

#1

Member of:
American Rivers
Audubon Society
Friends of California Parks
Mountain Lion Foundation
National Parks and Conservation Assn.
National Resources Defense Council

Jack Allen
15015 Bestor Boulevard,
Pacific Palisades, California 90272
(310) 454-2712
E-Mail: uclajack@verizon.net

Ocean Conservancy
Save the Redwoods
Sierra Club
Wilderness Society
World Wildlife Fund
Yellowstone Assn.
Zero Air Pollution (ZAP)

June 15, 2013

AGENDA ITEM NO. 1

Councilmembers,
Energy and Environmental Committee,
Los Angeles City Council

Date: 6/17/13

Submitted in E.E. Committee

Council File No: 11-1531

Item No.: 1

Deputy: Villanueva

Re: Council File 11-1531 (Koretz)
Final Environmental Impact Report for Proposed
Single-use Carryout Bag Ordinance
Hearing: Monday, June 17
Response to Final EIR

public Honorable Councilmembers,

The following comments are submitted regarding the responses of the City Bureau of Sanitation to the Comments from the public and other agencies to the Draft Environmental Impact Report (DEIR) regarding the Single-Use Carryout Bag Ordinance.

Essentially, the responses to the Comments are legally non-responsive and the proposed Alternatives are not included in the proposed Final EIR (FEIR) in that they Moreover, several of the responses add significant new information to that was not in the DEIR. Therefore, it is requested that the DEIR be re-circulated.

The Council set a deadline to get the subject ordinance before the City Council before seven of its members termed out June 30. The problem for the Bureau of Sanitation is that in order to respond to some of the comments concerning the DEIR, it would have had to promulgate new information which would have required that the DEIR to be recirculated and if that was done, the ordinance would not get to Council before June 30. So many of the response to the comments are defective. However, despite that, some of the responses contain significant new information.

Comment No. 17-1:

1. That Single-use Bags are reused.

Comment 17-1, the commentator stated that the proposed ordinance was predicated on the premise that plastic and paper bags were used only once. The commentator cited several independent sources that such bags are frequently reused.

The responder replied:

“While the commenter asserts that the single-use plastic bags will be replaced with reusable bags made of cloth, no such presumption was made in the Draft EIR. As clearly stated throughout the Draft EIR, the analyses of environmental impacts are based on very conservative assumptions that the single-use plastic bags will be replaced with both paper bags and reusable bags made of LDPE plastic and other materials. The replacement assumptions are shown below.”

First, no where in the DEIR is there any information that single-use bags were reused. The term “single-use carryout bag” which is used throughout is never defined. In its context, the DEIR, the only alternative described is a “reusable carryout bag”. Further, single-use carryout bags are divided into “single-use plastic carryout bags” and “single-use paper carryout bags.”

The response to Comment 17-1 is an admission that single-use carryout bags are reused. That is a significant admission because nowhere in the DEIR is there any analysis as to how reuse of single-use carryout bags reduces the alleged environmental impacts. As the study cited by the Commenter in support of Comment 17-1 states, the reuse of HDPE bags as bin liners reduces the environmental impacts by between 13 per cent and 33 per cent. The DEIR does not factor this in.¹

Instead, the responder apparently refers to Table 3.1-5 stating that the table sets forth the replacement assumptions. But the responder is mixing apples with oranges. What the Commentator is talking about is the reuse of single-use carryout bags, not what they will be replaced by. The table referred to by the Responder and the response clearly indicate that what the Responder is discussing is what type of bags will replace the single-use carryout bags, not how many single-use carryout bags will be reused.

What is not discussed in Table 3.2-5 is the number of other plastic bags that will have to be manufactured to replace the number of single-use carryout bags that are reused as trash liners which will be substantial and will replace single-use carryout bags in landfills but that is the subject of the response to Comment No. 17-2.

What the Responder is stating is while we omitted to state that single-use carryout bags were reusable, the omission of this important fact doesn't mean that we denied it.

¹ There is an important distinction between HDPE plastic bags and LDPE plastic bags. As was established by the Commentator, HDPE plastic is made from waste refining gases and thus, do not require more petroleum to manufacture whereas LDPE plastic bags are made of petroleum products and therefore, require petroleum. The result is that the production of LDPE bags significantly contributes to the generation of greenhouse gases while the manufacture of HDPE bags has a very minimal impact. As a study by the UK Environmental Protection Agency states, the manufacture of one cloth reusable bag produces more greenhouse gases than the production of 125 LDPE single-use carryout bags and that amount doubles if an LDPE single-use carryout bag is used twice and it increases again if the bag is reused again.

