



AGENDA REPORT
SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: June 2, 2009

Agenda Item 7-J
Approvals:
City Manager
Dept. Head
Attorney
Finance

Department: Public Works / Engineering
Prepared By: Tom Bonigut, Assistant City Engineer

Subject: PROPOSED REGULATION OF SINGLE-USE PLASTIC BAGS, EXPANDED POLYSTYRENE FOOD SERVICE CONTAINERS, AND OUTDOOR BALLOON DISPLAYS AT CITY FACILITIES AND EVENTS.

Summary: Staff has been developing, and the City's Coastal Advisory Committee (CAC) has been considering, proposed regulations of single-use plastic bags, expanded polystyrene (EPS, also referred to as "styrofoam") food service containers, and outdoor balloon displays at City events or facilities. This report provides an update on the progress of these initiatives, including potential issues and recommendations for further action. This report also summarizes proposed State legislation relating to EPS and single-use plastic bags.

Background

Based on past requests from the CAC, Watershed Task Force, San Clemente Green and local citizens, staff researched and prepared initial drafts of proposed City regulations regarding single-use plastic bags, EPS food service containers, and outdoor balloon displays. The intent of these regulations is to reduce litter on City beaches and in coastal waters and improve the condition of the local environment. Specifically, the following three proposed regulations were prepared for initial public discussion and review by the CAC.

Prohibition on Single-Use Plastic Bags

This proposed Ordinance would prohibit distribution of single-use plastic bags at the point of sale for all businesses within the City. The intent is to reduce this source of pollution, as these bags (and bag fragments) are prevalent along the beach and in ocean waters, are not biodegradable, and have a low recycling rate (4%¹). The goal is to encourage the use of reusable bags (ideally made with recycled content), which have the least adverse impact compared to plastic and paper bags. Although paper bags can end up as litter, their weight reduces the likelihood to become wind-borne pollution, and their biodegradability reduces potential wildlife impacts. For the one-year period from April 2008 to April 2009, the San Clemente Watershed Task Force Adopt-A-Beach cleanup program collected over 35,000 pieces² of plastic from City beaches (this included all forms of plastic - Adopt-a-Beach data did not include a separate category for plastic bags or plastic bag fragments). This number represents only those pieces of debris that were counted, as volunteers routinely reported that there were "too many pieces to count." About one dozen California communities have adopted such bans, with about that many known to be considering such bans. A related approach toward reducing plastic bag pollution involves enacting a per-bag fee that is charged at the point of sale to discourage use of plastic bags. However, existing State law

1 Recyclingtoday.com, April 14, 2008.
2 From reports at www.scwatersheds.com/blog.htm.

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(Public Resources Code, Section 42254(b)) pre-empts local governments from enacting such fees.

Prohibition on Expanded Polystyrene (EPS)

This proposed Ordinance would prohibit the use of disposable EPS or non-recyclable plastic food service ware at all retail food businesses within the City. This Ordinance would build on the City's existing policy which prohibits these items from use at City facilities and City-sponsored events. The intent is to reduce EPS pollution found on our beaches from such "mobile" sources as take-out food containers. For the one-year period from April 2008 to April 2009, Adopt-A-Beach volunteers collected over 57,000 pieces of EPS from City beaches. Like plastic debris, this number for EPS represents only those pieces of debris that were counted, as volunteers routinely reported that there were "too many pieces to count." There are environmentally preferable alternatives to EPS with comparable performance and cost. Many cities in California and nationwide have already implemented similar ordinances.

Prohibition on Outdoor Balloon Displays at City Facilities & City Events

This proposed City Policy would prohibit the use, distribution, display, sale or release of balloons (filled with any gas lighter than air) at special events that occur at City facilities or are sponsored or co-sponsored by the City of San Clemente. This policy targets the use of outdoor balloon displays because of the likelihood that balloons from these displays are accidentally released, and then become pollution. For the one-year period from April 2008 to April 2009, the San Clemente Watershed Task Force Adopt-A-Beach cleanup program collected over 3,900 balloons or balloon fragments from City beaches. This policy would not apply to indoor balloon displays, or to any events held at City facilities or parks where a special event permit is not be required (e.g. this would not apply to use of balloons for a birthday party at the beach or a City park). Also, the CAC recommended that the policy focus on balloons filled with any gas lighter than air (e.g. helium), because these are difficult, if not impossible, to recover once they are accidentally released.

