monica and other cities cooperated in completing a Master Environmental Assessment as the basis for cities conducting environmental review of plastic bag regulations. The City of Santa Monica expects to complete an Environmental Impact Report (EIR) for its proposed regulations later this year. The City of San Jose is also preparing an EIR in association with the adoption of a plastic bag ban. The San Jose ban would affect most single-use shopping bags, but is not expected to go into effect until 2011.

### **Legislation**

There have been a number of attempts over the last two years by State legislators to regulate single use plastic bags but none have gained the broad support and progressed through the legislative process as far as AB 1998. The State Assembly analysis of the bill states that it:

*Prohibits, on and after January 1, 2012, a store from providing single-use carryout bags to customers at the point of sale. Requires stores to make reusable bags available for purchase and authorizes stores to provide reusable bags at no cost.*

For a complete summary of the provisions, the bill itself and analysis, please see Attachment B to this report.

AB 1998 is supported by numerous environmental groups (Heal the Bay, Sierra Club, Santa Barbara Channel Keeper, etc.), American Federation of State, County and Municipal Employees (AFSCME), who argue single-use bags pollute our marine ecosystem, litter our cities, and consume limited resources, including public funds, the State Lands Commission, and the California Grocers and Retailers Associations.

The bill is opposed by several industry groups (e.g. the American Forest and Paper Association and the American Chemistry Council) and the California Taxpayers' Association, who contend single-use bags are affordable, convenient and environmentally benign when managed properly. Some opponents also argue that banning these bags will needlessly destroy the jobs of the Californians who produce them and raise prices on retail customers.

The League of California Cities has expressed concern about the legislation based on its provisions that preempt local government regulation of single-use plastic bags and due to provisions that would end the in-store plastic bag collection requirements of existing law (AB 2449). The League of Cities letter, dated June 8, 2010, is attached.

The next scheduled review of the bill is before the Senate Committee on Environmental Quality on June 28, 2010.

### **III. ATTACHMENTS:**

- A. Draft letter of support for AB 1998
- B. AB 1998 summary, bill, and analysis
- C. League of California Cities letter of concern

# ATTACHMENT A

# CITY of CARPINTERIA CALIFORNIA

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June 28, 2010

## Members of the City Council

Assembly Member Julia Brownley  
State Capitol, Room 2163  
Sacramento, CA 95814

Gregg Carty - *Mayor*  
Al Clark - *Vice Mayor*  
J. Bradley Stein  
Joe Armendariz  
Kathleen Reddington

Dear Assembly Member Brownley:

On behalf of the City Council and citizens of Carpinteria, I am please to support Assembly Bill (AB) 1998, the Single-Use Bag Reduction Act. As a coastal city responsible for protecting sensitive coastal resources and which relies on coastal recreation as an important part of its local economy, the City of Carpinteria supports statewide efforts to permanently reduce the consumption of plastic and paper single-use carryout bags. AB 1998 represents a determined effort to accomplish this goal in a sustainable manner by banning the distribution of single-use plastic carryout bags at all supermarkets, retail pharmacies and convenience food stores statewide, promoting reusable bags (defined as designed for at least 100 uses, and made of a washable material), and requiring stores to make available for purchase recyclable paper bags, containing a minimum of 40 percent post consumer material content, at a minimum sales price of \$0.05 per bag.

Moreover, the City of Carpinteria finds the urgency in addressing this matter reflected in the bill's commitment to implement the statewide ban on and after January 1, 2012, and for retailers to provide reusable bags or to make available for purchase recycled paper bags by July 1, 2013. The annual distribution of an estimated 19 million plastic bags contributes to urban litter and water pollution, imposing environmental and financial burdens on local communities that grow each year. The provisions of this bill will result in a significant reduction of these adverse impacts and will accelerate the sustainable consumer practice of only using bags with a reusable life.

Sincerely,

Gregg A. Carty  
Mayor

Cc: Assemblyman Pedro Nava, 35<sup>th</sup> District  
State Senator Tony Strickland, 19<sup>th</sup> District

## **ATTACHMENT B**

**AB 1998 (Brownley)** Solid waste: single-use carryout bags.

From text dated: 05/28/10

Existing law requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store. This requirement is repealed on January 1, 2013. This bill would repeal those at-store recycling program requirements on January 1, 2011, and would instead, on and after January 1, 2012, prohibit certain types of stores, as defined, from providing a single-use carryout bag to a customer. The bill would, on and after July 1, 2013, prohibit convenience food stores, foodmarts, and certain specified stores from providing a single-use carryout bag to a customer. The bill would require a store, on and after July 1, 2013, to only provide reusable bags, as defined, or to make available for sale recycled paper bags at a reasonable cost, but not less than \$0.05. The bill would exempt the sale of certain specified bags from the above prohibition and restriction. The bill would, beginning January 1, 2013, require a reusable bag manufacturer to obtain a biennial certification from the Department of Resources Recycling and Recovery by submitting a certification fee and a certification that its reusable bag meets specified requirements. The bill would specify administrative civil penalties for a person who violates the above requirements. The bill would require the department to deposit the certification fees into the Reusable Bag Account, which would be established by the bill in the Integrated Waste Management Fund, and to deposit the penalties and fines collected into the Penalty Subaccount, which would be established by the bill in the account. The bill would provide that moneys in the account and the subaccount would be expended by the department, upon appropriation by the Legislature, to implement the above requirements. This bill would preempt local regulations on the use and sales of reusable bags, single-use carryout bags, recycled paper bags, or other specified bags at stores, as defined.

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 20, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1998**

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**Introduced by Assembly Member Brownley**

(Principal coauthor: Senator Leno)

(Coauthors: Assembly Members Ammiano, Chesbro, De Leon, Evans, Feuer, Hill, Bonnie Lowenthal, Nava, Ruskin, Skinner, Torlakson, and Yamada)

(Coauthors: Senators DeSaulnier, Hancock, Liu, Lowenthal, and Pavley)

February 17, 2010

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~~An act to amend Section 42257 of, and to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of, the Public Resources Code, and to repeal Chapter 5.1 (commencing with Section 42250) of, Part 3 of Division 30 of the Public Resources Code, relating to solid waste.~~  
*An act to add Chapter 5.3 (commencing with Section 42280) to, and to repeal Chapter 5.1 (commencing with Section 42250) of, Part 3 of Division 30 of the Public Resources Code, relating to solid waste.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1998, as amended, Brownley. Solid waste: single-use carryout bags.

Existing law requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store. This requirement is repealed on January 1, 2013.

This bill would repeal those at-store recycling program requirements on January 1, 2012, and would instead, on and after January 1, 2012, prohibit a store *certain types of stores*, as defined, from providing

a single-use carryout bag to a customer. *The bill would, on and after July 1, 2013, prohibit convenience food stores, foodmarts, and certain specified stores from providing a single-use carryout bag to a customer. The bill would require a store, on and after July 1, 2013, to only provide reusable bags, as defined, or to make available for sale recycled paper bags at a reasonable cost, but not less than \$0.05. The bill would exempt the sale of certain specified bags from the above prohibition and restriction. The bill would, beginning January 1, 2013, require a reusable bag manufacturer to obtain a biennial certification from the Department of Resources Recycling and Recovery by submitting a certification fee and a certification that its reusable bag meets specified requirements. The bill would specify administrative civil penalties for a person who violates the above requirements. The bill would require the department to deposit the certification fees into the Reusable Bag Account, which would be established by the bill in the Integrated Waste Management Fund, and to deposit the penalties and fines collected into the Penalty Subaccount, which would be established by the bill in the account. The bill would provide that moneys in the account and the subaccount would be expended by the department, upon appropriation by the Legislature, to implement the above requirements.*

*The bill would require the department, on or before January 1, 2015, to submit to the Legislature a report regarding the effectiveness of the bill's provisions and recommendations to further encourage the use of reusable bags. The requirement for submitting the report would become inoperative on January 1, 2019.*

*This bill would preempt local regulations on the use and sales of reusable bags, single-use carryout bags, recycled paper bags, or other specified bags at stores, as defined.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 ~~(a) The prohibition imposed by this act, pursuant to Section~~
- 4 ~~42281 of the Public Resources Code, is necessary for the~~
- 5 ~~environmental, public health, and societal burdens imposed by~~
- 6 ~~single-use plastic carryout bags.~~

1 ~~(b) Despite global treaties to prevent dumping at sea and~~  
2 ~~minimize land-based sources of pollution, and increasing efforts~~  
3 ~~worldwide to protect water quality, the quantity of marine debris~~  
4 ~~in the world's oceans is increasing.~~

5 ~~(c) Despite recycling and voluntary solutions to control pollution~~  
6 ~~from plastic bags in California, only 5 percent of plastic carryout~~  
7 ~~bags are recycled and the rest either take up valuable landfill space~~  
8 ~~or are discarded in the environment.~~

9 ~~(d) The North Pacific Gyre in the Pacific Ocean is home to the~~  
10 ~~largest accumulation of plastic pollution, now estimated to be the~~  
11 ~~size of the United States and is increasing rapidly.~~

12 ~~(e) According to the California Coastal Commission, the~~  
13 ~~majority of marine debris is composed of plastic materials; 60 to~~  
14 ~~80 percent overall and 90 percent of floating debris is plastic.~~

