

## **THE SAVE THE PLASTIC BAG COALITION**

**TO THE CITY OF MANHATTAN BEACH, CALIFORNIA**

### **FORMAL OBJECTIONS BY THE SAVE THE PLASTIC BAG COALITION TO PROPOSED NEGATIVE DECLARATION AND CLAIMS OF EXEMPTION REGARDING PROPOSED ORDINANCE NO. 2115 TO PROHIBIT THE USE OF PLASTIC CARRY-OUT BAGS, AND TO THE PROPOSED ORDINANCE**

The Save The Plastic Bag Coalition (the “Coalition”) is an unincorporated association of plastic bag manufacturers and distributors. The members include (but are not limited to) Grand Packaging, Inc. and Crown Poly, Inc. which are manufacturers and Elkay Plastics Co., Inc. which is a manufacturer and distributor. Members of the Coalition supply plastic carry-out bags to businesses covered by the proposed ordinance and would be adversely affected by its adoption.

The Coalition hereby responds to the June 12, 2008 Notice Of Intent To Adopt Negative Declaration and asserts the objections herein.

### **GROUND FOR EXEMPTION CITED BY THE CITY**

14 CCR §15061(b)(3) and §15308 are cited by the city in the proposed ordinance as the bases for exemption from the California Environmental Quality Act (CEQA) and the requirement that an Environmental Impact Report (EIR) be prepared.

14 CCR §15061(b)(3) is known as the “common sense exemption.” It states as follows:

The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is *no possibility* that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. [Emphasis added]

Citing 14 CCR §15061(b)(3), the proposed ordinance states that the activity will not result in direct or indirect or reasonably foreseeable direct or indirect physical change to the environment.

14 CCR §15308 is a “categorical exemption.” It states that the following category of actions is exempt from CEQA:

[A]ctions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the

environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.

14 CCR §15300.2(c) states an exception to all categorical exemptions, as follows.

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Citing 14 CCR §15308, the proposed ordinance states that the ordinance is exempt as it is a regulatory program designed to protect the environment.

### **THE SCOTTISH REPORT**

In 2005, the Scottish Government issued a full environment impact assessment on the effects of a proposed plastic bag levy (the “Scottish Report”). A copy of the [Scottish Report](#) is provided herewith.

The Scottish report states:

If only plastic bags were to be levied (scenarios 1A and 1B), then studies and experience elsewhere suggest that there would be some shift in bag usage to paper bags (which have worse environmental impacts.)

The Scottish Report compared plastic and paper bags and made the following findings:

[A] paper bag has a more adverse impact than a plastic bag for most of the environmental issues considered. Areas where paper bags score particularly badly include water consumption, atmospheric acidification (which can have effects on human health, sensitive ecosystems, forest decline and acidification of lakes) and eutrophication of water bodies (which can lead to growth of algae and depletion of oxygen).

[Note: Eutrophication means the process by which a body of water becomes rich in dissolved nutrients, thereby encouraging the growth and decomposition of oxygen-depleting plant life and resulting in harm to other organisms.]

Paper bags are anywhere between six to ten times heavier than lightweight plastic carrier bags and, as such, require more transport and its associated costs. They would also take up more room in a landfill if they were not recycled.

The Scottish Report contains the following comparison of the environmental metrics of plastic bags and paper bags which is taken from the study done by the French company Groupe Carrefour. The lightweight plastic bag has been given a score of 1 in all categories as a reference point. The report states:

A score greater than 1 indicates that another bag ('bag for life' or paper) makes more contribution to the environmental problem than a lightweight plastic bag *when normalised against the volume of shopping carried*. A score of less than 1 indicates that it makes less of a contribution, i.e. it has less environmental impact than a lightweight plastic bag.” [Emphasis added]

The indicators take account of emissions which occur over the whole lifecycle. They can therefore occur in different locations depending on where different parts of the lifecycle are located. For global environmental problems such as climate change, the location of the emission is not important in assessing the potential environmental impact....

<b>Indicator of environmental impact</b>	<b>HDPE bag lightweight</b>	<b>Paper bag single use</b>
Consumption of non-renewable primary energy	1.0	1.1
Consumption of water	1.0	4.0
Climate change (emission of greenhouse gases)	1.0	3.3
Acid rain (atmospheric acidification)	1.0	1.9
Air quality (ground level ozone formation)	1.0	1.3
Eutrophication of water bodies	1.0	14.0
Solid waste production	1.0	2.7
Risk of litter	1.0	0.2

Scottish Report at page 22-23.

