

SAVETHEPLASTICBAG.COM

OBJECTIONS TO CITY OF PALO ALTO
PROPOSED MITIGATED NEGATIVE DECLARATION
AND NOTICE OF INTENT TO FILE LAWSUIT

To the City of Palo Alto, Planning Department, 250 Hamilton Avenue, Palo Alto, CA 94301.

Project name: Ordinance Amendment to Place a Limited Prohibition on Single-Use Plastic Checkout Bags

SaveThePlasticBag.com hereby objects to the February 3, 2009 Notice of Intent To Adopt A Mitigated Negative Declaration. This document contains the following elements:

- A. Formal objections to the Notice Of Intent To Adopt A Mitigated Negative Declaration.
- B. Formal request and demand for preparation of Environmental Impact Report (EIR) regarding proposed plastic bag ordinance, pursuant to the California Environmental Quality Act (CEQA).
- C. Notice of intent to file petition for writ of mandate under CEQA to require preparation of EIR regarding proposed plastic bag ordinance.
- D. Notice of intent to file lawsuit challenging validity of proposed plastic bag ordinance, including request for declaratory relief.

ABOUT SAVETHEPLASTICBAG.COM

SaveThePlasticBag.com (“STPB”) is an unincorporated association concerned about the environment, including but not limited to the negative environmental effects of increasing paper bag and the negative environmental effects of reusable bag usage.

SaveThePlasticBag.com (under its previous name Save The Plastic Bag Coalition) has filed a lawsuit against the County of Los Angeles in the Los Angeles Superior Court challenging its phased ban of plastic bags.

SaveThePlasticBag.com (under its previous name Save The Plastic Bag Coalition) has also filed a lawsuit against the City of Manhattan Beach in the Los Angeles Superior Court challenging the validity of its ordinance banning plastic bags. The court granted STPB’s motion for preliminary injunction on December 18, 2008, ruling that STPB is likely to succeed on the merits.

Copies of the lawsuits and primary litigation documents and the aforementioned ruling in the Manhattan Beach case are available at: www.savetheplasticbag.com/ReadContent541.aspx

PLASTIC BAGS ARE THE TARGET OF A MISINFORMATION CAMPAIGN

Every manufactured product has a negative environmental impact. Plastic bags are no exception. The difference between plastic bags and other products is that plastic bags have been singled out for intense and unprecedented scrutiny and are being held to a standard of environmental perfection that no manufactured product could ever satisfy.

Plastic bags are as environmentally benign as any product available today. They have a tiny impact compared to other products and activities. However, this has not prevented them from becoming a negative *symbol* for some environmental activists and politicians who have become obsessed with eliminating them from the marketplace.

Plastic bags have also been caught up in a broader “all plastic is evil” sentiment propagated by extremists, which is simplistic, unrealistic and absurd.

Myths and misinformation about plastic bags pervade the Internet. They have found their way into city and county reports, because staffs have failed to check facts. The staff reports are accepted as true by well-meaning politicians and members of the public who rely on the reports.

The Times (of London) is one of the most respected newspapers in the world. No one would seriously suggest that it has pro-business or anti-environmental bias. A *Times* editorial states:

Many of those who have demonized plastic bags have enlisted scientific study to their cause. By exaggerating a grain of truth into a larger falsehood, they spread misinformation and abuse the trust of their unwitting audiences.

www.timesonline.co.uk/tol/comment/leading_article/article3508113.ece

On March 8, 2008, *The Times* published a report entitled: “Series of blunders turned the plastic bag into global villain.” The report states as follows:

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

Fifteen years later in 2002, when the Australian Government commissioned a report into the effects of plastic bags, its authors

misquoted the Newfoundland study, mistakenly attributing the deaths to “plastic bags”.

The figure was latched on to by conservationists as proof that the bags were killers. For four years the “typo” remained uncorrected. It was only in 2006 that the authors altered the report, replacing “plastic bags” with “plastic debris”. But they admitted: “The actual numbers of animals killed annually by plastic bag litter is nearly impossible to determine.”

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

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

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

www.timesonline.co.uk/tol/news/environment/article3508263.ece.

