

LAW OFFICES  
*of*  
**STEPHEN L. JOSEPH, ESQ.**

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

*Admitted in California and the District of Columbia*

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

June 10, 2008

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

RE: Proposed plastic bag ban ordinance and CEQA demand

Dear Council Members:

I represent the Save The Plastic Bag Coalition.

On June 3, 2008, I wrote to the city stating the coalition's legal objections to the proposed plastic bag ban ordinance. In response to my letter, the Council deferred consideration of the proposed ordinance until its next meeting. I am writing to respond to some surprising and disturbing statements made at the June 3 Council meeting. Also, I wish to respond to a comment made by a Council Member regarding the coalition.

**INAPPROPRIATE STATEMENTS MADE AT JUNE 3 MEETING**

In my letter, I informed the city that it must comply with the California Environmental Quality Act (CEQA). My understanding is that the city does not dispute that point, nor could it in view of the Alameda Superior Court ruling.

At the June 3 meeting, the City Attorney informed the Council that the city would not need to write a full Environmental Impact Report ("EIR"). He indicated that the purpose of the exercise is merely to "beef up the record" to justify a plastic bag ban. He said that as long as a study is not "obviously flawed," it would be good enough. The following exchange took place:

Lindy Coe-Juell: I don't know that we would go to a full EIR in our study...."

City Attorney: "We can do it in two weeks."

Council Member: “Seriously?”

City Attorney: “Yeah I don’t think that we would need an EIR for this. They’ve just simply raised an issue. It would depend on what information is out there. But if we can come up with studies that contradict the argument they’ve made about paper bags being more negative to the environment than plastic bags then I think we can move forward rather quickly on it.”

....

City Attorney “What we are looking for is studies that say why plastic is bad.”

These statements are inappropriate and legally wrong. We believe that the City Attorney’s position regarding CEQA was flippant and dismissive. The last people who should be undermining CEQA are those who profess to be concerned about protecting the environment.

The purpose of the EIR is not to prove that plastic bags or paper bags are good or bad, or any other preconceived conclusions. The purpose is to obtain reliable information on all sides of the issue and conduct an objective analysis.

The EIR must be prepared in good faith. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. It informs governmental decision-makers and the public of the significant environmental effect of a project, identifies possible ways to minimize the significant effects, and describes reasonable alternatives. 14 CCR §15121.

Title 14, Chapter 3 of the California Code of Regulations contains legal [requirements](#) about the EIR [process](#) and the [contents](#) of an EIR. We are very concerned, based on the City Attorney’s statements, that the city does not intend to comply with the legal requirements. The coalition will seek judicial enforcement if necessary.

CEQA is critically important legislation for the protection of the environment. It ensures that governmental actions are based on sound environmental information, thorough analysis, and consideration of the alternatives, not myths and misinformation. I hope that you will make it clear at the next Council meeting that the city takes its obligations under CEQA seriously.

The Council needs an EIR because the city is intentionally disregarding the facts. For example, in my June 3 letter, I quoted from a report in the London Times establishing that the statements in the Staff Report about marine mammals and seabirds were incorrect and based on a typographical error. The London Times report was never mentioned at the June 3 meeting.

### **INAPPROPRIATE STATEMENT TO THE MEDIA**

The following appeared in a report in *Easy Reader* on June 5.

“Councilman Jim Aldinger said the coalition was hijacking environmental law, harboring ulterior motives other than the improvement of the environment. “Using CEQA for this purpose is ridiculous,” he said.

It is not the coalition that is hijacking environmental law. It is the city that is undermining it. The city assumes that it already knows everything on this subject, even though it has done zero research and zero analysis. Selectively copying inaccurate one-liners from the Internet and calling it a “Staff Report” does not qualify as legitimate research. Calling the requirement of a CEQA analysis “ridiculous” is irresponsible and suggests that Council Member Aldinger is not seriously interested in investigating the facts or facing up to the consequences of the proposed ordinance.