As the State Supreme Court stated in *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124:

"If the lead agency adds "significant new information" to the EIR subsequent to the close of the public comment period but prior to certification of [6 Cal.4th 1125] the final EIR, CEQA requires that the lead agency provide a new public comment period. (§ 21092.1.)"

The Court defined "significant new information" as:

"...the addition of new information to an EIR after the close of the public comment period is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement."

The Court stated that if "the new information merely served to clarify an environmental effect that was adequately discussed in the draft EIR" then recirculation of the DEIR was not required. *Id.* at p. 1131. But the Court cited several instances where such significant new information existed and the rationale for the requirement that the inclusion of new information required recirculation.

"By way of contrast, section 21092.1 was intended to encourage meaningful public comment. (See State Bar Rep., *supra*, at p. 28.) Therefore, new information that demonstrates that an EIR commented upon by the public was so fundamentally and basically inadequate or conclusory in nature that public comment was in effect meaningless triggers recirculation under section 21092.1." *Id.* at p. 1130

One example the Court cited: (*Id.* at p. 1131-32)

"Discovery that a project encroached upon wetlands, when the text of the draft EIR indicated that the wetlands area would remain undeveloped, was a substantial change in circumstances requiring revision and recirculation of the EIR. The failure to do so "deprived the public, who relied upon the EIR's representations, of meaningful participation regarding the issue of wetlands degradation," a significant adverse effect."

Response No. 17-5 is not only evasive and non-responsive, it is an admission that single-use carryout bags are reusable, which is significant new information that affects the amount of green house emissions generated as well as the number of LDPE plastic bags that will have to be reproduced to replace them as trash can liners, which will then replace them in landfills, thus reducing the number of bags that the FEIR states will no longer find their way into landfills, streams and the ocean. In other words by replacing one type of plastic bag with another will be robbing Peter to pay Paul. The omission of this fact deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project.

As previously noted, Response 17-1 is also non-responsive to the Comment. As the Court stated in *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6

“In the course of preparing a final EIR, the lead agency must evaluate and respond to comments relating to significant environmental issues. (§ 21092.5, subd. (a); Guidelines, §§ 15088, 15132, subds. (b - d).) In particular, the lead agency must explain in detail its reasons for rejecting suggestions and proceeding with the project despite its environmental effects. (Guidelines, § 15088, subd. (b).) ‘There must be good faith, reasoned analysis in response [to the comments received]. Conclusory statements unsupported by factual information will not suffice.0 (Ibid.)”

Instead of directly responding to the Comment that it is a misnomer to use the term “single-use carryout bags” to describe bags that are not only reusable but studies show are reused a majority of times, the Responder instead attempts to obfuscate the issue that the DEIR does state that the types of bags that would be banned by the ordinance are in fact reusable, the Responder instead states that re-use potential of single use plastic bag is limited in contrast with reusable bags. No one argues that and it is not an issue.

The Responder states that the Commentator should see Response 17-4 but fails to indicate what in Response No. 17-4 addresses the issue regarding the fact that the DEIR is predicated on the premise that single-use carryout bags are only used once. Response 17-4 cites the UK Environmental Agencies conclusion that single-use carryout bags, in particular plastic bags, are reusable which is a significant fact omitted from the DEIR.

Thus, the Response does not present a good faith reasoned analysis. 14 Cal. Code Regs. §15088(b), *Towards Responsibility in Planning v. City Council*, (1988) 200 Cal. App. 671, 683.

Comment 17-2:

Comment No. 17-2 addressed the fact that the numbers used for single-use plastic carryout bags were grossly exaggerated. The DEIR stated on page 17, that customers in the City of Los Angeles use an estimated 2,031,232,707 single-use plastic carryout bags annually.

The Commentator stated that this figure included all single-use plastic carryout bags, not just the single-use plastic carryout bags used in the stores covered by the ordinance. Therefore, the number was substantially overstated.

Secondly, the Commentator stated that the numbers were derived from unsubstantiated sources, principally on a Green Cities Master Environmental Assessment of March 2010 (MEA) that was not based on any reliable information.² Basically the MEA number is derived from a Resolution of the California Integrated Waste Management Board (CIWMB), which when read, does not set forth any basis for how it arrived at the estimate,

² The MEA was prepared by Heal the Bay, an environmental association that has strongly advocated banning single-use plastic carryout bags for the last 20 years, and very biased and tunnel minded.

