

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: The Honorable City Council
FROM: Jennifer Mellon, Senior Management Analyst
DATE: March 19, 2009 (CC meeting of April 1, 2009) *JM*
SUBJECT: Consider a Ban on Single-use Plastic Bags and Discussion of Polystyrene

BACKGROUND

At the meeting on August 20, 2008, staff brought an informational staff report before the City Council to discuss the consideration of a plastic bag ban in Moorpark. Council directed staff to draft plastic bag ban options, research California Environmental Quality Act (CEQA) requirements, discuss retail participation requirements and report back to Council. Additionally, Councilmember Mikos also asked for information regarding Polystyrene (often misstated as the brand Styrofoam).

The August Agenda Report included a spreadsheet summary of what other jurisdictions have done regarding plastic bag bans and state legislation items. This spreadsheet, Attachment 1, has been updated and now also includes polystyrene bans enacted by California jurisdictions as well as updated information regarding plastic bag bans and State legislation. The attachment also gives a brief summary of status for jurisdictions that have implemented a ban or have been requested to propose implementation.

DISCUSSION

Plastic Bags

According to the California Integrated Waste Management Board (CIWMB) plastic bags are technically recyclable; however, it is estimated that less than 5% are actually recycled. The County of Los Angeles determined, through their own research, that this low recycle rate is due to high contamination, logistics of sorting, the tendency of bags to jam separating machines at recycling facilities, low quality of plastic used in bags, and the lack of suitable markets for the recycled plastic resin. This low recycle factor coupled with the lightweight and expansive characteristics of plastic bags that make them into windblown litter pose the largest concerns to jurisdictions. Compostable plastic bags have been

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considered viable alternatives in Northern California where industrial composting facilities are available. At present, the closest industrial composting facility to Moorpark is in Bakersfield, CA.

Our research of actions taken by other jurisdictions shows that the preparation of a full Environmental Impact Report (EIR) is critical to avoiding possible, costly court challenges to any plastic bag ban. As evidenced by the attachment, jurisdictions that have taken action have done so in many different ways. The City of Oakland instituted their plastic bag ban in 2007 and addressed the California Environmental Quality Act (CEQA) with a Notice of Exemption, was subsequently sued, and settled the suit by agreeing to rescind their ordinance. The City of Manhattan Beach approved their plastic bag ban in 2008 after conducting an Initial Study. A Negative Declaration was prepared and adopted to comply with CEQA. Manhattan Beach was subsequently sued by the Save the Plastic Bag Coalition and the case was heard by the Los Angeles Superior Court on February 20, 2009. The Judge ruled that an EIR is necessary to satisfy CEQA requirements. City of Manhattan Beach is moving forward with the implementation of their ban and has appealed the court decision. The City of Malibu approved their ban in 2008 after undergoing the same preliminary steps as Manhattan Beach; conducting an Initial Study and adopting a Negative Declaration. The City of Malibu has, to date, not been sued and is moving forward with their ban.

City of Santa Monica staff has been putting forth an effort to address plastic bags, both compostable and non-compostable, within the City of Santa Monica. It was determined by their City Attorney, that due to the plastics industry and their stake in keeping plastic bags in the market, a full scale EIR would be required to move forward with a successful ordinance that could not be effectively challenged. Staff has an ongoing, working relationship with the Ocean Protection Council (OPC), and on March 16, 2009, the City of Santa Monica received notice from the OPC that they are willing to go forward to their board for funding approval to perform a statewide Master Environmental Assessment (MEA) which can be made part of an EIR. The MEA would provide the environmental background and research on the impacts of plastic bags and could serve as the bases for an EIR. This could greatly assist jurisdictions efforts to prepare EIR, potentially saving time and money. If Council elects to proceed with a plastic bag ban, it is recommended that the City proceed after the OPC completes its MEA.

Regarding the options for inclusion of certain retail establishments in the plastic bag ban, jurisdictions have typically used phased approach. The San Francisco ban was enacted for large supermarkets in November 2007 and pharmacies in May 2008 only. According to the City of San Francisco, they are experiencing full compliance and those stores affected are the highest volume distributors of single use plastic bags by an enormous margin. The City of Malibu ordinance states that grocery stores, food vendors, restaurants, pharmacies,

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and city facilities must comply six months after the effective date and for all remaining retail establishments, vendors and non-profit vendors, one year from the effective date.

Staff has very little information on enforcement. As stated above, the City of San Francisco has reported a high level of compliance. Malibu's ordinance has yet to take effect. If the City Council elects to proceed with the plastic bag ban, it is anticipated that initially, some notification, education and site visits may be needed.

Staff has drafted options 1 – 3 below, with regard to single-use plastic bag bans for Council consideration.

- Option 1 – Draft an ordinance to ban all plastic, single-use bags equal to or less than 2 mils¹ thickness at large, chain supermarkets and retail chain stores one year after adoption of the ordinance.
The City would prepare a full EIR, give proper notice to the public to allow for the mandated comment period prior to Council consideration and the Ordinance would be read.
- Option 2 – Draft an ordinance to ban all plastic, single-use bags equal to or less than 2 mils¹ thickness at large, chain supermarkets and retail chain stores one year after adoption of the ordinance and at all other retail establishments two years after adoption of ordinance.
The City would prepare an EIR, give proper notice to the public to allow for the mandated comment period prior to Council consideration and the Ordinance would be read.
- Option 3 - Take no action at this time to ban plastic bags awaiting the outcome of current State of California Legislation, a possible Statewide MEA, and pending actions in other jurisdictions. Revisit the matter in twelve months.
Staff will monitor State Legislation and jurisdictional pursuits regarding plastic bag bans and paper bag fees; the status of a possible Statewide MEA and the lawsuits currently in process and report back to Council at a later date to be determined.