15 ~~(f) It is estimated that at least 267 species of wildlife have been~~  
16 ~~threatened by marine debris through ingestion or entanglement,~~  
17 ~~including sea turtles, fish, marine mammals, and various species~~  
18 ~~of sea birds.~~

19 ~~(g) Paper bags made from virgin materials are not~~  
20 ~~environmentally sound alternatives to plastic carryout bags because~~  
21 ~~the production of these types of bags contributes to deforestation,~~  
22 ~~natural resource depletion, greenhouse gas emissions, and~~  
23 ~~waterborne wastes.~~

24 ~~(h) Though recycled content paper carryout bags are recyclable~~  
25 ~~and have fewer negative impacts than virgin paper bags, recycled~~  
26 ~~content paper carryout bags are not environmentally sound~~  
27 ~~alternatives to plastic carryout bags, because the production of~~  
28 ~~these types of bags contributes to greenhouse gas emissions and~~  
29 ~~waterborne wastes.~~

30 *(a) The prohibition imposed by this act, pursuant to Section*  
31 *42281 of the Public Resources Code, is necessary to reduce the*  
32 *environmental, public health, economic, and societal costs resulting*  
33 *from the production, use, and discard of single-use plastic carryout*  
34 *bags.*

35 *(b) Despite local and state efforts to minimize land-based*  
36 *sources of pollution, and increasing efforts worldwide to protect*  
37 *water quality, the quantity of plastic pollution in the world's*  
38 *aquatic environments is increasing.*

39 *(c) Recycled content paper carryout bags, while not without*  
40 *their impacts, when made with 40 percent or more postconsumer*

1 *content, are a high value recyclable collected in every curbside*  
2 *and community recycling program in California.*

3 (†)

4 (d) *Plastics made from bio-based sources that are marketed as*  
5 *“compostable” or “biodegradable” are not environmentally sound*  
6 *alternatives to plastic carryout bags because they have not been*  
7 *shown to degrade in aquatic environments and require conditions*  
8 *only available in composting facilities to rapidly break down into*  
9 *constituents that assimilate back into the environment. Most*  
10 *Californians lack access to composting facilities capable of*  
11 *accepting compostable plastic bags.*

12 (‡)

13 (e) *On September 18, 2006, the West Coast Governor’s*  
14 *Agreement on Ocean Health was signed by Governor*  
15 *Schwarzenegger of California, Governor Kulongoski of Oregon,*  
16 *and Governor Gregoire of Washington to address the challenges*  
17 *of the Pacific coast’s declining health and to establish its protection*  
18 *as a regional priority.*

19 (⌘)

20 (f) *On February 8, 2007, the California Ocean Protection Council*  
21 *approved a resolution to call for statewide action to reduce the*  
22 *amount of land-based sources of marine debris and the resulting*  
23 *implementation strategy was adopted by the Ocean Protection*  
24 *Council in November 2008, which called for aggressive actions*  
25 *to reduce the use of single-use plastic products, including plastic*  
26 *bags.*

27 ~~(f) On World Oceans Day 2009, the Under-Secretary General~~  
28 ~~and Executive Director of the United Nations Environmental~~  
29 ~~Programme called for an outright ban or rapid phaseout of thin~~  
30 ~~film plastic carryout bags worldwide.~~

31 ~~(m) In the United States, and in California, many cities have~~  
32 ~~already enacted bans, or are seriously considering banning plastic~~  
33 ~~single-use bags.~~

34 ~~(n) The Legislature finds and declares that proliferation of these~~  
35 ~~bans should be of statewide interest and concern and that the state~~  
36 ~~should take action regulating the use of plastic and paper single-use~~  
37 ~~bags.~~

38 (g) *In the United States, and in California, many cities have*  
39 *already introduced or enacted bans of single-use carryout bags*

1 *creating a patchwork of rules and regulations governing the use*  
2 *and disposal of these bags.*

3 *(h) The Legislature finds and declares that environmental and*  
4 *economic costs posed by single-use bags is of statewide interest*  
5 *and concern and that the state should take action to substantially*  
6 *reduce the use of plastic and other single-use bags.*

7 ~~SEC. 2. Section 42257 of the Public Resources Code is~~  
8 ~~amended to read:~~

9 ~~42257. This chapter shall remain operative only until January~~  
10 ~~1, 2012, and as of that date is repealed, unless a later enacted~~  
11 ~~statute, that is enacted before January 1, 2012, deletes or extends~~  
12 ~~that date.~~

13 *SEC. 2. Chapter 5.1 (commencing with Section 42250) of Part*  
14 *3 of Division 30 of the Public Resources Code is repealed.*

15 *SEC. 3. Chapter 5.3 (commencing with Section 42280) is added*  
16 *to Part 3 of Division 30 of the Public Resources Code, to read:*

17  
18 CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

19  
20 Article 1. Definitions

21  
22 42280. For purposes of this chapter, the following definitions  
23 shall apply:

24 (a) "Department" means the Department of Resources Recycling  
25 and Recovery.

26 (b) "Recycled paper bag" means a paper carryout bag provided  
27 by a store to a customer at the point of sale that meets all of the  
28 following requirements:

29 (1) Contains a minimum of 40 percent postconsumer recycled  
30 content.

31 (2) Is accepted for recycling in curbside programs in a majority  
32 of households that have access to curbside recycling programs in  
33 the state.

34 (3) Is capable of composting, consistent with the timeline and  
35 specifications of the American Society of Testing and Materials  
36 (ASTM) Standard Specifications for Compostable Plastics D6400,  
37 as published in September 2004.

38 (4) Has printed on the bag the name of the manufacturer, the  
39 location (country) where the bag was manufactured, and the  
40 percentage of postconsumer content.

- 1 ~~(b) "Reusable bag" means a bag that meets both of the following~~  
2 ~~(c) (1) Until a standard is established and enforceable by the~~  
3 ~~department, "reusable bag" means a bag that meets both of the~~  
4 ~~following requirements:~~  
5 ~~(1)~~  
6 ~~(A) Is designed and manufactured for at least 100 uses.~~  
7 ~~(2) (A)~~  
8 ~~(B) (i) Is made of a washable material that does not contain~~  
9 ~~lead or any other heavy metal in a toxic amount, as determined by~~  
10 ~~the department.~~  
11 ~~(B) The requirement of subparagraph (A)~~  
12 ~~(ii) The requirements of clause (i) shall not affect any authority~~  
13 ~~of the Department of Toxic Substances Control pursuant to Article~~  
14 ~~14 (commencing with Section 25251) of Chapter 6.5 of Division~~  
15 ~~20 of the Health and Safety Code and, notwithstanding subdivision~~  
16 ~~(c) of Section 25257.1 of the Health and Safety Code, shall not be~~  
17 ~~considered as a product category already regulated or subject to~~  
18 ~~regulation.~~  
19 ~~(e) "Single-use carryout bag" means a bag that meets all of the~~  
20 ~~following conditions:~~  
21 ~~(1) Is designed for one or more uses, but fewer than 100 uses.~~  
22 ~~(2) Is made of plastic, paper, or other material.~~  
23 ~~(3) Is provided by a store to a customer at the point of sale.~~  
24 ~~(2) By January 1, 2013, the department shall establish standards~~  
25 ~~in regulations that define "reusable bag," using the standards~~  
26 ~~specified in paragraph (1), and any additional durability, material~~  
27 ~~content, or labeling requirements. Labeling requirements shall,~~  
28 ~~at a minimum, require reusable bags to be imprinted, in a manner~~  
29 ~~sufficient to be identifiable and readable, with both of the~~  
30 ~~following:~~  
31 ~~(A) The name of the reusable bag producer.~~  
32 ~~(B) The reusable bag seal or logo, as determined by the~~  
33 ~~department, showing compliance with the minimum standards.~~  
34 ~~(d) "Reusable bag producer" means either of the following:~~  
35 ~~(1) A person or entity that manufactures a reusable bag.~~  
36 ~~(2) A person or entity that initially sells or offers for sale or~~  
37 ~~distribution a reusable bag in California.~~  
38 ~~(e) (1) "Single-use carryout bag" means a bag made of plastic,~~  
39 ~~paper, or other material, that is provided by a store to a customer~~

1 *at the point of sale and that is not a reusable bag, as defined in*  
2 *subdivision (c).*

3 *(2) A single-use carryout bag does not include either of the*  
4 *following:*

5 *(A) A bag provided by a pharmacy to a customer purchasing*  
6 *prescription medication.*

7 *(B) A nonhandled bag used to protect a purchased item from*  
8 *damaging or contaminating other purchased items when placed*  
9 *in a recycled paper bag or reusable bag.*

10 *(d)*

11 *(f) "Store" means a retail establishment that provides single-use*  
12 *carryout bags to its customers as a result of the sale of a product*  
13 *and that meets any of the following requirements:*

14 *(1) Meets the definition of a "supermarket" in Section 14526.5.*

15 *(2) Has over 10,000 square feet of retail space that generates*  
16 *sales or use tax pursuant to the Bradley-Burns Uniform Local Sales*  
17 *and Use Tax Law (Part 1.5 (commencing with Section 7200) of*  
18 *Division 2 of the Revenue and Taxation Code) and has a pharmacy*  
19 *licensed pursuant to Chapter 9 (commencing with Section 4000)*  
20 *of Division 2 of the Business and Professions Code.*

21 ~~*(3) Is a convenience food store or foodmart engaged in retailing*~~  
22 ~~*a limited line of goods that generally includes milk, bread, soda,*~~  
23 ~~*and snacks.*~~

24 *(3) Is a convenience food store, foodmart, or other entity*  
25 *engaged in the retail sale of a limited line of goods that generally*  
26 *includes milk, bread, soda, and snack foods with a Type 20 or 21*  
27 *license issued by the Department of Alcoholic Beverage Control.*

28

29

## Article 2. Carryout Bag Regulation

30

31 42281. (a) (1) *On and after January 1, 2012, a store, as defined*  
32 *in paragraph (1) or (2) of subdivision (f) of Section 42280, shall*  
33 *not provide a single-use carryout bag to a customer at the point of*  
34 *sale.*

35 (2) *On and after July 1, 2013, a store, as defined in paragraph*  
36 *(1) or (2) of subdivision (f) of Section 42280, shall only provide*  
37 *reusable bags, as defined by subdivision (c) of Section 42280, that*  
38 *meet the requirements of this chapter and standards established*  
39 *by the department.*

1 (b) A store shall make reusable bags available for purchase by  
2 a customer. A store, as defined in paragraph (1) or (2) of  
3 subdivision (f) of Section 42280, may provide reusable bags to  
4 customers at no cost.

