

SAVETHEPLASTICBAG.COM

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**RESPONSE TO PALO ALTO CITY MANAGER'S
MEMORANDUM DATED MARCH 16, 2009**

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 responds to the March 16, 2009 memorandum from the City manager to the City Council ("Memo").

All of the previous objections that we have made are reaffirmed. The fact that such objections are not restated fully here is not intended to constitute and does not constitute a waiver of any such objections. Without waiving any such objections, we hereby respond to the Memo. All rights are reserved.

THE RULING IN THE MANHATTAN BEACH LAWSUIT

On February 20, 2009, the Los Angeles Superior Court granted our petition for a writ of mandate to invalidate the City of Manhattan Beach ordinance banning plastic bags, because paper bags may cause significant damage to the environment. To download the ruling, click on the following link:

www.savetheplasticbag.com/UploadedFiles/Manhattan%20Beach%20ruling.pdf

The court had previously granted a preliminary injunction prohibiting Manhattan Beach from implementing the ordinance. In its ruling on the injunction, the court stated:

The solution required by CEQA in such cases is to publicly air the dispute between the experts by ordering an EIR, rather than ignoring or suppressing the existence of such a dispute.

To download the ruling on the preliminary injunction, click on the following link:

www.savetheplasticbag.com/UploadedFiles/MB%20minute%20order.pdf

Manhattan Beach had beefed up its staff report in response to our objections. It too had a reusable bag promotion program as part of its initiative. However, it did not save them from having to do an EIR. *The situation with Palo Alto is no different.*

**WE HAVE MADE A FAIR ARGUMENT THAT THERE
MAY BE A SIGNIFICANT NEGATIVE EFFECT ON THE ENVIRONMENT**

On page 3 of the Memo, the City Manager states: “The City estimates that the conversion to reusable bags will be sufficient to offset any negative environmental impacts associated with conversion from SUPCBs to paper.” This is a hope expressed by the City Manager, but not a *certainty*. It is indisputably *possible* that there will be a massive switch to free paper bags. That triggers the requirement of an EIR.

14 CCR §15061(b)(3) (the “common sense exemption”) 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 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.

The City Manager states at page 4 of the Memo that “Palo Alto is not disputing the life cycle analysis utilized by the Scottish study and cited by STPB.” The Scottish Report thus constitutes substantial evidence, which Palo Alto does not dispute, that a switch to paper bags may result in a significant negative effect on the environment.

The City Manager assumes on page 4 of the Memo that there would be no net negative effect of the environment, despite the findings of the Scottish Study, because of “other Program components.” *However, the other Program components are not being implemented as the paper bag fee proposal has been deferred or cancelled due to insufficient staff resources, so the finding is invalid.*

There is *no certainty* that the reusable bag program will offset the negative environment impacts. As in San Francisco, consumers may switch to free paper bags. We have observed at Trader Joe’s in San Francisco, where plastic bags are not available, that the vast majority of people take free paper bags rather than using reusable bag. At Trader Joe’s, an assortment of reusable bags is highly visible and available for purchase at the checkout counter.

Based on the BYOBag! Campaign, The City Manager concludes at page 4 of the Memo that if the ordinance is passed, reusable bags usage will increase by 10% and the number of customers taking no bag will increase by 8.6%. Based on this outcome, the city concludes that CO2 emissions from grocery store checkout bag usage if the ordinance is passed will decrease.

The city’s logic is demonstrably faulty. If every plastic bag used today is replaced by a paper bag, there will be an increase in climate changing emissions. The city cannot say with certainty that such a scenario will not happen.

Even if 10% of customers use a reusable bag and 8.6% use no bag, the remaining 81.4% may switch to paper bags which would have a significant negative environmental impact resulting from increased climate changing emissions.

Paper bags result in 3.3 times more climate changing emissions according to the Scottish Report which the city does not dispute. A mere 10% reduction in the number of paper bags (or even an 18.6% reduction) does not offset that impact. To offset the impact, the number of replacement paper bags used would have to be 3.3 times less than the number of plastic bags that were used prior to the ordinance. The city has produced no such evidence.

The City Manager states at page 5 of the Memo as follows: “The conclusion that the proposed Ordinance and Program implementation will reduce CO2 emissions would also apply to the other air emissions referenced by STPB, as these air emissions would be approximately proportional to CO2 emissions.” This is more faulty logic by the city.

Eutrophication of water bodies by paper bags is 14.0 times greater for paper bags than plastic bags, according to the Scottish Report. 14.0 is not “approximately proportional” to 3.3. For there to be no such significant negative environmental impact resulting from eutrophication of water bodies, the number of replacement paper bags used would have to be 14.0 times less than the number of plastic bags that were used prior to the ordinance. The city has produced no such evidence.

We do not see any data in the city’s reports about the emissions and other pollution involved in making and transporting “reusable bags.” Such data is essential to any analyses of environmental impacts and must be factored into the calculations.

Further, the city has failed to take into account that plastic grocery bags are reused as bin liners, for pet waste, and for multiple other purposes for which “reusable” bags and paper bags are not or cannot be used. The term “single use” bag when applied to plastic bags is inaccurate and misleading and we object to the term. Many or most plastic bags are used again.

The city claims that it has identified the environmental impacts in the MND. 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.

The City has engaged in precisely the kind of argument, speculation, unsubstantiated opinion and narrative that §15064(f) warns against. We dispute and object to all of the City’s arguments in the Memo based on the foregoing points.

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 and in the previously filed Objections.

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.

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REQUEST FOR FUTURE NOTICES TO BE SENT TO NEW ADDRESS

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, to our new address: SaveThePlasticBag.com, 350 Bay Street, Suite 100-328, San Francisco, CA 94133.

Dated: March 16, 2009

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