CAC Review and Public Comment

The CAC considered and discussed the proposed regulations at its February 12 meeting. There was unanimous support from the CAC and the public in attendance (about 50 attendees) for the proposed regulations, and there were only a few minor changes made to the initial drafts. The CAC further considered the revised proposed regulations at its March 12 meeting where a few additional minor changes were recommended. At that meeting, staff recommended that the proposed plastic-bag ban be placed "on hold" due to recent litigation that invalidated a similar ordinance in another city (discussed below). Given this, the CAC recommended that the City Council adopt the proposed EPS Ordinance and proposed Balloon Policy.

Potential Issues

As was noted above, there are California communities that have already adopted ordinances to prohibit the use of single-use plastic bags and EPS. However, some of these ordinances have been challenged by industry groups as discussed in the following sections.

Single-Use Plastic Bag Litigation

An association of plastic bag manufacturers recently formed a "Save the Plastic Bag Coalition," which has become active in challenging local government bans (existing and proposed) of single-use plastic bags. For example, in August 2008, this Coalition sued the

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City of Manhattan Beach for failure to prepare an Environmental Impact Report (EIR), pursuant to requirements of the California Environmental Quality Act (CEQA), before adoption of its ban on single-use plastic bags. In February 2009, the Los Angeles Superior Court ruled in favor of the Coalition on the basis that the administrative record supported the Coalition's claim that an EIR must be prepared to evaluate the potential environmental impact of a plastic bag ban. In April, the Coalition filed a similar suit against the City of Palo Alto's plastic bag ban, and also has filed formal legal objections against proposed plastic bag bans in at least six other communities.

The threat of litigation has underscored the need to conduct an environmental review when considering a proposed plastic bag ban. If the City of San Clemente were to proceed with a plastic bag ban, an EIR would first need to be prepared, at an estimated cost of up to \$100,000³. However, the California Ocean Protection Council⁴ recently authorized funds to conduct a Master Environmental Assessment (MEA) to assess impacts related to regulation of single-use (plastic and paper) and reusable bags. The City previously provided a letter of support for this effort, which would include a literature review of available studies and would examine the relative impacts of plastic, paper, and reusable bags and the indirect environmental impacts of imposing fees and bans on single-use bags. The MEA would be a comprehensive analysis that could be used by all California cities and counties considering bans and fees, and would serve to speed each EIR process and reduce the EIR cost. In light of this effort, and pending plastic bag legislation (discussed in a subsequent section), staff recommends postponing further development and consideration of a local plastic bag ordinance.

EPS Challenges

Similar to plastic bags, the American Chemistry Council (ACC) represents resin suppliers and polystyrene/plastic foodservice product manufacturers in lobbying against proposed bans on EPS. Staff is not aware of any EPS-related lawsuits by ACC, instead the ACC provides detailed comment on proposed EPS bans and lobbies decision makers and others on its position against such bans.

The CEQA challenges to proposed plastic bag bans raise the potential of similar challenges to any proposed EPS ordinances. Some cities have taken the approach that CEQA rules do not apply to a proposed EPS ban, or that CEQA provides exemptions for such actions. Other cities have determined that CEQA does apply and have conducted Initial Studies to determine if proposed EPS bans would have a significant impact on the environment. If the City were to pursue a ban on EPS, staff recommends that an Initial Study pursuant to CEQA be prepared. Similar efforts by other cities have resulted in adoption of Negative Declarations because the analyses conducted did not find substantial evidence that there would be any significant environmental impacts associated with an EPS ban. If that is the City's finding after the Initial Study, the cost of preparing a Negative Declaration is estimated at \$2,500 and would take about 2 to 3 months. If not, a more detailed EIR analysis would be required.

³Based on estimates by the Cities of Manhattan Beach and Santa Monica.

⁴The OPC is a special State Council created by the 2004 Ocean Protection Act to integrate and coordinate the State's laws and institutions that are responsible for protecting and conserving ocean resources, including coastal waters and ocean ecosystems. More information is available at: www.opc.ca.gov.