5 (c) Notwithstanding any other law, a store may provide a  
6 customer participating in the California Special Supplemental  
7 Food Program for Women, Infants, and Children pursuant to  
8 Article 2 (commencing with Section 123275) of Chapter 1 of Part  
9 2 of Division 106 of the Health and Safety Code with a reusable  
10 bag or a recycled paper bag at no cost.

11 (d) Notwithstanding the requirements of subdivision (a), a store  
12 shall make available for sale to a consumer at the point of sale a  
13 recycled paper bag at a reasonable cost, but not less than five  
14 cents (\$0.05), except as provided in subdivision (c).

15 (e) Notwithstanding subdivision (a), because the City and  
16 County of San Francisco provides residents with curbside  
17 collection of foodwaste for composting, and has encouraged stores  
18 to stock compostable plastic bags to facilitate participation in that  
19 program, a store in the City and County of San Francisco may sell  
20 to a consumer at the point of sale a compostable plastic bag  
21 meeting the American Society for Testing and Materials (ASTM)  
22 Standard Specification for Compostable Plastics D6400, as  
23 published in September 2004, at a cost not less than five cents  
24 (\$0.05).

25 42282. Beginning July 1, 2013, a store as defined in paragraph  
26 (3) of subdivision (f) of Section 42280 shall comply with the  
27 provisions of this article.

28 42283. (a) On or after January 1, 2013, and on or before  
29 January 1 every two years thereafter, a reusable bag producer  
30 that sells, distributes, or makes a reusable bag available to a store  
31 in California, shall submit a certification to the department that  
32 each reusable bag meets the requirements of subdivision (c) of  
33 Section 42280 and associated standards issued by the department.

34 (b) A reusable bag producer shall submit a fee to the department  
35 with each certification pursuant to Section 42284.

36 (c) The department shall provide a system to submit  
37 certifications online.

38 (d) The department shall publish a list on its Internet Web site  
39 that includes:

1 (1) *The name, location, and appropriate contact information*  
2 *of a reusable bag producer in compliance with this chapter.*

3 (2) *The reusable bag product or products in compliance with*  
4 *this chapter.*

5 42284. (a) *The fee for the initial certification by a reusable*  
6 *bag producer, as defined in subdivision (d) of Section 42280, shall*  
7 *not exceed ten thousand dollars (\$10,000) per reusable bag*  
8 *producer, as determined by the department. In establishing the*  
9 *initial fee, consideration by the department shall include, but not*  
10 *be limited to, if provided by a reusable bag producer, the annual*  
11 *sales revenue of a participating reusable bag producer, the number*  
12 *of employees of the participating reusable bag producer, and the*  
13 *number of reusable bag products to be submitted for certification*  
14 *by the participating reusable bag producer.*

15 (b) *The fee for biennial certification thereafter shall be two*  
16 *thousand dollars (\$2,000). The department may adjust the biennial*  
17 *certification fee, not to exceed three thousand dollars (\$3,000) per*  
18 *certification, if the department determines that additional fees are*  
19 *necessary to support implementation of this chapter. Notification*  
20 *of any fee increases shall be provided to certified producers and*  
21 *posted on the department's Internet Web site 60 days in advance*  
22 *of the fee increase.*

23 (c) *The fees in this section shall not exceed the amount necessary*  
24 *to cover the department's reasonable costs associated with the*  
25 *implementation of this chapter.*

26 42285. (a) *The department may inspect and audit any entity*  
27 *subject to this chapter.*

28 (b) *On or after July 1, 2013, the department may test any*  
29 *reusable bag manufactured by a reusable bag producer and*  
30 *provided to a store for sale or distribution for compliance with*  
31 *this chapter and associated regulations.*

32 (c) *The department may enter into an agreement with other*  
33 *state entities that conduct inspections to provide necessary*  
34 *enforcement of this chapter.*

35 42286. (a) *Any violation of Section 42281 shall be subject to*  
36 *an administrative civil penalty assessed by the department in an*  
37 *amount not to exceed five hundred dollars (\$500) for the first*  
38 *violation. Subsequent violations may be increased by up to five*  
39 *hundred dollars (\$500) per violation, not to exceed five thousand*  
40 *dollars (\$5,000) per violation.*

1 (b) Any violation of Section 42283, or any submission of false  
2 or misleading information to the department, shall be subject to  
3 an administrative civil penalty assessed by the department of up  
4 to fifty thousand dollars (\$50,000) per violation, not to exceed an  
5 annual total of one hundred fifty thousand dollars (\$150,000).

6 (c) The department shall publish a list on its Internet Web site  
7 of any fines or penalties that have been levied against a violator  
8 of this section for failure to comply with the requirements of this  
9 chapter.

10 42287. (a) The department shall deposit all certification fees  
11 paid pursuant to this article into the Reusable Bag Account, which  
12 is hereby created in the Integrated Waste Management Fund in  
13 the State Treasury. The moneys deposited in the Reusable Bag  
14 Account shall be expended by the department, upon appropriation  
15 by the Legislature, to assist the department with its costs of  
16 implementing this chapter.

17 (b) The department shall deposit all penalties and fines collected  
18 pursuant to this article into the Penalty Subaccount, which is  
19 hereby created in the Reusable Bag Account, and shall be expended  
20 by the department, upon appropriation by the Legislature, to assist  
21 the department with its costs of implementing this chapter.

22 42288. The department may adopt regulations that are  
23 reasonable and necessary to implement this chapter.

24  
25

Article 3. Report and Administration

26

27 ~~42282. (a) On or before January 1, 2015, the department shall~~  
28 ~~submit a report to the Legislature regarding the effectiveness of~~  
29 ~~this chapter. The report shall also include recommendations to~~  
30 ~~further encourage the use of reusable bags by consumers and~~  
31 ~~retailers and to reduce the consumption of single-use carryout~~  
32 ~~bags, including at a minimum, expanding the definition of stores~~  
33 ~~that are subject to this chapter to all other stores and retail~~  
34 ~~establishments distributing single-use bags.~~

35 ~~(b) The requirement for submitting a report imposed under~~  
36 ~~subdivision (a) is inoperative on January 1, 2019, pursuant to~~  
37 ~~Section 10231.5 of the Government Code.~~

38 ~~(c) A report to be submitted pursuant to subdivision (a) shall~~  
39 ~~be submitted in compliance with Section 9895 of the Government~~  
40 ~~Code.~~

1 ~~42283. The department shall administer and enforce this~~  
2 ~~chapter.~~

3  
4 *Article 3. Preemption*

5  
6 *42289. This chapter is a matter of statewide interest and*  
7 *concern and is applicable uniformly throughout the state.*  
8 *Accordingly, this chapter occupies the whole field of regulation*  
9 *of reusable bags, single-use carryout bags, recycled paper bags,*  
10 *or any other bag referred to in this chapter. No city, county, or*  
11 *other local public agency may enforce or implement any existing*  
12 *or new ordinance, resolution, regulation, or rule on any store as*  
13 *defined by this chapter relating to reusable bags, single-use*  
14 *carryout bags, recycled paper bags, or any other bag referred to*  
15 *in this chapter unless expressly authorized by this division.*

BILL ANALYSIS

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Page 1

ASSEMBLY THIRD READING  
AB 1998 (Brownley)  
As Amended May 28, 2010  
Majority vote

NATURAL RESOURCES 6-3      APPROPRIATIONS 11-5

Ayes: Chesbro, Brownley, De  Leon, Hill, Huffman,  Skinner	Ayes: Fuentes, Anniano,  Bradford,  Coto, Davis, Monning,  Ruskin, Skinner, Solorio,  Torlakson, Torrico
Nays: Gilmore, Knight, Logue	Nays: Conway, Harkey, Miller,  Nielsen, Norby

SUMMARY : Prohibits stores, as defined, from providing single-use carryout bags to customers. Specifically, this bill :

- 1) Defines terms used in the bill, including:
- a) "Recycled paper bag" as a paper carryout bag that contains a minimum of 40% post-consumer recycled content; is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs; is compostable; and, has printed on the bag the name of the manufacturer, the location where manufactured, and the percentage of post-consumer content;
  - b) Until a standard is adopted by the Department of Resources Recycling and Recovery (DRRR), "reusable bag" as a bag that is designed and manufactured for at least 100 uses and is made of a washable material that "does not contain lead or any toxic metal in a toxic amount, as determined by the Department." By January 1, 2013, requires DRRR to establish standards for reusable bags, as specified;
  - c) "Single-use carryout bag" as a bag made of plastic, paper, or other material that is provided by a store to a