## **THE ULS REPORT**

In March 2008, use-less-stuff.com (“ULS”) issued an updated “Review Of Life Cycle Data Relating To Disposable, Compostable, Biodegradable, And Reusable Grocery Bags” (the “ULS Report”). A copy of the [ULS Report](#) and the one-page ULS [media release](#) announcing the report are provided herewith.

ULS made the following findings which are contained in the report:

1. Plastic bags generate 39% less greenhouse gas emissions than uncomposted paper bags, and 68% less greenhouse gas emissions than composted paper bags. The plastic bags generate 4,645 tons of CO2 equivalents per 150 million bags; while uncomposted paper bags generate 7,621 tons, and composted paper bags generate 14,558 tons, per 100 million bags produced.
2. Plastic bags consume less than 6% of the water needed to make paper bags. It takes 1004 gallons of water to produce 1000 paper bags and 58 gallons of water to produce 1500 plastic bags.
3. Plastic grocery bags consume 71% less energy during production than paper bags. Significantly, even though traditional disposable plastic bags are produced from fossil fuels, the total non-renewable energy consumed during their lifecycle is up to 36% less than the non-renewable energy consumed during the lifecycle of paper bags and up to 64% less than that consumed by biodegradable plastic bags.
4. Using paper sacks generates almost five times more solid waste than using plastic bags.
5. After four or more uses, reusable plastic bags are superior to all types of disposable bags -- paper, polyethylene and compostable plastic -- across all significant environmental indicators.

ULS Report at pages 3-4. The ULS report concludes as follows:

Legislation designed to reduce environmental impacts and litter by outlawing grocery bags based on the material from which they are produced will not deliver the intended results. While some litter

reduction might take place, it would be outweighed by the disadvantages that would subsequently occur (increased solid waste and greenhouse gas emissions). Ironically, reducing the use of traditional plastic bags would not even reduce the reliance on fossil fuels, as paper and biodegradable plastic bags consume at least as much non-renewable energy during their full lifecycle.

ULS Report at pages 5.

### **OTHER ENVIRONMENTAL IMPACTS**

As stated in my letters dated June 3 and 10, 2008, there are other environmental impacts of a shift to paper bags.

It takes approximately ten times more diesel fuel to transport paper bags than plastic bags, because they are heavier and bulkier.

It takes as much as eighty-five times more energy to recycle a paper bag than a plastic bag.

The manufacture of paper bags generates approximately 70 percent more air pollutants than plastic bags.

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.

A comprehensive review of the impact of the paper industry on the environment is contained in a report entitled "The State of the Paper Industry" by the Environmental Paper Network the "Paper Report"). It can be downloaded at:

[www.environmentalpaper.org/stateofthepaperindustry/confirm.htm](http://www.environmentalpaper.org/stateofthepaperindustry/confirm.htm).

The following findings are stated in the Paper Report:

[T]he paper industry's activities - and our individual use and disposal of paper in our daily lives - have enormous impacts. These include loss and degradation of forests that moderate climate change, destruction of habitat for countless plant and animal species, pollution of air and water with toxic chemicals such as mercury and dioxin, and production of methane - a potent

greenhouse gas - as paper decomposes in landfills, to name just a few. (Page iv)

One of the most significant, and perhaps least understood, impacts of the paper industry is climate change. Every phase of paper's lifecycle contributes to global warming, from harvesting trees to production of pulp and paper to eventual disposal. (Page v)

The climate change effects of paper carry all the way through to disposal. If paper is landfilled rather than recycled, it decomposes and produces methane, a greenhouse gas with 23 times the heat-trapping power of carbon dioxide. More than one-third of municipal solid waste is paper, and municipal landfills account for 34 percent of human related methane emissions to the atmosphere, making landfills the single largest source of such emissions. The U.S. Environmental Protection Agency has identified the decomposition of paper as among the most significant sources of landfill methane. (Page v)

Plastic bags are often criticized on the ground that they do not decompose in landfills. In fact, as we can see from the Paper Report, that is a positive attribute of plastic bags, not a negative one.