### **LACK OF LEGAL AUTHORITY TO BAN**

In my June 3 letter, I stated that even if an EIR is completed, the City of Manhattan Beach has no legal authority to ban plastic bags. Unfortunately, this point was not mentioned by anyone at the June 3 meeting. In the event that an ordinance is passed banning plastic bags, you should expect this issue to be litigated.

### **THE INCONVENIENT TRUTH ABOUT PAPER BAGS**

Plastic is not perfect, nothing is, but it is far better for the environment than paper. It would be ludicrous to ban the environmentally superior alternative. We will provide support for the following information upon request and as part of the EIR process.

**Plastic is far more energy efficient.** It takes approximately four times more energy to create a paper bag. It takes approximately ten times more diesel fuel to transport paper bags, because they are heavier and bulkier. It takes as much as eighty-five times more energy to recycle a paper bag. Think of the CO<sub>2</sub> emissions.

**Plastic is far cleaner.** The manufacture of paper bags generates approximately 70 percent more air pollutants and 50 times more water pollutants than plastic bags.

**Plastic saves trees.** What is happening in the oceans is important, but so too is what is happening on land and in the atmosphere. Approximately 13 to 17 million trees are chopped down each year to make paper bags, which will multiply if plastic bags are banned. Logging has an impact on climate change. Trees absorb and store CO<sub>2</sub>. Logging releases stored CO<sub>2</sub> into the atmosphere. CO<sub>2</sub> is increasing the acidification of the oceans and threatening the ecosystem and entire species of marine life.

The June 3 Staff Report is full of assertions about the negative environmental impacts of plastic bags. The report does not contain a single word about the negative environmental impacts of paper bags. Not one word! Why?

Taking the position that paper bags have no negative environmental impact is intellectually dishonest and absurd. Is this the quality of information that the City of Manhattan Beach considers acceptable when it makes its decisions?

We are not suggesting that the city must accept as true our information about the environmental impacts of paper bags. Far from it. The city should not accept anything as true just because someone has said it or it is on the Internet. We are saying that the city must conduct a proper investigation of all the ramifications of the proposed ordinance through the mandatory EIR process. Burying the facts is not acceptable.

### **DRIVING UP THE COST OF GROCERY SHOPPING**

Paper bags are far more expensive for stores to purchase than plastic bags. Ultimately, the extra cost will be passed on to the consumer. Food costs are rising. Many people in the community are struggling to pay the costs of groceries. Passing a plastic bag ban would be economically damaging to these people and incredibly insensitive.

CEQA states that a finding of a significant effect on the environment “shall” be made if the “the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.” Public Resources Code §21083(c). These effects include “adverse economic or social effects on people.” *Citizens Assn. For Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 170.

We demand that the EIR include an examination of the economic and social effects of the higher cost of paper bags.

### **OUR PROPOSAL: REDUCE, REUSE, RECYCLE, PUBLICIZE**

Banning plastic bags is a bad idea. This is what we propose.

**Reduce:** Stores should be asked to reduce the number of bags they hand out by putting more items in them and avoiding double-bagging.

**Reuse:** The city should ask residents to take their own reusable bags to the store. If they forget and have to obtain bags at the checkout, they should be encouraged to choose plastic over paper because it is the environmentally superior choice.

**Recycle:** Consumers should be asked to take their used plastic bags back to the store and deposit them in the special plastic bag recycling bins that were installed statewide last year. The city should also be working to improve the curbside recycling of plastic bags.

**Publicize:** The city should put posters up, do mailings, and get the word out through the media encouraging reduction, reuse, and recycling.

**CONCLUSION**

The coalition was formed to make people ask questions, look at *all* of the facts, consider *all* of the consequences, and think for themselves rather than believing everything they hear and jumping on the anti-plastic bag bandwagon. Being factually correct is more important than being politically correct. That is why the coalition is demanding an EIR.

I request that you make this letter and my June 3 letter part of the public record. Thank you for your consideration. All rights are reserved.

Sincerely,

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

Stephen L. Joseph

Copies to:

Geoff Dolan, City Manager  
Lindy Coe-Juell, Assistant to City Manager  
City Attorney Robert V. Wadden, Jr. Esq.