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- customer at the point of sale and that is not a reusable bag. Single-use carryout bag does not include a bag provided at a pharmacy to a customer purchasing prescription medication or a nonhandled bag used to protect a purchased item from damaging or contamination other purchased items when placed in a recycled paper bag or reusable bag; and,
- d) "Store" as supermarkets; stores over 10,000 square feet that include a pharmacy; and, a convenience food store or foodmart engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks.
- 2) Prohibits, on and after January 1, 2012, a store from providing single-use carryout bags to customers at the point of sale. Requires stores to make reusable bags available for purchase and authorizes stores to provide reusable bags at no cost.
- 3) Requires, on and after July 1, 2013, that a store only provide reusable bags to consumers.
- 4) Authorizes stores to provide customers participating in the California Special Supplemental Food Program for Women, Infants, and Children with reusable bags or recycled paper bags at no cost.
- 5) Requires stores to make available for sale to consumers at the point of sale a recycled paper bag at a reasonable cost, but not less than five cents.
- 6) Requires, on and after January 1, 2013, and every two-years thereafter, producers of reusable bags to submit a certification to DRRR that each bag meets the requirements specified in the bill and any standards developed by DRRR. Requires that producers also submit a fee for each

certification, not to exceed \$10,000 per producer for the initial certification and between \$2,000 and \$3,000 every two-years thereafter. Specifies that the fees collected be used by DRRR to administer the requirements of the bill.

7) Authorizes DRRR to conduct inspections to enforce this chapter.

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Page 3

- 8) Establishes, for stores that do not comply with the bag distribution requirements above, administrative civil penalties up to \$500 for the first violation, and an additional \$500 for subsequent violations, up to a total of \$5,000.
- 9) Establishes, for violations of the reusable bag certification requirements, or any submission of false information, administrative civil penalties of up to \$50,000 per violation, not to exceed an annual total of \$150,000.
- 10) Pre-empts local governments from enforcing or adopting any new or existing law, ordinance, resolution, regulation, or rule on any store, as defined, relating to reusable bags, single-use carryout bags, recycled paper bags, or any other bag referred to in the bill.

EXISTING LAW :

- 1) Requires operators of stores (defined as supermarkets and stores over 10,000 square feet that include a pharmacy) to establish an in-store plastic carryout bag recycling program. The program must include:
  - a) Plastic bags provided by the store to include a label encouraging customers to return the bag to the store for recycling;
  - b) Easily accessible recycling bins for plastic bags;
  - c) All plastic bags collected must be recycled in a manner consistent with the local jurisdiction's recycling plan;
  - d) The store must maintain records relating to the program for at least three years and must make the records available to the local jurisdiction or California Integrated Waste Management Board (CIWMB) upon request; and,
  - e) The operator of the store must make reusable bags available to customers.
- 2) Pre-empts local governments from requiring stores that meet these provisions to implement separate recycling programs or

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Page 4

from imposing a fee on plastic bags.

3) Sunsets the above provisions on January 1, 2013.

FISCAL EFFECT : According to the Assembly Appropriations Committee:

- 1) One-time costs during 2011-12 and 2012-13, possibly as much as \$1.5 million, equivalent to 21 positions, to prepare regulations, assist regulated stores, characterize reusable bags, and develop a program-specific database [Integrated Waste Management Account (IWMA)].
- 2) Ongoing cost, possibly as much as \$1 million annually, equivalent to 15 positions, beginning in 2013-14, to provide ongoing assistance to regulated stores, conduct site inspections and audits, characterize reusable bags, and maintain database [Integrated Waste Management Account (IWMA)].
- 3) This bill has one time costs of approximately \$150,000 in 2013-14 to develop report to Legislature (IWMA).
- 4) All costs are likely to be covered by revenue from the fees

and penalties established by the bill.

COMMENTS : Plastic bags are a significant contributor to litter and marine debris. Their light weight and expansive nature makes them especially prone to blowing into waterways. Even when disposed of in the waste stream, these bags pose litter problems as they blow off of trucks and out of solid waste handling operations. According to the US EPA, marine debris has become a serious problem along shorelines, coastal waters, estuaries, and oceans throughout the world. It is estimated that 60-80% of all marine debris, and 90% of floating debris, is plastic. Marine debris can be life threatening to marine organisms and can wreak havoc on coastal communities and the fishing industry. Recent studies by the Algalita Marine Research Foundation and the Southern California Coastal Water Research Project have found that the average mass of plastics in the seawater off the coast of Long Beach is two and a half times greater than the average mass of plankton. After storms with excessive runoff, the mass of plastics is even greater. A similar study over seawater 1,000 miles west of San Francisco

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found the mass of plastics was six times the mass of plankton in drifts where marine animals congregate for feeding on plankton.

In February 2007, the Ocean Protection Council (OPC) adopted a resolution to reduce marine debris, which included specific actions on single-use plastics. In November 2008, OPC adopted its final implementation strategy for the resolution. The strategy includes three "priority actions for measurable success:" 1) Implement a take-back program for convenience food packaging; 2) Prohibit single-use products that pose significant ocean litter impacts where a feasible alternative is available; and, 3) Assess fees on commonly littered items.

Plastic single-use bags are included in action 2; OPC proposes that a fee be added for all single use paper and plastic bags to incentivize people to switch to reusable bags. OPC goes on to suggest that if a fee does not dramatically reduce the use of bags, a ban should be considered.

Reusable bags are the most environmentally benign alternative to plastic bags. Paper, the most likely replacement for plastic, also has drawbacks, including being more costly for stores and using more energy to produce and recycle. However, these do degrade when littered and do not pose the threats to marine life that plastic bags do. Additionally, compostable or degradable plastic bags are not recyclable and contaminate recycling equipment if they are mixed in with conventional plastic bags. Moreover, most degradable bags do not break down in a marine environment.

AB 2449 (Levine), Chapter 845, Statutes of 2006 requires all stores to establish a plastic bag recycling program. The stated goal of this legislation was to increase recycling, and to create the infrastructure necessary to collect and recycle plastic bags. That bill also pre-empted local governments from enacting a per-bag fee on plastic bags. Local governments have indicated concerns with the pre-emption created by AB 2449, arguing that the fee could be used to discourage bag distribution and fund anti-litter or recycling programs.

According to the author, Californians use over 19 billion plastic bags annually (approximately 552 per person), creating over 147,000 tons of waste. CWMB staff estimates that only 5-6% of plastic materials are recycled in California. The

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author also states that paper bags also have negative environmental impacts, including deforestation, air pollution, and excessive energy consumption. The author states that California currently spends approximately \$25 million annually to clean up plastic bag waste, and municipalities collectively spend \$300 million annually.

Analysis Prepared by : Elizabeth MacMillan / NAT. RES. / (916)  
319-2092

FN: 0004704

# ATTACHMENT C



1400 K Street, Suite 400 • Sacramento, California 95814  
Phone: 916.658.8200 Fax: 916.658.8240  
www.cacities.org

June 8, 2010

Assembly Member Julia Brownley  
State Capitol, Room 2163  
Sacramento, CA 95814

RE: AB 1998 (Brownley), Single-Use Carryout Bags  
Concerns

Dear Assembly Member Brownley:

On behalf of the League of California Cities, I write to support your efforts to deal with the important issue of single-use bags in California. The League has long been supportive of our many cities that have been working hard to recycle, manage and even ban single-use bags. However, while we have not taken a formal position on your bill, AB 1998, at this time, we still have significant concerns.

**Statewide preemption at the point-of-sale:** The League currently has policy to oppose any bill that preempts local ordinances that ban single-use plastic bags. While we understand the reasoning for a statewide solution to the single-use bag concern, and might even be able to stomach very limited preemption that only covers the bags specifically banned, we find very problematic preemptive language when there is no solution being offered for those bags.

**Repeal of AB 2449:** The League was neutral on AB 2449 (Levine, Chapters of 2006) that required grocery stores in California to do take-back of plastic bags in-store. This is an important provision of law because it provided collection of both single-use bags banned under AB 1998, but also any other plastic bags customers brought back. While that law is set to sunset in 2013, we find problematic that this bill, AB 1998, both repeals the provisions of AB 2449 (two years early) as well as preempts local governments from passing ordinances to require retailers to take-back plastic bags.

Finally, we thank you for your work on this important issue and urge your consideration of our concerns. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Kyra Emanuels Ross".

Kyra Emanuels Ross  
Legislative Representative  
League of California Cities

cc: Chair and Members, Environmental Quality Committee  
Randy Pestor, Senate Environmental Quality  
Consultant, Senate Republican Caucus  
Governor's Office of Planning and Research

The motion was unanimously adopted by voice vote.

