

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 SEP -4 PM 2:00

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Public Works Agency
DATE: September 16, 2008

RE: **Ordinance Rescinding Ordinance No. 12818 C.M.S., Which Banned The Use Of Non-Biodegradable Plastic Carry-Out Bags At Point Of Sale By Certain Retail Establishments**

SUMMARY

On July 17, 2007 Council passed Ordinance No. 12818 C.M.S. which banned the use of non-biodegradable plastic carry out bags at the point of sale by qualifying retail businesses in Oakland. The Coalition to Support Plastic Bag Recycling filed a lawsuit challenging the City's CEQA determination. The court ruled in favor of the Coalition and ordered the City to rescind the Ordinance. This ordinance implements the Court Order.

FISCAL IMPACT

No fiscal impacts are associated with rescinding Ordinance No. 12818 C.M.S.

BACKGROUND

On July 17, 2007 Council passed Ordinance No. 12818 C.M.S. banning the use of non-biodegradable plastic carry out bags at the point of sale by qualifying retail businesses in Oakland. The City found the Ordinance to be exempt from the California Environmental Quality Act (CEQA). The exemption was challenged by the Coalition to Support Plastic Bag Recycling in their petition for writ of mandate, filed on August 3, 2007. The Court found in favor of the Coalition and ordered the City to rescind the Ordinance within 120 days of May 28, 2008.

KEY ISSUES AND IMPACTS

By banning single-use plastic bags and encouraging use of reusable bags, Ordinance No. 12818 C.M.S addressed several concerns that have been City priorities, including litter prevention, waste reduction, recycling, storm water quality, and aquatic and marine habitat protection. Because the judge has ordered that the City rescind the Ordinance, staff concludes that environmental impacts of single-use bags would be addressed most effectively at the state level.

On July 15, 2008, Council voted to support AB2058 (Levine), which would prohibit a store from providing free plastic bags without meeting a 70% diversion requirement. Similar legislation

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amending or replacing this bill are likely to be introduced, and it is recommended that the City support such legislation if it meets the goals of the Ordinance now being rescinded.

SUSTAINABLE OPPORTUNITIES

Economic: Adoption of this ordinance will have no economic impact.

Environmental: Adoption of this ordinance hampers the City's goals of achieving local reduction of waste, litter and pollution. To achieve these goals, the City can support state legislation that results in the statewide implementation of laws that encourage use of reusable bags and discourage the use of single-use bags.

Social Equity: Adoption of this ordinance will have minimal to no impact on social equity.

DISABILITY AND SENIOR CITIZEN ACCESS

Adoption of this ordinance will have no impact on accessibility for seniors or persons with disabilities.

RECOMMENDATION(S) AND RATIONALE

Staff recommends that the ordinance rescinding Ordinance No. 12818 C.M.S. be adopted. The judgment granting the writ of mandate in favor of the Coalition to Support Plastic Bag Recycling requires the City to "vacate, rescind and set aside the Ordinance." Failure to rescind Ordinance No. 12818 C.M.S., banning the use of non-biodegradable plastic carry-out bags at the point of sale by retail establishments in the City of Oakland violates the Court's order.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the ordinance vacating, rescinding and setting aside Ordinance No. 12818 C.M.S.

Respectfully submitted,



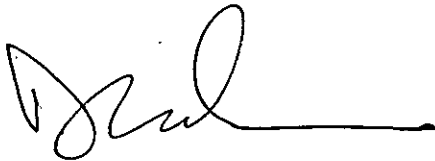
Raul Godinez II, P.E.
Director, Public Works Agency

Reviewed by:
Brooke A. Levin, Assistant Director

Reviewed by:
Susan A. Kattchee, Manager, Environmental Services

Prepared by:
Becky Dowdakin, Solid Waste & Recycling Program
Supervisor, Environmental Services Division

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



Office of the City Administrator

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APPROVED AS TO FORM AND LEGALITY

Mark P. Wolf
City Attorney

OAKLAND CITY COUNCIL
ORDINANCE No. _____ C.M.S.

**ORDINANCE RESCINDING ORDINANCE NO. 12818 C.M.S., WHICH
BANNED THE USE OF NON-BIODEGRADABLE PLASTIC CARRY-OUT
BAGS AT POINT OF SALE BY CERTAIN RETAIL ESTABLISHMENTS**

WHEREAS, on July 17, 2007, City Council passed Ordinance No. 12818 C.M.S., banning the use of non biodegradable plastic carry out bags at point of sale by retail establishments that gross one million dollars or more annually, finding the ordinance to be exempt from the California Environmental Quality Act (CEQA); and

WHEREAS, on August 3, 2007, the Coalition to Support Plastic Bag Recycling ("Coalition") filed a Petition for Writ of Mandate against the City Council of the City of Oakland and the City of Oakland, alleging noncompliance with CEQA; and

WHEREAS, on May 27, 2008, Judge Roesch issued the Writ of Mandate, and ordered the City of Oakland and the City Council of the City of Oakland to vacate, rescind and set aside Ordinance No. 12818 C.M.S. within 120 days of May 28, 2008; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. Ordinance No. 12818 C.M.S. is hereby vacated, rescinded and set aside in its entirety.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

MPW

**ORDINANCE RESCINDING ORDINANCE NO. 12818 C.M.S., WHICH BANNED
THE USE OF NON-BIODEGRADABLE PLASTIC CARRY-OUT BAGS AT
POINT OF SALE BY CERTAIN RETAIL ESTABLISHMENTS**

NOTICE AND DIGEST

This Ordinance vacates, rescinds and sets aside Ordinance No. 12818 C.M.S. (which banned the use of non-biodegradable plastic carry-out bags at point of sale by certain retail establishments) in compliance with a court order