

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/20/09

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE
2.

JUDGE PRO TEM

B. JAUREGUI, COURTROOM ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

C. CRUZ, CSR # 9095

Reporter

9:30 am

BS116362

Plaintiff

Counsel

STEPHEN L. JOSEPH (X)

SAVE THE PLASTIC BAG COALITION

Defendant

Counsel

ROBERT V. WADDEN, JR. (X)

VS

CITY OF MANHATTAN BEACH ET AL

NATURE OF PROCEEDINGS:

HEARING ON PETITION FOR WRIT OF MANDATE;

Matter comes on for trial and is argued.

The Petition for Writ of Mandate is granted.

Petitioner, an unincorporated association of manufacturers and distributors of plastic bags, challenges an ordinance adopted by the City of Manhattan Beach that prohibits retail establishments, restaurants, and vendors in the City of Manhattan Beach from providing plastic carry-out bags to customers at the point of sale. The basis for challenge is that the adoption of the ordinance violates the California Environmental Quality Act (CEQA) because the City did not adopt an Environmental Impact Report that compares plastic bags and paper bags and determines which of the two has a greater negative impact upon the environment.

An administrative record consisting of two volumes and 691 numbered pages lodged by the City of Manhattan Beach in this department on February 10, 2009, is received in evidence as petitioner's exhibit 1, there being no objection thereto. Both parties have attempted to get the court to consider documents extraneous to the administrative record as additional evidence in this proceeding. All such attempts are rejected because of lack of any evidence that the

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material in said documents was considered by the City when it approved the ordinance and because there is no evidence that either of the parties attempted unsuccessfully to offer the documents at the administrative level or that the evidence contained therein was not available when the City Council adopted the ordinance.

The City of Manhattan Beach contends that the petitioner lacks standing to sue under CEQA because it is seeking to use CEQA to advance its own commercial and competitive interests. The contention has no merit because the broad standing rules applicable in CEQA cases have been held to confer standing upon petitioners who will receive a commercial benefit from enforcing compliance with CEQA unless the petitioner is a for-profit corporation that is seeking a commercial advantage over a specific competitor. REGENCY OUTDOOR ADVERTISING INC. v. CITY OF WEST HOLLYWOOD, 153 Cal.App.4th 825(2007); WASTE MANAGEMENT OF ALAMEDA COUNTY v. COUNTY OF ALAMEDA, 79 Cal.App. 4th 1223(2000). Petitioner here raises a genuine environmental issue: whether the banning of plastic bags, and the consequent increase in the use of paper bags, will increase, rather than decrease, injury to the environment.

The Administrative Record in this case contains substantial evidence to support a fair argument that the prohibition of the distribution of plastic bags to customers will result in a net increase, rather

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than a net decrease, in damage to the environment. Each side has placed into the administrative record studies that support its position in the matter. Under such circumstances an Environmental Impact Report (EIR) must be created and considered by the public officials who are contemplating an ordinance, the very purpose of which is to improve the environment. "Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees." LAUREL HEIGHTS IMPROVEMENT ASSOCIATION v. REGENTS OF UNIVERSITY OF CALIFORNIA, 47 Cal.3d 376, 392(1988).

The City contends that because it is a small city the population of which is only 33,852, and that it contains only two hundred and seventeen licensed commercial establishments, the impact of the ordinance on paper bag use would be minimal. The contention has no merit because it is supported by no standard by which to determine what is "minimal." The size of the City of Manhattan Beach relative to the size of other cities is not sufficient to show that the petitioner has not made a fair argument, supported by substantial evidence, that the increase in the use of paper bags that will be caused by the challenged ordinance will have only an insignificant

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environmental impact.

Other contentions made by respondent are also without merit.

The Administrative Record lodged in this action is ordered forthwith returned to the party who lodged it, to be preserved without alteration until the Judgment herein is final, and to be forwarded to the Court of Appeal in the event of an appeal.

Counsel for petitioner are to submit a proposed judgment and a proposed writ of mandate to this department within ten days with a proof of service showing that copies of said documents have been served upon opposing counsel by hand delivery or facsimile. The court will hold said documents for ten days before signing and filing the judgment and causing the clerk to issue the writ.

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