OTHER BUSINESS

6. Consideration of letter of support related to AB 1998 pending State legislation concerning single use plastic shopping bags

STAFF RECOMMENDATION: That the Council authorize the Mayor to sign a letter supporting the passage of AB 1998, the Single-Use Bag Reduction Act

DOCUMENTS:

Staff Report dated June 28, 2010 prepared by Dave Durlinger, City Manager with attached draft letter of support for AB 1998, AB 1998 summary bill, and analysis and League of California Cities letter of concern

The City Manager explained that the City Council has requested that staff monitor legislation and litigation related to the local regulation of single use plastic bags. Since the last report provided to the City Council in May 2009, two significant changes have occurred. Legislation is currently making its way through the State process that would ultimately prohibit the distribution of single use plastic shopping bags in California, including Carpinteria grocery and convenience stores. Also, a coalition of cities has completed a Master Environmental Impact Report that could serve as the basis for cities to evaluate and understand the environmental impacts of local regulations that prohibit the use of these types of bags.

The City Council will recall that it initially considered this matter along with a ban on non-recyclable plastic take-out food containers. In late 2008, the City Council determined to proceed with establishing City regulations on the use of non-recyclable plastic take-out food containers, and to monitor litigation and state legislation pertaining to cities efforts to regulate the use of plastic bags.

Previously, the City Council expressed an interest in establishing local regulations that would either serve as a significant disincentive to stores and/or customers use of plastic shopping bags, or to simply prohibit their use in Carpinteria. This interest was based on evidence provided to the City Council, including public testimony, that light weight plastic bags routinely end up on the environment as litter and can do significant harm to sensitive habitat areas and marine life.

OTHER  
BUSINESS

LETTER OF  
SUPPORT RE AB  
1998, SINGLE USE  
PLASTIC  
SHOPPING BAGS

Staff previously reported to the City Council that it felt that the State ultimately establish law regulating single use plastic bags in the State and that local regulations could be preempted. Based on the prior review of this matter by the City Council, Staff has determined that AB 1998 could further the City Council's interests by phasing out their use in Carpinteria and other California cities. A draft letter of support for AB 1998 is attached for the City Council's consideration.

Adopting a ban on plastic bags still carries significant litigation risk. San Francisco adopted the first local ban in California in 2007, which was not challenged. Shortly thereafter, Oakland adopted a similar ban and deemed that action exempt from the California Environmental Quality Act. That ordinance was successfully challenged by the Coalition to Support Plastic Bag Recycling ("Coalition"). The lawsuit alleged that Oakland failed to conduct adequate environmental review under CEQA in light of the effect such a ban has on the increased use of alternative products like paper bags which have their own environmental consequences. The court determined the adoption of a ban could have environmental impacts so the City abused its discretion by relying on categorical exemptions and invalidated Oakland's ordinance.

Earlier this year, the City of Santa Monica and other cities cooperated in completing a Master Environmental Assessment as the basis for cities conducting environmental review of plastic bag regulations. The City of Santa Monica expects to complete an Environmental Impact Report (EIR) for its proposed regulations later this year. The City of San Jose is also preparing an EIR in association with the adoption of a plastic bag ban. The San Jose ban would affect most single-use shopping bags, but is not expected to go into effect until 2011.

There have been a number of attempts over the last two years by State legislators to regulate single use plastic bags but none have gained the broad support and progressed through the legislative process as far as AB 1998. The State Assembly analysis of the bill states that it:

*Prohibits, on and after January 1, 2012, a store from providing single-use carryout bags to customers at the point of sale. Requires stores to make reusable bags available for purchase and authorizes stores to provide reusable bags at no cost.*

For a complete summary of the provisions, the bill itself and analysis please see Attachment B to this report.

AB 1998 is supported by numerous environmental groups (Heal the Bay, Sierra Club, Santa Barbara Channel Keeper, etc.), American Federation of State, County and Municipal Employees (AFSCME), who argue single-use bags pollute our marine ecosystem, litter our cities, and consume limited resources, including public funds, the State Lands Commission, and the California Grocers and Retailers Associations.

The bill is opposed by several industry groups (e.g. the American Forest and Paper Association and the American Chemistry Council) and the California Taxpayers' Association, who contend single-use bags, are affordable, convenient and environmentally benign when managed properly. Some opponents also argue that banning these bags will needlessly destroy the jobs of the Californians who produce them and raise prices on retail customers.

The League of California Cities has expressed concern about the legislation based on its provisions that preempt local government regulation of single-use plastic bags and due to provisions that would end the in-store plastic bag collection requirements of existing law (AB 2449). The League of Cities letter, dated June 8, 2010, is attached.

The next scheduled review of the bill is before the Senate Committee on Environmental Quality on June 28, 2010.

Councilmember Reddington requested that separate letters also be sent to Senator Tony Strickland, Assembly Member Nava and Governor Schwarzenegger.

REDDINGTON

Bill Crowley and Donna Jordan, representing Carpinteria Beautiful, spoke urging support of AB 1998. They said that although Carpinteria Beautiful's reusable bag campaign has assisted in helping people to learn to use reusable bags but have not solved the problem. A statewide solution is needed and AB 1998 should be supported.

BILL CROWLEY  
AND DONNA  
JORDAN,  
CARPINTERIA  
BEAUTIFUL

Councilmember Armendariz said that he is opposed to AB 1998 because he feels it overly intrusive and he shares the League of California Cities concern about preemption. He said he would prefer to see this done through citizen initiatives city by city, and thereby getting beyond the EIR requirement.

ARMENDARIZ

Motion was made by Councilmember Stein and seconded by Vice Mayor Clark to authorize the Mayor to sign letters supporting the passage of AB 1998 to be sent to Assembly Member Pedro Nava, Assembly Member Julia

COUNCIL VOTES  
TO SEND  
LETTERS OF

Brownley, State Senator Tony Strickland and Governor Arnold Schwarzenegger.

SUPPORT FOR  
AB 1998

Ayes: Stein, Clark, Reddington, Carty

Noes: Armendariz

**STAFF REPORT**  
**COUNCIL MEETING DATE**  
**August 8, 2011**

**ITEM FOR COUNCIL CONSIDERATION**

Update on litigation and pending legislation regarding banning of single use plastic bags.

Report prepared by: Peter Brown, City Attorney

  
Signature

Reviewed by: Dave Durlinger, City Manager

  
Signature

**STAFF RECOMMENDATION**

Action Item  Non-Action Item

Direct staff to prepare a report on options related to the scope and content as well as the appropriate environmental clearance likely associated with an ordinance banning the distribution of single use carry-out plastic bags by retailers within the City.

**I. BACKGROUND**

In February 2008, after a presentation by the Santa Barbara City College Sustainability Workshop and public testimony in late 2007, the City Council directed staff to prepare draft regulations banning local businesses from distributing carry-out plastic bags and expanded polystyrene take-out food containers (EPS). In a September 2008 staff report, staff updated the City Council on its progress regarding preparation of draft regulations. Staff reported that many cities that had adopted such bans had relied on exemptions from California Environmental Quality Act (CEQA) to fulfill their environmental review obligations. The update also noted that the Coalition to Support Plastic Bag Recycling had recently initiated lawsuits against similar bans passed by the City of Manhattan Beach and the County of Los Angeles. The lawsuit against the City of Manhattan Beach, *Save the Plastic Bag Coalition v. City of Manhattan Beach*, challenged the City's decision to issue a negative declaration for purposes of the CEQA rather than preparing an environmental impact report (EIR). The September 2008 update also identified a series of alternatives the City could take to a blanket ban, which included enacting a deferred ban to take effect only if state legislation was not passed by 2010, developing a composting program for plastic bags, and contracting with a private company to place plastic bag recycling bins at various locations in the City.

The City Council proceeded with establishing regulations on the use of non-recyclable take-out food containers/EPS. Given the uncertainty surrounding which environmental document was proper to accompany enactment of a plastic bag ban, however, the City Council requested that staff monitor litigation, including the Manhattan Beach litigation, and state legislation pertaining to efforts to regulate the use of plastic bags.

On March 28, 2011, staff provided the City Council with an update on the status of cities' efforts and state legislation aimed at regulating the use of single use and lightweight plastic bags. The staff report indicated that development of regulations pertaining to plastic bags would likely require the preparation, processing and certification of an EIR, noting that several California cities had already chosen to prepare EIR for purposes of CEQA. The report also noted that the California Supreme Court had agreed to hear the City of Manhattan Beach's appeal of the lower court's ruling that it needed to complete and certify an EIR before implementing its plastic bag ban. Staff summarized various pending litigation and state legislation regarding plastic bag regulation. Staff also identified the following possible courses of action that the City could take:

1. Draft local regulations to ban plastic bag use and a supporting EIR.
2. Lobby other agencies in the County, or on the South Coast, to prepare a joint EIR that would cover all agencies in Santa Barbara County and distribute the EIR preparation costs among the participants.
3. Continue with the current position of promoting reusable bags by holding a reusable bag month and supporting education efforts by local organizations.

The California Supreme Court recently issued a decision in *Save the Plastic Bag Coalition v. City of Manhattan Beach* that most likely affects the City's options as identified in March 2011. This staff report discusses the Supreme Court's decision, the reaction of the plastic bag industry and California cities to the decision, and the City's options in light of this new development. The report also describes local action relating to plastic bag regulation and provides an update on pending state legislation regarding plastic bag regulation.

## II. DISCUSSION

### *Save the Plastic Bag Coalition v. City of Manhattan Beach*

In August 2008, an association of plastic bag manufacturers and distributors – the Save the Plastic Bag Coalition (Coalition) – filed a lawsuit challenging the City of Manhattan Beach's preparation of a negative declaration under CEQA in connection with its adoption of a ban on point-of-sale plastic bag distribution. The Coalition claimed the City should have instead prepared an EIR weighing the impacts of its proposed ban on plastic bags. In February 2009, the Los Angeles Superior Court ruled that Manhattan Beach needed to complete and certify an EIR before approval and implementation of its bag ban. In January 2010, a court of appeal agreed with the superior court and also said an EIR, rather than a negative declaration, should have been prepared.

