

Judge shelves plastic bag ban

By Andrea Woodhouse, Staff Writer

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A Superior Court judge Friday rejected Manhattan Beach's ban on plastic carryout bags, ruling that the city should have first fully studied its potential environmental consequences.

Judge David Yaffe decided that the city must consider that a proliferation of paper bags, a likely result of banning plastic carriers, could harm the environment.

The ruling effectively voids a ban set to go into effect for many businesses in town next week.

"The judge said the city is required by law to do an environmental impact report because there is a fair argument that there would be a substantial impact on the environment," Manhattan Beach City Attorney Bob Wadden said. "There's a potential impact from the fact that more paper will be used."

Indeed, the decision is a victory for a group of plastics manufacturers who in August filed suit against Manhattan Beach, alleging the city had violated the California Environmental Quality Act by not fully studying the ban's possible environmental effects.

"We were vindicated," said Stephen Joseph, an

attorney representing The Save the Plastic Bag Coalition. "We've been saying all along that the assumption that plastic was worse than paper is wrong."

Despite promises of litigation from the coalition, a unanimous Manhattan Beach City Council in July banned plastic carryout bags - its members then waxing enthusiastically that the decision would curb visual and environmental pollution.

Believing a full environmental analysis was unnecessary, the city conducted an initial study and found no significant threat to the environment from the ban.

Opponents, however, argued that eliminating the option of plastic bags in stores would only lead to the proliferation and littering of paper bags, and pointed to studies showing that paper sacks require more energy to produce, consume more space in landfills and emit more methane gases during decomposition.

Yaffe ruled Friday that an environmental impact report would settle the paper vs. plastic debate, Wadden said.

"(The judge's) analysis said this is such a big question that it needs to be done in the most public manner possible," he said.

Wadden believed the city had grounds for an appeal, as Yaffe apparently ignored a provision of CEQA that calls for an environmental impact report only when a proposed project poses a substantial impact on the environment, he said.

"The judge basically seemed to be ruling that as long as there is any type of impact, substantial or not, you have to do an environmental impact report," Wadden said. "That is not the law. If it were, you'd be doing an EIR for every little thing."

But Yaffe did not rule that Manhattan Beach lacked power to ban plastic carryout bags - and that may still come to be.

Even if a full environmental analysis echoes the coalition's arguments, Manhattan Beach could move forward by declaring that even though the ban would have a major effect on the environment, other benefits warrant its approval, Wadden said.

He estimated such an environmental impact report would cost several thousand dollars.

"What this really is is a delaying tactic, and I do think it's meant to send a message to the other cities out there looking to ban plastic bags," Wadden said. "It's buying (the coalition) time, but it isn't going to stop the cities that are determined to ban plastic bags."

And Manhattan Beach certainly seems determined. Though it could drop its pursuit of a ban entirely, Mayor Richard Montgomery believes that's unlikely.

"I cannot see this council, which gave it a 5-0 vote to begin with, taking a step backward and not moving forward with either the appeal or the EIR or both," he said Friday.

"I just think it's important to keep it in perspective that we're not discontinuing our efforts. All we're doing is following the judge's request to perform an EIR and go from there," he added.

Proving its commitment to reusable bags, the city will partner with a local environmental group Feb. 28 to give away free canvas totes to shoppers at four grocery stores in town, Montgomery said.

Meanwhile, city leaders will discuss their next step in a closed session next month, Wadden said.

Joseph, the coalition's attorney, didn't view Friday's ruling as a setback for the city.

"It's a victory for the people of Manhattan Beach because now, if there's an environmental impact report, they get to find out the truth before there is a vote," he said. "They get to see what's really the science behind it and not these unfounded assertions the city is making."

But Friday's ruling could be discouraging for the many Manhattan Beach stores and restaurants already prepared for the ban, set to kick in Feb. 28 for most businesses.

Manhattan's business community was largely receptive to the change, said Helen Duncan, president of the Manhattan Beach Chamber of Commerce, who noted that most respondents in a survey conducted by the chamber before the ban was approved said they supported such a

prohibition.

She expected many of the businesses would ungrudgingly eliminate plastic carryout bags regardless of Friday's ruling.

"I think they're going to do the change even without the law," Duncan said. "They're going to see it's what should be done, that it's right and they're going to do it. We have businesses that care about the community."

The Kettle, a downtown mainstay, began taking steps months ago to order paper carryout bags, rather than plastic, which are generally preordered by the restaurant in large quantities, said manager Emily Jason.

"I don't think they realize how much goes into a decision like this, and we're a small business," said Jason, clearly frustrated Friday afternoon.

"To have to stop ordering the plastic bags - because we order them way ahead of time - and then have to go back to look for other alternatives, and now (the ban) is not going to be valid? It's amazing."

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