Outdoor Balloons at City Facilities & Events

Staff has prepared a proposed draft City Policy to prohibit the use of outdoor balloon displays at City facilities and City-sponsored events. The draft policy is structured very similar to the City's existing policy that prohibits use of EPS at City facilities, and would be implemented in a similar fashion via a special condition included with facility rental agreements and special event permits. The draft policy is supported by the CAC and the Beaches, Parks and Recreation Department. Staff recommends moving forward with this policy, which involves preparing a final proposed policy and accompanying resolution for City Council consideration. The current draft policy is attached for the Council's initial review.

State Legislation

There are several proposed bills in the current session of the California Legislature that address plastic bags and EPS food packaging. A brief description, current status and web links for additional information are provided below. Staff has also provided recommendations for City Council support of or opposition to these proposed bills, should the City Council wish to take a position on one more of these items.

SB 228 (DeSaulnier) - Compostable Bags

- *Description:* Requires that compostable bags carry a unique label that will readily distinguish them from non-compostable bags.
- *Status:* This legislation is active, and recently passed out of the Senate Environmental Quality Committee. It will next be heard in the Senate Appropriations Committee.
- *Staff Recommendation:* Support, since it would help to visibly discern the difference between compostable and "virgin" plastic bags, which would prevent contamination of composting and recycling streams.
- *For more information:*
http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_228&sess=CUR&house=B&author=desaulnier

AB 1358 (Hill) Polystyrene Food Packaging Ban

- *Description:* Bans the use of expanded polystyrene food packaging.
- *Status:* This legislation is active, and recently passed out of the Assembly Natural Resources Committee. It will next be heard in the Assembly Appropriations Committee.
- *Staff Recommendation:* Support, since it would provide statewide consistency toward addressing the significant litter and marine pollution challenge that food service polystyrene represents.
- *For more information:*
http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_1358&sess=CUR&house=B&author=hill

AB 68 (Brownley) - Offsetting the Costs of Single-Use Bag Litter

- *Description:* Requires that consumers pay a \$0.25 fee for single-use bags (plastic, paper and compostable) distributed at large grocery stores, pharmacies and convenience stores. Collected funds would be used to support education and waste reduction programs.

- *Status:* This legislation is active, and recently passed out of the Assembly Natural Resources Committee. It is being considered in the Assembly Appropriations Committee.
- *Staff Recommendation:* Support, since it would effectively deter the use of single-use bags and encourage consumers to switch to reusable bags.
- *For more information:*
http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_68&sess=CUR&house=B&author=brownley

AB 87 (Davis) – Environmental Mitigation of Single-Use Bag Litter

- *Description:* Almost identical to AB 68 by requiring that consumers pay a \$0.25 fee for single-use bags (plastic, paper and compostable) distributed at large grocery stores, pharmacies and convenience stores. Collected funds would be used to support education and waste reduction programs. Also requires single-use bag manufacturers to develop educational materials and provide them to stores.
- *Status:* This legislation is active, and recently passed out of the Assembly Natural Resources Committee. It is being considered in the Assembly Appropriations Committee.
- *Staff Recommendation:* Support, since it would effectively deter the use of single-use bags and encourage consumers to switch to reusable bags.
- *For more information:*
http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_87&sess=CUR&house=B&author=davis

AB 1141 (Calderon) - Carryout Bags

- *Description:* Requires manufacturers of plastic bags to pay a \$0.001 per-bag fee, but denies the proceeds of this fee to cities that have banned any single-use bag. Also requires cities that have banned single-use bags to provide alternative single-use bags at no cost to the manufacturer, distributor or consumer.
- *Status:* This legislation is listed as active, but did not pass out of the Assembly Natural Resources Committee.
- *Staff Recommendation:* Oppose, if there is further action on this bill.
- *For more information:*
http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_1141&sess=CUR&house=B&author=charles_calderon

**Recommended
Action:**

STAFF RECOMMENDS THAT the City Council:

1. Direct staff to postpone further development of a single-use plastic bag ordinance, and monitor the progress of the Ocean Protection Council's Master Environmental Assessment, as well as related pending legislation;
2. Direct staff to continue developing a proposed ban on Expanded Polystyrene, including preparation of an Initial Study pursuant to CEQA;
3. Authorize a supplemental appropriation of \$2,500 from the Solid Waste Fund undesignated fund balance to 058-518-43540 (Planning Services); and
4. Direct staff to finalize a proposed City Policy and accompanying Resolution prohibiting outdoor balloon displays at City facilities and events.