In response to *The Times* report, the British Government minister charged with eliminating plastic bags wrote to *The Times* stating:

We have never said that plastic bags were a leading cause of death in marine animals, though general plastic waste does make a contribution.... They are a potent *symbol* of our throwaway society and public opinion recognizes this. Of course, these bags contribute only a small part of the waste that leads to climate-changing emissions, but we need to change the small things as well as the large and to work with the grain of public opinion. [Emphasis added.]

www.timesonline.co.uk/tol/news/environment/article3508263.ece

As the British Government acknowledges, ideological *symbolism* and pandering to public opinion, not truth and environmental protection, are driving the anti-plastic bag campaign.

Even Heal the Bay has been forced to backtrack and admit that it is speculating about whether plastic bags are killing any marine mammals. (Heal the Bay is a group based in Santa Monica that advocates the banning of plastic bags.) Sarah Abramson, Director of Coastal Resources at Heal the Bay has admitted as follows:

When we conduct an autopsy on an animal, it's difficult to figure out what plastic killed it, but going off of the statistics we have from the amount of high amount of plastic bags found during beach clean-ups and the large number that wind up in catch basins, it's fair to say a good percentage of the plastic debris marine life are consuming is from plastic bags.

www.easyreadernews.com/story.php?StoryID=20033752

STPB's primary objective is to provide the true facts about plastic bags to decision-makers and the public, thereby dispelling the myths and misinformation. STPB has created an environmental information website at www.savetheplasticbag.com. The website cites only to studies prepared by governmental organizations and independent environmental groups. No plastic industry studies are cited.

Despite STPB's best efforts to disseminate the facts, we are finding that many lawmakers and their staffs are still hearing only what they want to hear, including myths and misinformation, and persistently disregarding or refusing to believe any information that interferes with their preconceived views about plastic bags. This is called "confirmation bias." See http://en.wikipedia.org/wiki/Confirmation_bias.

Misleading people and getting them excited and agitated about the effects of plastic bags on marine life is unfair and irresponsible.

STPB is determined to ensure that lawmakers arrive at their decisions about plastic bags with the benefit of accurate and comprehensive environmental information. We strongly encourage the Mayor and Council Members to visit our website at www.savetheplasticbag.com to learn the true facts about plastic bags.

LEGAL BASIS FOR OBJECTION TO PROPOSED NEGATIVE DECLARATION

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]

The criterion for a mitigated negative declaration, that is that there is *no possibility* of significant environmental impact, is not satisfied in this instance.

The issue of the applicability of CEQA to the banning of plastic bags has already been fully 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 Code of California Regulations (“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.

In the Oakland Case, the court referred to the Scottish Report and an earlier version of the 3-08 ULS Report which are discussed in the next section of this document.

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’s ruling can be downloaded at: www.savetheplasticbag.com/ReadContent541.aspx.

In *County Sanitation District No. 2 v. County of Kern*, (2005) 127 Cal.App.4th 1544, the court held as follows:

California courts, including the Fifth Appellate District, routinely describe the fair argument test as a low threshold requirement for the initial preparation of an EIR that reflects a preference for resolving doubts in favor of environmental review....

In contrast to this description of the fair argument test, County asserts that “[a]ny reasonable doubts whether substantial evidence exists must be resolved in favor of the agency's decision.” This assertion is rejected because (1) it misstates the low threshold of the fair argument test and (2) the case relied upon by County did not actually involve the fair argument test or the approval of a negative declaration....

A logical deduction from the formulation of the fair argument test is that, if substantial evidence establishes a reasonable possibility of a significant environmental impact, then the existence of contrary evidence in the administrative record is not adequate to support a decision to dispense with an EIR. Guidelines, §15064, subd. (f)(1); *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-905.