Additionally, the Commentator noted that the CIWMB had done a study in 2008 that found that only 44% of single-use plastic carryout bags came from grocery stores.

Further, the Commentator pointed out that the studies used in the DEIR were made in 2010 and prior, which was before the City of Los Angeles allowed residents to deposit single-use plastic carryout bags in their recycling bins so that data previous to that did not accurately reflect the number of such bags.

The Response was not only non-responsive, it was evasive. It was not a good faith reasoned response.

First, the Responder states :

“The commenter’s citation refers to a single field sample that does not have any relevance to the number of PCBs consumed per resident in the state or the City of Los Angeles.”

What field sample is being referred to? Is it the only 44% of bags are coming from grocery stores? The Responder goes on to cite a number of figures in support of the figures set forth in the DEIR but no where in the DEIR is there any analysis as to how many single-use plastic carryout bags going into the City of Los Angeles waste stream come from grocery stores and the Responder cites no source for that information. Thus, the response is inadequate and conclusionary and not well reasoned.

In response to the Commentator’s observation that the recycling numbers cited in the DEIR are outdated since they do not reflect changes in the City’s recycling policy for single-use plastic carryout bags, the Responder contends that the DEIR includes information about the City’s recycling program but doesn’t relate that to how many single-use plastic carryout bags are being recycled currently rather than 2010 or earlier.

Again, the response is non-responsive. The obsolete information in the DEIR needs to be updated, but to do that would require that the DEIR be recirculated so to avoid that, the Responder provides evasive answers.

Comment No. 17-3:

Comment No. 17-3 addressed the fact that the calculations of air pollutant emissions with the current use of single-use plastic carryout bags are erroneously low because they were derived from the MEA. The source of the information in the MEA is the aforementioned CIMWB Resolution which seemed to pull a number out of the hat without any substantiation. ³

The Responder states that State law deems that the MEA is a valid source. Normally that

³ The Commentator cited a 2008 CIWMB statewide study that concluded that single-use plastic carryout bags in the study do not include other plastic bags like shopping bags, that might have been used to contain trash.

would be the case, but when the MEA is based on unsubstantiated information, it should not be valid, as a matter of law.

Comment No. 17-5:

Comment No.17- 5 raised doubts about the impacts transporting single-use plastic carryout bags. In particular, it addressed the transportation of cloth bags has on air quality and green house emissions. It noted that cotton grown in Africa and India must be transported to China to make the bags and then transported to ships to bring them to the U.S. which has added impacts ont air quality and greenhouse emissions.

The Responder stated that this was unsubstantiated. First, if one looks at the labels on the cloth bags, it would be hard to find one that is not made in China. Second, the Chinese are going to buy the cheapest cotton available, and it is an indiputable fact that cotton is grown in both Africa and India. BBC did a report on the growth of cotton to show that manufacturers, particularly in the U.S. cannot trace the sources of cotton in order to enforce laws which protect children and it showed young children in Africa picking coton for export to China.

The Responder also states that reusable bags are made of a variety of materials , such as LDPE plastic, nylon, cloth and others. What the others are is unknown but almsot every reusable bag being used is made of cotton, primarily because it is cheaper than nylon, and it is easier to fold up and lasts longer than plastic.

Comment No. 17-8:

Comment No. 17-8 states that the impacts on littering by single-use plastic carryout bags is exaggerated. The Commentator cites three reliable sources that emphasize that point, including one study that showed that single-use plastic carryout bags comprise only one-tenth of a percent of the litter.

The Responder counters that the DEIR states that in the Los Angeles area, plastic films, including plastic bags account for 7% to 30% of all litter and plastic bag litter comprises up to 23% of the litter in the Los Angeles River.

The problem with that statement is that it addresses all types of plastic bags and films and not just single-use plastic carryout bags that come from grocery stores. As noted previously, only 44% of single-use plastic carryout bags come from grocery stores. But there are many types of plastic bags. Garbage bags, trash bags of all sizes, sandwich bags, shipping bags, boil in bags, produce bags, meat bags, all kinds of merchandise bags such as candy bags, cooking bags, etc., etc.

Rather than distinguish single-use plastic carryout grocery bags from other plastic bags, the fierce advocates of the bag bans have used a shotgun approach in order to inflate the number of plastic bags in order to support their argument that single-use plastic carryout grocery bags are much more of a problem than they really are.

Again, the Response is evasive, and non-responsive.