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Fiscal Impact: Yes. The Solid Waste Fund balance will be reduced by \$2,500.

Attachments: Initial Draft – Proposed Resolution to Prohibit Outdoor Balloon Displays at City Facilities and City-Sponsored Events.

Notification: None.

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7/2/06

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SAN CLEMENTE, CALIFORNIA, PROHIBITING THE USE
AND/OR DISPLAY OF HELIUM BALLOONS AT CITY
FACILITIES AND CITY-SPONSORED EVENTS.

WHEREAS, the City of San Clemente has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, a deterioration in the quality of the City's ocean waters and beaches threatens the public health, safety and welfare and negatively affects tourism and the local economy which depends on tourist trade; and

WHEREAS, over 3,811 balloons and balloon fragments were collected during volunteer beach cleanup efforts on San Clemente beaches over a 7 month period in 2008; and

WHEREAS, latex balloons float for just a few hours but can take a year or more to degrade in the marine environment, long enough to repeatedly wrap around or be ingested by sea turtles, birds, and marine mammals; and

WHEREAS, while it is difficult to prove ingestion of balloons are a direct cause of death to marine animals, the fact that balloons have been identified in the stomachs of animals indicates that balloons are not rapidly broken down by an animal's digestive system and/or that death occurred shortly after ingestion of balloons.

NOW, THEREFORE, The City Council of the City of San Clemente does hereby resolve as follows:

Section 1. With limited exception noted below, the City of San Clemente shall not use or display balloons filled with any gas lighter than air. Prohibited products include, but are not limited to, latex and Mylar balloons.

Section 2. Rental agreements, leases and license agreements for usage of any City-owned property or facility shall require that contracting parties assume responsibility for preventing the utilization, sale or display of balloons by any attendee or vendor utilizing the City property or facility during the term of the rental agreement, lease or license agreement. Rental agreements shall indicate that the violating contractor's security deposit will be forfeited if the Beaches, Parks and Recreation Director, or his/her designee, determines that the contractor knowingly allowed such items to be utilized in violation of the rental agreement. Agreements shall indicate that if it is determined by the Beaches, Parks and Recreation Director, or his/her designee, that the lessee(s) allowed such items to be utilized in violation of the lease or license agreement, that said violation(s) shall be brought to the attention of the City Council in the form of an agenda report. This information may be utilized by Council in determining whether to continue or terminate the concession or license agreement.

Section 3. The use, distribution, display, sale or release of balloons (filled with any gas lighter than air) at special events that are sponsored or co-sponsored by the City of San Clemente shall be prohibited. This prohibition shall apply to the event organizers, agents of the event organizers, event vendors, and any other party (including non-profit organizations) who have an agreement with one or more of the co-sponsors of the event. The prohibition on the use of balloons will not be enforced upon individuals who are attending the function solely as a visitor or spectator. Written agreements with any party, including non-profit organizations, participating in an event that is sponsored or co-sponsored by the City of San Clemente, shall specifically prohibit the display and distribution of balloons filled with any gas lighter than air. If it is determined by the Beaches, Parks and Recreation Director, or his/her designee, that the sponsor(s) of the special event allowed such items to be utilized in violation of the rental agreement, this fact shall be brought to the attention of the City Council in the form of an agenda report. This information may be utilized by Council in determining whether or not to co-sponsor the event in the future.

Section 4. Exceptions will be made to this Resolution if balloons are used indoors and remain so for the duration of the event. Proper disposal of all balloons must occur at the conclusion of the event and includes discharging helium if used and disposing balloons in the appropriate refuse or recycling receptacle.

Section 5. All individuals, groups, businesses, non-governmental and other governmental entities are strongly encouraged to assist in preserving the environment by ceasing to purchase helium filled balloons (or balloons filled with any other gas lighter than air), especially for the purpose of intentionally releasing said balloons into the environment.

Section 6. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this ____ day of _____, ____.

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Mayor of the City of
San Clemente, California

ATTEST:

CITY CLERK of the City of
San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

CITY CLERK of the City of
San Clemente, California

Approved as to form:

City Attorney

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