THE SHIFT TO PAPER BAGS WILL OR MAY RESULT IN A SIGNIFICANT NEGATIVE ENVIRONMENTAL IMPACT

Paper bags would not be banned under the proposed ordinance. While the City of Palo Alto plans to use encouragement, education and other voluntary means to mitigate the use of paper bags in favor of reusable bags, the success of the endeavor is by no means assured. *There is a significant possibility that the proposed ordinance will result in an increase in the number of paper bags provided to consumers, notwithstanding the promotion and giving away of reusable bags.*

In 2007, the City of San Francisco passed an ordinance banning non-compostable plastic carryout bags in supermarkets and grocery stores with more than \$2 million in annual sales and chain pharmacies. The ordinance requires the use of paper bags, compostable plastic bags, or reusable bags. To determine the impact of the ordinance, Use-Less-Stuff.com (“ULS”) observed store and customer bag usage in San Francisco. A total of 25 retail stores were visited from September 14 to 17, 2008. Stores were walked through, store personnel were questioned, checkout activities were observed, and customers’ bagging preferences were reviewed.

ULS found that all food chains affected by the ordinance had switched to paper bags only. ULS also found that “very few people” brought reusable bags to the store -- no more than in other cities. ULS concluded as follows in a report issued in September 2008 entitled “Report on Field Trip to San Francisco to Assess Plastic Bag Ban” (the “9-08 ULS Report”):

If reducing environmental impact is the objective of the Ordinance, results to date do not indicate it will be successful. First, little use of reusable bags was observed. Second, the replacement of plastic by paper and the return to double bagging may actually increase environmental impact, as many peer reviewed lifecycle studies indicate that paper bags use more energy, produce more waste, and generate more greenhouse gas emissions than do plastic bags.

The 9-08 ULS Report can be downloaded (including photographs) at www.use-less-stuff.com. It is incorporated herein by reference.

The manufacture, distribution, and recycling of paper bags may or will result in a significant negative environmental impact. Therefore, the City of Palo Alto cannot meet the standard that there is *no possibility* that the proposed ordinance will cause a significant environmental effect.

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 available at www.scotland.gov.uk/Resource/Doc/57346/0016899.pdf.

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. 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]

Indicator of environmental impact	HDPE bag lightweight	Paper bag single use
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 23.

In March 2008, ULS issued an updated “Review Of Life Cycle Data Relating To Disposable, Compostable, Biodegradable, And Reusable Grocery Bags” (hereinafter “3-08 ULS Report”). A copy of the report is available at <http://use-less-stuff.com>. ULS made the following findings in the report:

- A. 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.

- B. 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.
- C. 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.
- D. Using paper sacks generates almost five times more solid waste than using plastic bags.
- E. 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 3-08 Report at pages 3-4.

The ULS 3-08 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 3-08 Report at pages 5.

Based on the Scottish and both ULS Reports and common sense, it is clear that a prohibition on the distribution of plastic carry-out bags in Palo Alto would result in an increase in the number of paper carry-out bags that would have significant negative environmental impacts. Consequently, the City of Palo Alto cannot meet the standard that there is *no possibility* that the proposed ordinance will cause a significant environmental effect.

**IT CANNOT BE ASSUMED THAT REUSABLE BAGS
HAVE NO NEGATIVE ENVIRONMENTAL IMPACTS**

The City of Palo Alto has indicated that it hopes that consumers will switch to reusable bags. However, the City of Palo Alto has done no analysis of the environmental impacts of reusable bags. A shift to reusable bags may have a significant negative environmental impact. Therefore, the City of Palo Alto cannot meet the standard that there is no possibility that the proposed ordinance will cause a significant environmental effect.

Most reusable bags are manufactured in China. An EIR is necessary to determine the following:

- Metrics of consumption of nonrenewable energy to produce reusable bags. (An article in the *Wall Street Journal* “An Inconvenient Bag” Sep 26, 2008 states: “Many of the cheap, reusable bags that retailers favor are produced in Chinese factories and made from nonwoven polypropylene, a form of plastic that requires about 28 times as much energy to produce as the plastic used in standard disposable bags and eight times as much as a paper sack, according to Mr. Sterling of Natural Capitalism Solutions.”)
- Metrics on emissions of greenhouse gases in the production of reusable bags.
- Metrics on consumption of water to produce reusable bags.
- Metrics on creation of acid rain (atmospheric acidification) in the production of reusable bags.
- Metrics on creation of negative air quality in the production of reusable bags
- Metrics on water pollution or eutrophication in the production of reusable bags.
- Metrics on the consumption of nonrenewable energy to transport reusable bags. (Most reusable bags are made in China and have to be shipped to the United States and then transported by truck. Reusable bags are more voluminous and heavier than plastic bags, thereby requiring more diesel fuel to transport.)
- Metrics on the reusability of plastic carryout bags for bin liners, pet waste and other uses, which are not uses for “reusable” bags.
- Recyclability of reusable bags. (Most reusable bags are made from nonwoven polypropylene, which is not recyclable.)
- Metrics on solid waste production caused by disposal of plastic bags.