### **THE OAKLAND CASE**

The issue of the applicability of CEQA to the banning of plastic bags has already been litigated. *Coalition To Support Plastic Bag Recycling v. City of Oakland et al.*, Alameda Superior Court, Case No. RG07-339097 (hereinafter the "Oakland Case"). The City of Oakland passed an ordinance banning plastic bags, citing 14 CCR §15061(b)(3) and §15308 as reasons for not preparing an EIR. The court ruled that the ordinance was invalid as the city could not make the findings required under either section. A copy of the court's ruling is provided herewith.

In the Oakland Case, the court referred to the Scottish Report and an earlier version of the ULS Report.

The court ruled as follows regarding 14 CCR §15061(b)(3):

The findings of the Scottish report raise a reasonable inference that an outright ban on single-use 100% petroleum plastic bags may result in increased use of paper bags.

This evidence is sufficient to defeat the assertion of the “common sense exemption” because, with such evidence as part of the record, the City cannot meet the standard that there is no possibility that the Ordinance will cause a significant environmental effect....

It is because of this evidence in the record and unanimity of the uncertainty whether paper bags are less (or more) environmentally friendly than plastic bags that the City cannot assert that there is “no possibility” of any significant environmental effect caused by the ban of the 100% petroleum plastic bags.

Having found evidence to support a fair argument regarding the significant adverse effects of the Ordinance claimed by Petitioner, and no evidence that would permit the City to conclude to a certainty that Petitioner’s concerns are unfounded, City’s reliance on the common sense exemption was an abuse of discretion.

Ruling at 9-10.

The court ruled as follows regarding 14 CCR §15308:

[T]here are exceptions to the categorical exemptions. The City cannot rely on a categorical exemption for a project where there is a “reasonable possibility” that the activity will have a significant effect on the environment due to “unusual circumstances.” (CEQA Guidelines § 15300.2(c).) The City’s determination whether the ordinance will have a significant effect on the environment is reviewed under the fair argument standard. [Citation] The question is whether “on the basis of the whole record, there was *no* substantial evidence that there would be a significant [environmental] effect.” [Citation] [Emphasis in original]

A shift in consumer use from one environmentally damaging product to another constitutes an “unusual circumstance” of an activity that would otherwise be exempt from review under CEQA as activity undertaken to protect the environment. [Citation] The court also finds that substantial evidence in the record supports at least a fair argument that single-use paper bags are more environmentally damaging than single-use plastic bags. [Referring to the Scottish Report, the ULS Report, and other documents.]....

Although City points to evidence in the record that contradicts evidence cited by Petitioner, the court does not address it except to note that none of this evidence negates the evidence cited by petitioner. “If such evidence [supporting a fair argument of significant environmental impact] is found, it cannot be overcome by substantial evidence to the contrary.” [Citation]

Ruling at 11-12.

### **CEQA OBJECTIONS**

Based on the foregoing and the documents provided herewith, the Coalition objects to the proposed negative declaration and the proposed ordinance on the following grounds:

- A. Based on the Scottish and ULS Reports and common sense, it is clear that the prohibition on the distribution of plastic carry-out bags in Manhattan Beach would result in an increase in the number of paper carry-out bags that would have significant adverse environmental effects. Consequently, the City of Manhattan Beach cannot meet the standard that there is *no possibility* that the proposed ordinance will cause a significant environmental effect.
- B. The IES addresses paper bags. The city concedes in the IES that the banning of plastic bags in Manhattan Beach “may result in an increase in paper bag usage.” (Page 15) The city also concedes in the IES that “it is well documented that the manufacture and recycling of paper generates more wastewater than plastic bags. The increased use of energy could have an impact on the environment by increasing emissions from paper mills and recycling plants.” (Page 15) The city is thereby conceding that there is a *fair argument* and a *possibility* that the proposed ordinance will have a significant environmental effect.
- C. The City Attorney admitted at the June 3, 2008 Council hearing that the Coalition had made a “fair argument” in its June 3, 2008 letter. He stated: “They have raised in their [June 3, 2008] letter what’s called in CEQA terminology a fair argument that in fact there could be a negative impact from adopting this ordinance.”
- D. The city states in the IES that Manhattan Beach is a small city with only 217 licensed retail establishments that might use plastic bags. (Page 15) The city concludes as follows: “It *appears* that any increase in the total use of paper bags resulting from the proposed ban on plastic bags...would be relatively small with a minimal or nonexistent increase in pollutants generated from production and recycling.” (Page 16) (Emphasis added) This is a bare assertion that is not supported by any facts or evidence in the IES. In any case, the

word “appears” is a concession by the city that it is *possible* that the ordinance will have significant environmental effect.