Polystyrene

Staff was also asked to address expanded polystyrene (EPS) and staff requests Council give direction regarding how to proceed. Expanded or foamed polystyrene, often times referred to by the brand name Styrofoam, are styrene beads that can be expanded and formed into shapes like coffee cups, clam shell containers at fast food outlets etc. There

are also hard polystyrene products, like disposable cutlery, plastic containers like yogurt etc. electronic housing for TVs etc. which can be colored or clear. The symbol for polystyrene is  which gives the illusion that it is easily recycled. Both haulers in Moorpark will accept EPS in their recycling containers; however, the majority of polystyrene products are not recycled because of a lack of suitable recycling facilities and lack of demand for the material. Recyclable items collected in Moorpark with label numbers 3 – 7 are presently bailed together and exported, however, EPS food containers are often times contaminated due to food residue; therefore, not bundled into the mix. The current market for EPS is inadequate, and, when EPS is "recycled" it is not a closed loop. Polystyrene cups, containers, and other packaging material are usually recycled into fillers for other plastics, or items that cannot themselves be recycled and are eventually landfilled.

EPS food container recycling poses a myriad of dilemmas. If all retail establishments use alternative, recyclable, compostable material as food containers therefore keeping EPS out of the landfills, where do those alternative food containers go? The alternative food containers, often contaminated with food residue, are ultimately landfilled just as the EPS containers. Without a way to industrially compost these alternative food containers, whether contaminated or not, current expanded polystyrene ban programs do not seem fully effective.

At this time staff recommends monitoring what other jurisdictions are doing with regards to expanded polystyrene and alternate food containers. Staff concludes that efforts to conduct a survey of the approximately 103 food establishments in Moorpark and proper education regarding alternate container choices for food businesses in Moorpark would be necessary if a successful ban is to be enacted at a future date.

FISCAL IMPACT

If the City Council elects to proceed with the adoption of an Ordinance banning or restricting the use of single-use plastic bags, staff would propose the allocation of between \$20,000 and \$40,000 to secure a consultant to prepare the necessary CEQA documents including an EIR.

While there is adequate fund balance in the City's AB 939 budget to pay for these one-time costs, the City is dependent on this fund to cover staff cost and waste diversion programs. In addition to these consultant costs, if a ban were implemented there would be ongoing staff costs for planning, implementation, administration, monitoring, and enforcement of bans or restrictions. It can be estimated that a .25 FTE Administrative Specialist position (\$15,000) on an as needed basis would be necessary to research, conduct outreach to the business community, and fully implement the a plastic/paper bag with a phased in

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approach. Ongoing program support and compliance auditing would be essential to ensure success of a plastic bag ban/paper bag fee item.

STAFF RECOMMENDATION

Approve Option 3: Take no action at this time to ban plastic bags awaiting the outcome of current State of California Legislation, a possible Statewide MEA, and pending actions in other jurisdictions. Revisit the matter in twelve months.

Attachment 1 – Matrix of Plastic Bag Bans, Polystyrene and California Legislation

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STAFF RECOMMENDATION

Approve Option 3: Take no action at this time to ban plastic bags awaiting the outcome of current State of California Legislation, a possible Statewide MEA, and pending actions in other jurisdictions. Revisit the matter in February, 2010.

Attachment 1 – Matrix of Plastic Bag Bans, Polystyrene and California Legislation

Jurisdiction	Bans Non-Compostable Plastic Bags	Addresses Paper Bags	Enforcement Clause	Summary Status - Plastic Bag Ban	Bans Expanded (Foamed) Polystyrene	Recyclability/Compostability Requirement for Food Containers	Compostability Requirement for Food Containers	Alternative Packaging Affordability Clause	Enforcement Clause	Summary Status Polystyrene
City of Calabasas				Environmental Commission voted to draft an ordinance. Staff surveyed businesses. Council has decided to put item on hold due to lawsuits and monitor progress of Santa Monica.		X	X		X	Enacted July 2007, Effective March 31, 2008
City of Los Angeles	*prop			Plastic Bag Ban and Paper Bag Fee will take effect Jan. 2010 if State Legislation not adopted.		X				Adopted July 2008. Effective for City Facilities & Events July 1, 2008
City of Malibu	X			Ban takes effect for large stores & City in Dec. 08, all others June 09. Ordinance adopted May 08		X			X	Enacted Sept. 2005
City of Manhattan Beach	X			Banned all plastic bag use in City. Adopted Ordinance July 08. Sued and lost case on CEQA grounds. Appealing. Addressed CEQA with Notice of Exemption. Sued, lost case, and rescinded ordinance. Waiting for State Legislation.						Staff gathering information.
City of Oakland				Paper bag must be 45% recycled content. Effective Nov. 2007		X	X			Effective June 2006
City of San Francisco			X	Staff is in process of gathering information.			X		X	Effective June 2007
City of Santa Barbara				Staff drafting ordinance for ban of all plastic single use bags and performing nexus study on proposed paper bag fee. Atty suggested EIR. Working with Ocean Protection Council who are considering sponsoring a statewide Master Environmental Assessment that Cities could use.						Staff gathering information.
City of Santa Monica	*prop			Plastic Bag Ban and Paper Bag Fee will take effect Jan. 2012 if State Legislation not adopted.	X				X	Effective Dec. 2006
County of Los Angeles	*prop			Legislation not adopted.						