- Metrics on the extent to which reusable bags are actually reused. (The above-mentioned *Wall Street Journal* article referenced above states: “Earlier this year, KPIX in San Francisco polled 500 of its television viewers and found that more than half -- 58% -- said they almost never take reusable cloth shopping bags to the grocery store.”¹)

THE CITY HAS NOT PREPARED A CUMULATIVE ANALYSIS

By law, the environmental impact of City of Palo Alto’s proposed ordinance must be evaluated and judged as part of the statewide movement and in conjunction with similar or related initiatives and ordinances in other cities and counties and proposed statewide legislation.

14 CCR §15065(3) states that an EIR must be prepared if “the project has possible environmental effects that are individually limited but cumulatively considerable.” 14 CCR §15065(3) states that “cumulatively considerable” means that the “incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” 14 CCR §15355 defines “cumulative impacts” as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” 14 CCR §15355(b) states that “[c]umulative impacts can result from individually minor but collectively significant projects taking place over a period of time.”

In *Communities for a Better Environment v. California Resources Agency*, (2002) 103 Cal.App.4th 98, the court stated:

Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. [Footnote] One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact. [*Id.* at 114.]

From *Kings County and Los Angeles Unified*, the guiding criterion on the subject of cumulative impact is whether any additional effect caused by the proposed project should be considered significant given the existing cumulative effect. [*Id.* at 118.]

¹ STPB is highly averse to relying on newspaper reports for environmental data. However, the *Wall Street Journal* article shows the need for a Life Cycle Analysis on reusable bags, rather than an automatic (and clearly erroneous) assumption that reusable bags have no significant environmental impact.

The court stated that the agency must “focus on the combined effects of these impacts.” 103 Cal.App.4th at 121.

14 CCR §15064(f) specifically addresses the kind of evidence that an agency may and may not rely upon in determining whether there will be a significant effect:

Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

14 CCR §15064.7(a) states that an agency may develop “thresholds of significance.” A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant. 14 CCR §15064.7(a) The City has not developed any such thresholds of significance.

The following projects must be part of any cumulative analysis by the City:

1. The Los Angeles County program. On January 22, 2008, Los Angeles County adopted a so-called “voluntary” program to reduce single use bags by 30% by FY 2009-10 and 65% by 2012-13. The County will draft an ordinance banning plastic bags by April 2010 and will complete an EIR by that date. If the 30% or 65% goals are not met, plastic bags will be banned (but not paper bags).

At the Los Angeles County Board of Supervisors hearing on the program, the chair, Supervisor Burke, said the goals would in fact be “mandatory,” not voluntary. The County DPW Director said on the record: “They would be mandatory to the point that if they didn't meet those goals, then your board would impose a ban. In other words, there would be no penalty, criminal penalty for not meeting the goals, but the penalty would be that your board would move forward with the complete ban on plastic bags if they don't meet the goals.”

Heal the Bay, an anti-plastic bag activist group, engaged in nine months of negotiation with the County regarding the program. Its President, Mark Gold made public comments at the Manhattan Beach City Council meeting on July 1, 2008, before the vote on the Ordinance stating: “[The County] know that the recycling program that they’re setting up is doomed to failure and that basically it’s putting a ban out there in the future.... Nobody in the County of Los Angeles I have heard thinks that they’ll reach the 65% target. They think it’s a phased ban.”

2. The San Francisco plastic bag ban ordinance adopted in 2007.

3. The City of Malibu plastic bag ban ordinance adopted in 2008.
4. The City of Manhattan Beach plastic bag ban ordinance adopted in 2008.
5. The City of Santa Monica proposed plastic bag ban ordinance (which would also impose a fee on paper bags).
6. The Santa Clara County proposed model ordinance to impose a fee on plastic and paper bags.
7. Any pending bills in the California Legislature regarding banning or imposing fees on plastic bags, including but not limited to AB 68 and AB 87.