Manhattan Beach's ordinance banned point-of-sale plastic bag distribution, effectively prohibiting retailers from providing plastic shopping bags to customers. The proposed ordinance included a finding that CEQA did not apply because the ban would have no significant effect on the environment (CEQA Guidelines, § 15061(b)(3)) and because it qualified as a regulatory program to protect the environment (CEQA Guidelines, § 15083.) The initial study prepared by the city noted that paper bag replacement in lieu of plastic bags would not be on a one to one basis for various reasons. The study also emphasized the small size of Manhattan Beach's retail sector – 218 businesses, including just two supermarkets, three drug stores, and one Target store that were known to be high volume plastic bag users. The study asserted that any substitution of paper bags for plastic that occurred would not significantly impact landfill capacity since a larger portion of paper bags is recycled than plastic and the city

represented a small portion of regional landfill users. The initial study concluded, based on these considerations, that any increase in the use of paper bags would be relatively small, with minimal impacts on energy use, air quality, water quality, vehicle traffic, and solid waste facilities.

In response to the initial study, the Coalition cited to several studies that concluded the "life cycle" (*i.e.*, manufacture, distribution and recycling) of paper bags has a greater environmental impact than the life cycle of plastic bags. The Coalition asserted that these studies established a reasonable possibility that increased paper bag use would have a significant negative impact on the environment, requiring preparation of a full EIR. The city countered with a staff report citing other studies asserting that various life cycle studies yielded different results that could be selectively used to support the proponents of either plastic or paper bags. The city council proceeded to adopt the ordinance on July 15, 2008. The ordinance included findings regarding the city's interest as a coastal city in protecting the marine environment and the ill effects of plastic bags that make their way into the ocean where, because they do not biodegrade, they pose hazards to marine life.

In an unanimous decision, the California Supreme Court concluded that substantial evidence and common sense supported Manhattan Beach's determination that its ordinance would have no significant environmental effect. The court said even if the life cycle of paper bags entailed more negative environmental consequences than the plastic bag life cycle, the city acted within its discretion in concluding that its ordinance would have no significant effect because CEQA "does not demand an exhaustive comparative analysis of relative environmental detriments for every alternative course of action." As to local impacts, the Court went on to say that a detailed study was not required to conclude that the increased vehicle traffic and related effects stemming from delivery of paper bags was minimal. The court also found the initial study's reference to the anticipated potential impact to the regional landfill from paper bag disposal was sufficient to address the local impacts flowing from increased disposal of paper bags.

With regard to the potential life cycle impacts that might be felt outside the city, the court said an agency is not required to conduct an exhaustive analysis of all conceivable impacts that a project may have outside its geographical boundaries. It noted that less detail on such impacts would be required where, for example, those effects are indirect as compared with effects within the project boundary, or where they are difficult to predict with any accuracy. The impacts of Manhattan Beach's ordinance outside the city, the court concluded, were both indirect and difficult to predict. Accordingly, the city was entitled to evaluate these broader environmental impacts at a reasonably high level of generality. Citing the city's small population (less than 40,000) and retail sector (fewer than 220 establishments), the court said the increase in paper bag production following a change from plastic to paper bags was "insubstantial" and that city properly concluded the city's ban would have only a "miniscule contributive effect" on the broader environmental impacts. The court also noted that because of Manhattan Beach's small size, even the cumulative effects would be negligible. By contrast, the analysis would be different for a ban on plastic bags by a larger governmental body – for example, Los Angeles County with a population of 10 million – because it might lead to a significant increase in paper bag production. This decision affirmed the substantial discretion afforded public agencies across California when determining whether a CEQA project will have a potentially significant environmental effect.

As a small coastal city with a small retail sector, smaller in population and retail sector compared to Manhattan Beach, the City of Carpinteria seems to fit well within the reasoning adopted by the Court in this decision. Accordingly, if the City adopted a point of sale distribution ban of plastic bags by retailers, environmental review under CEQA at a level less than an EIR would seem to be appropriate.

### Plastic Bag Industry Response to *STPBC v. Manhattan Beach*

In a press release issued the same day as the Supreme Court's decision, the Save the Plastic Bag Coalition announced it was delighted with the decision, indicating it will continue to demand EIRs. The press release asserted that in 2011, the cumulative impacts of the shift to paper bags has reached critical mass. The Coalition characterized the *STPBC v. Manhattan Beach* decision as requiring EIRs for plastic bag bans in (1) larger cities and counties and (2) small cities based on cumulative impacts. The press release also celebrated the Court's decision that the Coalition has legal standing to challenge CEQA decisions and that "under certain circumstances businesses can challenge 'green' projects that may do more harm than good to the environment."

### Cities' Responses to *STPBC v. Manhattan Beach* and Existing Plastic Bag Bans

At the time the decision was issued, several cities in California had already adopted or were well on their way to adopting plastic bag bans, and a number were considering such bans. In Marin County, the Supreme Court's decision has encouraged advocates of a ban that they will be able to gain enactment of plastic bag bans in the County's cities and towns. A committee of six Marin County cities and towns have been exploring potential bans in recent months and are emboldened by the decision. The City of San Rafael was scheduled to discuss a plastic bag ban at its August 1 meeting.

Other cities and counties with plastic bag bans already in the works are proceeding with their plans. On July 1, 2011, the County of Los Angeles' ordinance, for which an EIR was prepared after a lawsuit was filed, went into effect for all large stores in the unincorporated areas of the county.

On August 1, the City of Long Beach's plastic bag ban took effect for larger stores. In addition to banning single use plastic bags, the ordinance also places a 10 cent minimum price requirement on distribution of paper bags. Approximately 2,000 smaller stores are not yet required to follow the ban, but 66 major stores no longer offer plastic bags. The ban will become effective for smaller stores beginning in 2012.

In southern California, Calabasas, Malibu and Santa Monica have also adopted plastic bag bans. In northern California, Fairfax, Oakland, Palo Alto, San Francisco, San Jose, Santa Clara County and Marin County have adopted plastic bag bans. Implementation of the ban has not yet occurred in all jurisdictions.

### Local Legislation and Efforts

In recent months, the City of Santa Barbara has considered whether to ban distribution of single use plastic bags within the city or to take some other action. After the most recent discussion in mid-July, the Santa Barbara City Council voted to take a voluntary reduction and education approach. Under the approved proposal, major supermarkets and produce dispensers are required to offer their customers reusable tote bags at affordable prices, post signs inside and outside their premises stating such bags are available, and train their employees to encourage customers to switch to reusable bags. For the past three years, the City of Santa Barbara has encouraged such efforts and initiated a public relations campaign, entitled "Where's Your Bag," that is designed to encourage the use of tote bags.

Beginning in April, the Albertsons grocery store in Carpinteria eliminated all bags – plastic and paper – from their store, asking customers either to bring their own bag or purchase one at the checkout register. The local Albertsons is one of a few grocery stores in that chain to have gone "bagless" recently.

### State Legislation

During the first part of the 2011-2012 Regular Session of the California Legislature, two bills were introduced regarding the regulation and/or ban of single use plastic bags and reusable

bags – Assembly Bill 298 and Senate Bill 915. Since the February 2011 staff report on this issue, there has been some progress on these bills.

#### **AB 298**

Assembly Bill 298 would prohibit reusable bag manufacturers from selling or distributing reusable bags in California that are designed or intended to be sold or distributed at a store unless they meet the following requirements: (a) are made of a material that can be cleaned or disinfected; (b) are free of heavy metals in toxic amounts; and (3) have the guidelines for the cleaning and disinfection of the bag printed on the bag or on a tag attached to the bag. On April 28, this bill passed out of the Assembly to the Senate, where it is currently in the Senate Committee on Environmental Quality. Because the bill met the June 3rd deadline for passing out of its house origin, if it receives Senate approval by September 9th and subsequent gubernatorial approval, the bill could become effective beginning January 1, 2012.

#### **SB 915**

Senate Bill 915, as amended, would require a specified percentage reduction in plastic bag use by a specified deadline, establish mandatory levels of recycled content in plastic bags, and mandate establishment of a stakeholder working group to develop strategies for increasing plastic bag recycling and obtaining funding for increased consumer awareness. The bill was amended in the Senate Committee on Environmental Quality to remove the provision suspending local plastic bag ordinances and prohibiting local governments from taking certain actions regarding plastic bags. At the author's request, the May 2 hearing on the bill was cancelled and there has been no activity on the bill since then. The bill did not meet the June 3 deadline for passing out of its house origin and therefore will not be considered again until January 2012.

#### City's Options

The City's strategy to date has been to promote the use of reusable bags. It has done this by providing financial support to Carpinteria Beautiful's efforts to distribute 5,000 reusable bags in 2009, as well as providing public education on the importance of using reusable bags. In light of the uncertainty surrounding the appropriate environmental review to be conducted in connection with enactment of single use carry-out plastic bag regulations, the City Council has not directed staff to draft regulations banning plastic bag use in the City.