- E. The size of the city and the number of retail outlets have nothing to do with whether the activity in question may have a significant negative effect on the environment. If it were otherwise, then each small city could avoid the preparation of an EIR, but the cumulative effect of many small cities doing the same thing would be large. The Coalition hereby makes a *fair argument* that it is *possible* that banning plastic bags in a city with 217 retail outlets would have a significant negative effect on the environment caused by a shift to paper bags.
- F. The IES does not satisfy the requirements of 14 CCR §15063 for an Initial Study as it does not state all of the possible negative environmental effects of an increase in the number of paper carry-out bags, including those identified herein and in the Scottish and ULS Reports (which are incorporated in these objections by reference) and the Coalition’s letters dated June 3 and 10, 2008.
- G. There is substantial evidence in the record that supports a *fair argument* and a reasonable possibility that single-use paper bags are more environmentally damaging than single-use plastic bags, including this document and the Scottish and ULS Reports. Therefore, it cannot be seen *with certainty* that there is *no possibility* that the activity in question may have a significant negative effect on the environment. **This objection cannot be overcome by substantial evidence to the contrary.** 14 CCR §15061(b)(3); Oakland Case at 12; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 CalApp.3d 1337, 1348 (“If such evidence [supporting a fair argument of significant environmental impact] is found, it cannot be overcome by substantial evidence to the contrary.”).
- H. There is substantial evidence in the record that supports a *fair argument* and a reasonable possibility that the activity will have a significant effect on the environment due to “unusual circumstances.” A shift in consumer use from one environmentally damaging product to another constitutes an “unusual circumstance.” **This objection cannot be overcome by substantial evidence to the contrary.** 14 CCR §15308, §15300.2(c); Oakland Case at 12; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 CalApp.3d 1337, 1348 (“If such evidence [supporting a fair argument of significant environmental impact] is found, it cannot be overcome by substantial evidence to the contrary.”).

Each of the above objections is a separate and independent ground.

## **FURTHER OBJECTIONS**

The Coalition further objects to the proposed ordinance on the following grounds:

1. Pursuant to California Public Resources Code §§42250-42257 (also known as “AB 2449”), stores (as defined in §42250(e)) are required to install special recycling bins for plastic bags. AB 2449 was intended to address and constitute the state’s solution to the perceived problems of plastic carry-out bags, including but not limited to recycling, litter, marine debris, and environmental sustainability issues. It occupies the field and preempts any potential city or county action to address those issues by enacting a plastic bag ban. AB 2449 contains no provision permitting a city or county to ban plastic bags. AB 2449 only reserves the right of cities and counties to adopt, implement, and enforce laws governing curbside or drop off recycling programs for plastic bags. §42250(c).
2. California cities and counties have no right or authority to ban a product simply because it is not recycled to a degree deemed satisfactory by the city or county.
3. California cities and counties have no right or authority to ban a product simply because the product sometimes becomes litter.
4. California cities and counties have no right or authority to ban a product simply because the product sometimes becomes marine debris.
5. California cities and counties have no right or authority to ban a product simply because they believe that it would be the best option for the sustainability of the environment.
6. A California city or county has no right or authority to ban plastic bags on environmental grounds. Other cities and counties may decide to pass laws banning paper bags rather than plastic bags. This would result in a patchwork of competing and conflicting environmental schemes that would cancel each other out and defeat the purposes of such laws. Assuming that it is not exclusively a federal matter under the Commerce Clause, only the California Legislature can enact such a ban.

Each of the above objections is a separate and independent ground.

**REQUESTS FOR INCLUSION IN THE RECORD**

It is requested that the following documents be made part of the record and the Staff Report:

1. This document.
2. The Oakland Case ruling provided herewith.
3. The Scottish Report provided herewith.
4. The ULS Report provided herewith.
5. The ULS media release provided herewith.
6. The London Times report provided herewith.
7. My letters dated June 3 and 10, 2008 on behalf of the Coalition provided herewith.

**CONCLUSION**

In the event that the city adopts the proposed ordinance, the Coalition and/or some or all of its members intend to file a lawsuit challenging its validity. The grounds will include (but may not be limited to) the points and objections stated herein and in my June 3 and 10, 2008 letters. No arguments or objections are waived. All rights are reserved.

We request an opportunity for the Coalition to provide oral testimony at the public hearing.

Dated: June 18, 2008

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