CEQA OBJECTION

Based on the foregoing and the documents provided herewith, SaveThePlasticBag.com objects to the proposed Mitigated Negative Declaration and the city's findings and determinations.

REQUEST AND DEMAND FOR ENVIRONMENTAL IMPACT REPORT

STPB requests and demands that the City of Palo Alto prepare an EIR, pursuant to CEQA. An EIR will identify, describe and disclose the environmental impacts of a shift to paper bags and reusable bags.

An EIR will also identify, describe and disclose the following:

- A. Approximately 85% of plastic bags used in the United States are made in the United States. These bags are not made out of oil. They are made of ethane which is a waste product from domestically produced natural gas. If the ethane is not used to make plastic bags, it will have to be burned off. The statement in the City Manager's Report that 12 million barrels of oils are used to make plastic bags is untrue.
- B. The statement in the City Manager's Report that plastic bags kill thousands of marine mammals is untrue. The London Times has exposed this as a myth based on a typographical error. The report on which the myth is based mentioned discarded nets, not plastic bags. See www.savetheplasticbag.com/ReadContent609.aspx.
- C. The marine debris issue has been grossly exaggerated. A 24 hour 50 mile trawl by an environmental organization in the North Pacific Gyre produced only enough plastic to fill the palm of a hand. See www.savetheplasticbag.com/ReadContent684.aspx.
- D. Plastic bags are fully recyclable. Special plastic bag recycling bins have been installed in large supermarkets and retail stores throughout California since 2007. Virtually all of the plastic bags deposited in those bins are actually recycled.

- E. Plastic bags do not clog up landfills. According to the California Integrated Waste Management Board, plastic bags (including retail bags) use up 0.4% of landfill space. See www.ciwmb.ca.gov/Publications/LocalAsst/Extracts/34004005/ExecSummary.pdf.
- F. It is an advantage that plastic bags do not decompose in landfills because they do not produce methane or other greenhouse gases. In contrast, decomposing paper in landfills produces methane which is a greenhouse gas with 23 times the heat trapping power of CO2. See www.environmentalpaper.org/stateofthepaperindustry/confirm.htm.
- G. The statement in the City of Palo Alto's Environmental Checklist Form that "plastic litter collection for beaches, state highways, cities and counties costs the State of California \$303.2 million each year" is untrue. That is the cost of clearing up all litter throughout the state, not just plastic bags. See www.savetheplasticbag.com/ReadContent606.aspx.

Taxing or banning plastic carryout bags will result in the direct loss of approximately 4,000 American jobs, including in California. In addition, there will be thousands of resin and distribution company job losses. Destroying an American manufacturing industry based on myths and misinformation during a severe economic crisis is irresponsible, absurd, and tragic. Most reusable bags are made in China, including those sold by Trader Joe's, Safeway and Whole Foods.

FURTHER OBJECTIONS

SaveThePlasticBag.com 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. 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 a ban.

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

NOTICE OF INTENT TO FILE LAWSUIT

In the event that the city adopts the proposed ordinance, STPB and/or some or all of its members intend to file a lawsuit challenging its validity. The grounds would include (but may not be limited to) the points and objections stated herein.

Specifically, STPB and/or some or all of its members would file a petition for writ of mandate under CEQA to require preparation of an EIR. As part of the lawsuit, a request would be made for a judicial declaration that any such ordinance would be invalid.

We would request attorney's fees pursuant to Code of Civil Procedure § 1021.5.

NO WAIVERS

No arguments or objections are waived. All rights are reserved.

REQUEST FOR FUTURE NOTICES

Pursuant to 14 CCR §15070(b), I request that you mail or fax to me any future notice of intent to adopt a negative declaration or mitigated negative declaration under CEQA, and all other future CEQA-related notices.

Dated: February 13, 2009

STEPHEN L. JOSEPH



Counsel, SaveThePlasticBag.com
P.O. Box 221
Tiburon, CA 94920-0221
Telephone: (415) 577-6660
Fax: (415) 869-5380
E-mail: savetheplasticbag@earthlink.net