The *Save the Plastic Bag Coalition v. City of Manhattan Beach* decision has provided guidance on the appropriate level for environmental review to accompany a plastic bag ban in a small, coastal city. Accordingly, the City has a new option available regarding the course of action to take: Draft an ordinance banning point of sale distribution of single-use plastic bags within the City and prepare the appropriate environmental clearance. Given the direction provided by the *STPBC v. Manhattan Beach* decision, the City would appear to be on strong ground if it models its findings after those contained in the Manhattan Beach ordinance.

Should the City Council determine to pursue this option and develop a local ordinance for consideration, the first step would be to request that City staff research the various components of local regulations, e.g., regulating all single-use bags or just plastic, regulating all stores, or just large retailers, etc., and how these components could affect environmental review. Staff is recommending that the City Council request this type of report, which would allow it to establish the parameters for the draft regulations and to formally initiate the municipal code amendment.

The initiation and development of an ordinance regulating the distribution of single-use plastic bags is not a part of this year's work program. Should the City Council concur with the Staff recommendation to prepare a report on regulatory options and environmental review for such an ordinance, it will also need to be determined whether the matter should be taken up this year or as a part of the 2012 work plan.

### III. LEGAL

Under the reasoning of the *Save the Plastic Bag Coalition v. City of Manhattan Beach* decision, the City would likely need to prepare an initial study and negative declaration in order to meet the environmental review requirements of CEQA for enacting an ordinance regulating plastic bags.

commented that this should have been addressed at the beginning of the meeting. Vice Mayor Stein stated that he agreed with Councilmember Carty because the Council was at a stalemate. Mayor Clark indicated that he had no problem continuing this item until the entire Council was present.

Vice Mayor Stein stated that he did not believe that a 40,000 square foot store would be creating a big box store. He noted that the project had gone through Planning Commission Review, Conceptual Review, the Architectural Review Board (ARB), and every step to come to this point. He stated that this was the first time he had heard anybody say that 30,000 square feet would be the sticking point. Mayor Clark noted that he expressed this concern originally when Vons was applying for an expansion. Councilmember Carty stated that he agreed with Vice Mayor Stein in that the project had already come to this point. He also stated that he believed the Councilmembers should have addressed this at a Planning Commission meeting or should have written a letter. Councilmember Reddington suggested that when reviewing large projects the City Council should meet jointly with the Planning Commission after ARB review.

Vice Mayor Stein noted that according to the January 10, 2010, minutes Councilmember Reddington only addressed an issue regarding bicycles and Mayor Clark addressed the 30,000 square feet expansion. Mayor Clark noted that even though he attended the Planning Commission meeting he did not speak because he did not want to prejudice his ability to vote on this item. Councilmember Carty noted that this project was to remodel an existing building and it was not to build a new structure.

Motion by Councilmember Carty, seconded by Vice Mayor Stein, to continue this item until they have all five Councilmembers present.

City Attorney Peter Brown recommended that the City Council continue the item to a date certain.

Motion by Councilmember Carty, seconded by Vice Mayor Stein, to amend the motion to continue this item to August 22, 2011.

A voice vote was taken and the motion carried with Councilmember Reddington dissenting and with Councilmember Armendariz absent.

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#### **OTHER BUSINESS:**

6. Update on Litigation and Pending Legislation Regarding Banning of Single Use Plastic Bags

Recommendation: Direct staff to prepare a report on options related to the scope and content as well as the appropriate environmental clearance likely associated with an ordinance banning the distribution of single use carry-out plastic bags by retailers within the City.

City Manager Dave Durlinger presented the staff report.

City Attorney Peter Brown provided an update on the Manhattan Beach case in which the California Supreme Court ruled that because Manhattan Beach is a small city, its regulation of single use plastic bags would not have a significant impact. He stated that due to the ruling it appeared that small cities do not need to prepare an Environmental Impact Report (EIR). He recommended that the City Council give direction to staff to bring back options to ban single use plastic bags, ban all single use bags, ban all or some single use plastic bags for stores of a certain size, or ban plastic bags for only certain types of stores. He stated that there was intense interest in this throughout the State; that staff wanted to investigate what other people were doing; that he wanted to see the studies done by Manhattan Beach; and that staff wanted to conserve resources by using studies that others prepared to help prepare an analysis.

Ahmed Jahadhmy noted that sustainability programs were the way of the future. He noted that the change to using reusable bags had been very positive for Albertsons. He stated that they were able to change people's habits and that they gave away thousands of reusable bags. He noted that one would need to have the courage to do the right thing and that Carpinteria had always been in the forefront of the environmental movement. He stated that the truth was that this was the right thing to do.

Donna Jordan stated that Carpinteria Beautiful had followed this issue very closely for many years. She further stated that they understood that the City Council hesitated to moving forward on this issue due to the legal uncertainties and the expense of preparing an EIR. She noted that it appeared that the blockade had been removed and that in the meantime the people tried education, set a good example, handed free reusable bags, instituted a reward program, and supported Albertsons for its decision to go plastic bagless. She stated that people had willingly and permanently made the change to reusable bags. She asked the City Council to direct staff to bring back a model ordinance.

Jeffrey Sterns, Silver Sands Mobile Home Park, noted that he worked with Ms. Jordan in handing out reminder stickers at Albertsons and that they received a positive response. He noted that he also received a positive response in handing out stickers at Vons. He stated that an ordinance would allow the City Council to take leadership on this issue. He also stated that it was not a question of coercion but that it was something that could be a standard. He further stated that he believed this was similar to when public smoking was allowed and then there was a change.

Penny Owens, Education Coordinator with Santa Barbara Channel Keeper, applauded the City of Carpinteria in its efforts to promote reusable bags. She also commended the work of Carpinteria Beautiful for providing free reusable bags and educational materials. She stated that Channel Keeper had been encouraging the City of Santa Barbara to enact an ordinance that would ban plastic shopping bags and place a small fee on paper bags. She further stated that they would continue to work on this goal with Santa

Barbara and other municipalities. She commented that Carpinteria could be a leader on this issue, and that Channel Keeper would urge the City Council to support staff's recommendation to develop an ordinance and to consider a ban on plastic bags with a small fee for paper bags

Bill Hickman, Surfrider Foundation, commended staff on the update and acknowledged Ms. Owens from Channel Keeper. He expressed support for a plastic bag ban and implementation of a small fee on paper bags. He noted that it would not be a ban but rather a reusable bag ordinance that encourages people to bring their reusable bags because this would be the right thing to do. He asked that the ordinance cover as many stores as possible; that the City Council make it as strong an ordinance as possible; and that the City Council lead by example.

Kathy King thanked the City Council for staying on this issue because it could have a great impact countywide. She noted that the age of fossil fuels was coming to an end. She stated that people should not be squandering what is left of fossil fuels on items such as plastic bags that impact the environment negatively. She expressed her support for a ban on plastic bags and placement of a fee or tax on paper bags.

Andy Schraeder, representing Clean Seas Coalition, distributed a copy of an article from *Rolling Stone*. He commented that the world's oceans were in shocking decline and that the article indicated that the world was on the edge of a sixth rate extinction. He presented a display of Arroyo Creek of what was referred to as the Plaza Vista Garbage Patch. He stated that plastic Styrofoam and plastic bags debris float in the ocean and that these materials do not degrade but break up into smaller pieces. He also stated that algae were starting to attach to plastic which then affects the food chain. He noted that plastic bags were not free because the cost is imbedded in the merchandise. He also noted that many countries worldwide and many municipalities were banning plastic bags; that he has used his own reusable bags for 20 years; and that it was a matter of changing consumers' habits. He expressed his support for a plastic bag ban.

Kevin Kirkoff, representing Environment California, stated that his group had been going door to door for the past two months in Ventura, Santa Barbara, Ojai, and Carpinteria educating people about the issue of banning plastic grocery bags. He noted they received overwhelming support and he urged the City Council to ban single use plastic grocery bags. He expressed his desire that other cities would follow suit.

Motion by Councilmember Carty, seconded by Vice Mayor Stein, to direct staff to research the options on what it will take to have a full ban on all single use plastic bags in Carpinteria in all retailers.

The motion was approved by consensus.

Councilmember Carty inquired whether similar regulation was brought to the Santa Barbara City Council. City Attorney Peter Brown responded that a similar request was brought forth; however, the Santa Barbara City Council voted not to adopt a mandatory plastic bag ban. He noted that the City of Santa Barbara was continuing with education efforts and considering placing a measure on the 2013 ballot to impose a tax on single use bags. He stated that he believed there was a possibility this issue would come back for further action.

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7. Letter of Support for SB 568 Pending Legislation Proposing a State-wide Ban on Expanded Polystyrene Foam Take-out Food Packaging

Recommendation: Approve for the Mayor's signature a letter of support for SB 568.

Dave Durlinger, City Manager, presented the staff report.

Andy Schraeder distributed a handout from the National Toxicology Program entitled, "Styreen, a likely human carcinogen." He stated that polystyrene is 60 percent Styrofoam and that it causes a hazard to the workers in the food industry. He also distributed a copy of a study regarding perishable food containers which described differences between foam containers and alternatives. He noted that 47 jurisdictions in California have enacted bans on polystyrene.

Pat Kistler, Carpinteria Chamber of Commerce, noted that two years ago the Chamber worked with the City to ban takeout containers. She indicated that Elie Helou had planned to address the City Council and noted that he prepares starch containers that can compost completely and that he recently closed a deal with a major yogurt supplier. She commended the City Council for taking this decision two years ago.

