

Council Agenda Report

To: Mayor Conley Ulich and the Honorable Members of the City Council

Prepared by: Lisa Pope, City Clerk *L. Pope*

Approved by: Jim Thorsen, City Manager *JT*

Date prepared: May 8, 2008 Meeting date: May 27, 2008

Subject: Second Reading and Adoption of Ordinance No. 323

RECOMMENDED ACTION: Conduct second reading, unless waived, and adopt Ordinance No. 323, prohibiting the use of plastic shopping bags in the City of Malibu.

FISCAL IMPACT: None.

DISCUSSION: At the Regular City Council meeting on May 12, 2008, the City Council introduced on first reading Ordinance No. 323.

Ordinance No. 323 is presented to the City Council for adoption.

ATTACHMENTS: Ordinance No. 323

ORDINANCE NO. 323

AN ORDINANCE OF THE CITY OF MALIBU PROHIBITING THE
USE OF PLASTIC SHOPPING BAGS

The City Council of the City of Malibu does ordain as follows:

Section 1. Chapter 9.28 of the Malibu Municipal Code is hereby added to the Malibu Municipal Code to read as follows:

“Chapter 9.28 Ban on Plastic Shopping Bags”

Section 9.28.010 Definitions

For purposes of this chapter, the following terms shall have the following meanings:

“Affected Retail Establishment” means any retail establishment located within or doing business within the geographical limits of the City of Malibu.

“ASTM Standard” means the American Society for Testing and Materials (ASTM)'s International standard D6400 for compostable plastic, as that standard may be amended from time to time.

“City Sponsored Event” means any event organized or sponsored by the City of Malibu or any Department of the City of Malibu.

“Compostable Plastic Bag” means a plastic bag that: (1) conforms to California labeling law (Public Resources Code Section 42355 et seq.), which requires meeting the current ASTM-Standard Specifications for compostability; (2) is certified and labeled as meeting the ASTM-Standard by a recognized verification entity such as the Biodegradable Product Institute; (3) contains no petroleum derived content; and (4) displays the word “Compostable” in a highly visible manner on the outside of the bag.

“Customer” means any person obtaining goods from an Affected Retail Establishment, Vendor or Non-Profit Vendor.

“Grocery Store” means a dealer in staple foodstuffs, meats, produce, and dairy products and usually household supplies.

“Non-Profit Vendor” means a recognized tax exempt organization which provides goods as a part of its services.

“Person” means any natural person, firm, corporation, partnership, or other organization or group however organized.

“Pharmacy” means a retail use where the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescription medications are offered for sale.

“Plastic Bag” means any bag made from non-compostable plastic, excluding reusable bags, provided by an Affected Retail Establishment, Vendor or Non-Profit Vendor to a customer at the point of sale for the purpose of carrying away goods.

“Produce Bag” means any plastic bag, excluding reusable bags, exclusively used to transport produce to the point-of-sale.

“Recyclable” means material that can be sorted, cleansed, and reconstituted using Malibu’s available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

“Recyclable Paper Bag” means a paper bag that meets all of the following requirements: (1) contains no old growth fiber; (2) is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content; and (3) displays the words "Reusable" and "Recyclable" in a highly visible manner on the outside of the bag.

“Retail Establishment” means any commercial business facility that sells goods directly to the ultimate consumer including but not limited to grocery stores, pharmacies, liquor stores, “mini-marts,” and retail stores and vendors selling clothing, food and personal items.

“Reusable Bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and is either: (1) made of cloth or other machine washable fabric; or (2) made of durable plastic that is at least 2.25 millimeters thick.

“Vendor” means any store, shop, restaurant, sales outlet or other commercial establishment located within or doing business within the City of Malibu, which provides perishable or non-perishable goods.

9.28.020 Plastic Shopping Bags Prohibited.

- A. No Affected Retail Establishment, Restaurant, Vendor or Non-Profit Vendor shall provide Plastic Bags or Compostable Plastic Bags to customers.
- B. Nothing in this section shall be read to preclude Affected Retail Establishments, Vendors and Non-Profit Vendors from making Recyclable Paper Bags available to customers.
- C. No person shall distribute Plastic Bags or Compostable Plastic Bags at any City facility or any event held on City property.
- D. This Chapter shall apply only to Plastic Bags or Compostable Plastic Bags provided at the point of sale for the purpose of carrying away goods. This Chapter shall not apply to single-use plastic

produce bags distributed in a grocery store exclusively for the purpose of transporting produce to the point of sale.

Section 2. The City Manager, or his or her designee, may exempt an Affected Retail Establishment, Vendor or Non-Profit Vendor from the requirements of this Chapter for a period of up to one additional year after the operative date of this Ordinance, upon sufficient showing by the applicant that the provisions of this Chapter would cause undue hardship. This request must be submitted in writing to the City within 60 days of the effective date of this Chapter. The phrase undue hardship includes without limitation:

1. Situations where there are no acceptable alternatives to Plastic Bags and Compostable Plastic Bags for reasons which are unique to the Retail Establishment, Vendor, or Non-Profit Provider;
2. Situations where compliance with the requirements of this Code would deprive a person of a legally protected right.

Section 3. Affected Retail Establishments, Vendors and Non-Profit Vendors that have entered into agreements for the purchase of Plastic Bags or Compostable Plastic Bags within the year prior to the effective date of this Ordinance are exempt from the provisions of this Chapter for one additional year following its operative date.

Section 4. Operative Date.

This Ordinance shall become operative as to: 1) Grocery Stores, Food Vendors, Restaurants, Pharmacies and City facilities six (6) months after its effective date; and 2) all remaining Affected Retail Establishments, Vendors and Non-Profit Vendors one (1) year after its effective date.

Section 5. California Environmental Quality Act (CEQA) Findings

Pursuant to the authority and criteria contained in CEQA, the City Council has analyzed the proposal as of projects that have been determined not to have a significant adverse effect on the environment and therefore, the proposed ordinance is exempt from the provisions of CEQA. Specifically, the City Council finds that the ordinance qualifies for a Class 8 categorical exemption. Pursuant to the Class 8, exemption, the proposed ordinance is presumed not to have a significant effect on the environment. The proposed ordinance, consisting of a citywide prohibition on the use of non-compostable plastic shopping bags qualifies for this exemption pursuant to CEQA Guidelines. City Council has also considered each of the potential exceptions to categorical exemptions set forth in CEQA Guidelines section 15300.2 and determined that there is no evidence to support application of the exceptions to the Class 8 categorical exemption.

Without waiving the right to rely on any applicable categorical or statutory exemption and in the interest of providing meaningful information to the City Council and to foster the most informed decision making process practicable, the Planning Division has nevertheless conducted an initial study of the proposed ordinance. The initial study confirmed that the action does not have the potential to

Ordinance No. 323
Page 4 of 4

result in a significant impact on the environment. Consequently, a negative declaration was prepared and is hereby adopted.

Section 6. The City Clerk shall certify the adoption of this ordinance.

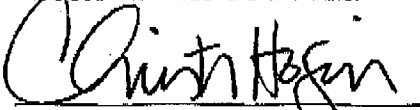
PASSED, APPROVED AND ADOPTED this _____ day of _____, 2008.

PAMELA CONLEY ULICH, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:



CHRISTI HOGIN, City Attorney