Kathy King stated that she was part of the group that came before the City Council two years ago asking that the City Council take action against the use of Styrofoam. She noted that the group presented this idea to the Santa Barbara City Council; however, they did not move forward because the City was moving towards a food scraps program and they were hoping to promote the use of biodegradable containers. She stated that the problem with these containers is if they are taken to a landfill they give off methane gas, they are less inert, and they cause more impact in terms of green house gases than a Styrofoam container. She thanked the City Council for its leadership and vision.

Bill Hickman, Surfrider Foundation, noted that they were a co-sponsor of SB 568 and he expressed his appreciation for the City Council's consideration of a letter of support

Penny Owens thanked the City Council for their leadership on this issue and urged that they submit the letter of support.

Motion by Vice Mayor Stein, seconded by Councilmember Reddington, to approve for the Mayor's signature a letter of support for SB 568.

## Attachment B

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**Attachment 2: Summary of Key Provisions from California Ordinances Banning Plastic Bags**

<b>Jurisdiction</b>	<b>Date Adopted (Effective date)</b>	<b>Item Banned/Charged</b>	<b>Stores Covered</b>	<b>Environmental Doc Prepared/Litigation and Outcome</b>
1. Ojai	Drafting in progress	Single use plastic bag ban.  Minimum charge for paper bags to be determined.	TBD	Negative Declaration currently being prepared
2. San Rafael	Drafting in progress	Plastic bag ban.  Minimum 5 cent charge for paper bags.  (Modeled after Marin County ordinance.)	Grocery stores, pharmacies and convenience stores.  Possible extension to retail stores after 1 year.	TBD
3. Santa Cruz County	September 2011  (March 2012)	Single use plastic bag ban with exception for customers of WIC and certain government programs.  Product bags excepted (i.e., thin bags for veggies, meat, dry cleaning, etc.).  Minimum 10 cent charge for single use paper bags until March 2013, then minimum 25 cent charge (must be 40% post consumer waste recycled). Must itemize sale of bags separately and submit records annually for inspection.  One year exemption available from Public Works Director for undue hardship. Penalty provisions.	All sales outlets, stores, shops, restaurants, vehicles, or other places of which operate primarily to sell or convey goods, including "to-go" food establishments.	Mitigated Negative Declaration  Not challenged
4. Long Beach	May 2011  (August 2011 & January 2012)	Single use plastic bag ban with exception for customers of WIC and certain government programs.  Minimum 10 cent charge for single use paper bags. No reimbursements by store. Money collected can only be used for certain items – i.e., costs to comply, purchase of bags, education of customers. Must itemize sale of bags	Effective for larger supermarkets (\$2M gross annual sales) and 10,000 sq ft stores with pharmacy August 2011; effective for smaller markets and pharmacies in January 2012. <sup>1</sup>	Addendum to LA County EIR  Litigation pending

<sup>1</sup> Common tiered definition of store (Long Beach, Calabasas, Marin County, , Los Angeles County, Palo Alto and San Francisco adopted one or more tier). "Store" means any of the following retail establishments:

1. A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;
2. A store of at least ten thousand (10,000) square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Business and Professions Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or
3. A drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.

Jurisdiction	Date Adopted (Effective date)	Item Banned/Charged	Stores Covered	Environmental Doc Prepared/Litigation and Outcome
		<p>separately and keep records for 3 years for inspection.</p> <p>Product bags excepted (i.e., thin bags for veggies, etc.).</p> <p>All stores shall provide recyclable paper or reusable bags for customers.</p> <p>Penalty provisions.</p> <p>Modeled after LA County ordinance.</p>		
5. Santa Clara County	<p>April 26, 2011</p> <p>(Phased requirements effective January 2012 &amp; January 2013)</p>	<p>Single use plastic bag ban.</p> <p>Minimum 15 cent charge for single use paper bags (must be 40% post consumer waste recycled).</p> <p>Product bags excepted (i.e., thin bags for veggies, etc.).</p>	<p>Applies to all retail establishment within unincorporated county except public eating establishments, non-profits, and social organizations. Exempts WIC and some other government programs until January 1, 2015.</p>	<p>Negative Declaration</p>
6. Calabasas	<p>February 2011</p> <p>(July 2011 &amp; January 2012)</p>	<p>Plastic carryout bag ban with exception for customers of WIC and certain government programs.</p> <p>Product bags excepted (i.e., thin bags for veggies).</p> <p>Minimum 10 cent charge for paper bags and all stores must report sales of paper bags to City Manager.</p> <p>Penalties for violations included.</p> <p>(Modeled after LA County ordinance.)</p>	<p>Effective for larger supermarkets (\$2M gross annual sales) and 10,000 sq ft stores with pharmacy July 2011; effective for smaller markets and pharmacies in January 2012.<sup>1</sup></p>	<p>Relied on Nov. 16, 2010 LA County EIR</p> <p>Adopted statement of overriding considerations (like County of LA) regarding potentially cumulative significant impacts from decomposition of paper bags in landfills.</p>
7. San Jose	<p>January 2011</p> <p>(January 1, 2012)</p>	<p>Single use plastic carryout bag ban with exception for customers of WIC and certain government programs.</p> <p>Product bags excepted (i.e. thin bags for veggies, etc.).</p> <p>For first 2 years, 10 cent minimum charge for recycled paper bags (40% post consumer), thereafter minimum 25 cent charge. Must itemize sale of paper bags separately and keep records for 3 years for inspection.</p>	<p>Applies to all retailers except restaurants and non-profit reuse organizations.</p>	<p>EIR</p>

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8. Santa Monica	January 2011  (Effective March 9, 2011, enforcement beginning September 2011)	Single use plastic bag ban with exception for customers of WIC and certain public welfare customers.  Grocery stores and pharmacies must charge a minimum of 10 cents for recycled paper bags (20 or 40% post consumer, depending on weight). Tracking and reporting of paper bag sales required.  Product bags excepted (i.e., thin bags for veggies, etc.).  Distribution of paper bags is prohibited at farmers markets, except for mushroom sales.  Exemptions available with application from City Manager for undue hardship.  Penalty provisions.	Applies to all retail stores exception for distribution of take-out food and liquid by food provided to consumer where necessary to safeguard public health and safety during transportation of food off premises.	EIR
9. Marin County	January 26, 2011  (January 1, 2012)	Single use plastic carry out bag ban with exception for customers of WIC and certain government programs.  Minimum 5 cent charge for recycled paper bags (20 or 40% post consumer, depending on weight).  Penalty provision.	Larger supermarkets (\$2M gross annual sales), 10,000 sq. ft. stores with pharmacy, select smaller markets. <sup>1</sup>	Categorical Exemptions (Class 7 and 8, CEQA Guidelines 15307, 15308)  Litigation pending
10. Los Angeles County	November 2010  (July 2011 & January 2012)	Single use plastic carry out bag ban with exception for customers of WIC and certain government programs.  Minimum 10 cent charge for paper bags.  Penalty provisions.	Effective for larger supermarkets (\$2M gross annual sales) and 10,000 sq ft stores with pharmacy July 2011; effective for smaller markets and pharmacies in January 2012. <sup>1</sup>	EIR (analyzed impacts of ban within both unincorporated area and cities of LA County)  Not challenged
11. Palo Alto	March 2009  (September 2009)	Single-use plastic bag ban.  Product bags excepted (i.e., thin bags for veggies, etc.).  Intend to consider enacting fee on paper bags.	Applies to 7 large supermarkets (\$2M gross annual sales). <sup>1</sup>	Mitigated Negative Declaration  Settlement prevents expansion of ban without EIR
12. Manhattan Beach	July 2008  (January 2009 & July 2009)	Single use plastic bag ban.  Product bags excepted (i.e., thin bags for veggies, etc.).  One year exemption available from City Manager for	All grocery stores, food vendors, pharmacies, restaurants, city facilities within 6 months; non-profits in one year.	Negative Declaration  Ordinance upheld by Supreme Court

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		undue hardship.		
13. Malibu	May 2008  (May 2009)	Single use plastic bags banned.  Product bags excepted (i.e., thin bags for veggies, etc.).  Exemptions available from City Manager for undue hardship.	Applies to all retail establishments, restaurants, vendors or non-profit vendors.	Negative Declaration  Not challenged
14. Fairfax	City Council: August 2007  Voter initiative: November 2008  (May 2009)	Single use plastic bags banned.  Paper bags with minimum 40% post-consumer recycled content may be distributed at no charge.  Penalty provisions.	All stores, shops, eating places, food vendors and retail food vendors.	Abandoned ordinance after suit but citizens later passed ban by voter initiative
15. Oakland	July 2007  (Repealed May 17, 2008)	Single use plastic bags banned.  Product bags excepted (i.e., thin bags for veggies, etc.).  Penalty provisions.	Retail establishments with gross annual sales of \$1M or more.	Categorical Exemptions (Class 7 and 8, CEQA Guidelines 15307, 15308)  Overturned by Superior Court for failure to comply with CEQA
16. San Francisco	April 2007  (October 2007 & April 2008)	Non-compostable plastic bag ban.  Paper bags with minimum 40% post-consumer recycled content may be distributed at no charge.  Penalty provisions.	After 6 months grocery stores with \$2M or more in gross annual sales and after 1 year, retail pharmacies with at least 5 locations under common ownership within the city. <sup>1</sup>	None  Not challenged