Comment No. 17-10:

Comment No. 17-10 basically points out that banning recyclable paper bags will not improve Forest Resources as noted in the DEIR because they are made of recycled paper. Moreover, they constitute less than .4% of the waste going into landfills.

The Responder did not question the facts but chose to state that the DEIR chose banning single-use plastic carryout bags and paper bags as the environmentally superior alternative. That is not a reasoned response.

Comment No. 17-11:

This comment did not compare the impacts on solid waste disposal between adoption of the ordinance and not adopting the ordinance. The commentor cited the fact that only .3% of solid waste was composed of single-use plastic carryout bags and that out of approximately 40 million tons of refuse in landfills, only 195,000 tons was supposed to be single-use plastic carryout bags and 156,000 tons of paper bags.

The Responder stated that was equivalent to 1,093 bags per resident of California in 2008. However, what was happening in 2008 is not relevant to 2013 when cities are now accepting single-use plastic carryout bags for recycling, which wasn't the case in 2008. Moreover, the figure 1,093 bags per resident per year is a preposterous figure. That means about three a day. Additionally, it does not subtract the 44% of grocery bags which is relevant to this ordinance and therefore the number is exaggerated for the purpose of propaganda and does not ascertain the real impact the ordinance would have on single-use plastic carryout bags.

The Response is not responsive to the issues raised in the comment.

Comment No. 17-12:

The Commentator suggested that two other possible adverse impacts be discussed. When Australia adopted a ban on single-use plastic carryout bags, thefts of shopping carts and shopping baskets increased after the adoption of the ban. It noted that the same thing happened in Los Angeles County after the County adopted its ban. It was suggested that the possibility of that occurring in Los Angeles should be discussed in the EIR.

The Responder replied that the Commentator did not provide any data or basis of support for the assertion. In fact, in a footnote, the Commentator cited a 2012 Review of Shopping Bag bans and also a National Center for Policy Analysis about the County ban. The response was non-responsive, not in good faith and not a reasoned response.

Additionally, the Commentator also stated that after the ban was adopted in Australia, major retailers reported the need to train staff in the use of the new bags to reduce possible work place injuries resulting from the overloading of reusable bags citing a study.

Again, the Responder ducks the issue by stating that 50 California cities and numerous other entities have adopted bans on single-use plastic carryout bags with no known significant impact of workplace injuries. The Responder provides no citations or references for the statement.

The response is not well reasoned and it is non-responsive.

Comment No. 17-14:

The Commentator suggested three alternatives that could reduce the trash flow. One was to ban the sale of paper towels and napkins which would result in people using cloth towels and napkins which are reusable.

The second proposed alternative was to ban the sale of disposable diapers (which are a bigger source of trash in landfills than single-use plastic carryout bags) in favor of reusable cloth diapers.

The third alternative proposed is to step up the education of citizens to recycle single-use carryout bags.

The Responder stated that an EIR is required only to set forth only those alternatives necessary to permit a reasoned choice and which are potentially feasible and capable of achieving major project objectives. The response then states what the objectives of the ordinance are. One of them is:

“Reducing the adverse environmental impacts associated with single-use plastic carryout bags, including impacts to air quality, biological resources (including marine environments), water quality, and *solid waste*; (Emphasis added.)”

Again, the response is not a reasoned response to the comment and is thus non responsive. Moreover, the suggested alternatives satisfy the feasibility test set forth by the Court in *Laurel Heights Improvement Assn. v. Regents of University of California*, supra, 6 Cal.4th at 1142:

“An alternative is "feasible" and therefore worthy of consideration only if it is "capable of being accomplished in a successful manner within a reasonable period of time, taking into account, economic, environmental, social, and technological factors." (§ 21061.1; see also Guidelines, § 15364.)”

The proposed alternative all satisfy this criteria.

Moreover, only five alternatives are included in the Final EIR. One is “No Project.” The second is to ban both plastic and paper bags. The third is to impose a higher fee on paper bags. The fourth is to adopt an ordinance without a grace period. The fifth is to impose a higher fee on single-use paper carryout bags.

Only two of the alternatives will reduce the trash flow so it is within reason to consider other alternatives that will accomplish the same objective.

As the Court stated in *Laurel Heights, supra*:

“...consideration of a reasonable range of feasible alternatives is required to foster informed decisionmaking and public participation.”

That was not done in this case and the City should add those alternatives to the list of alternatives in the FEIR and discuss them.

Significant Facts Were Added to the DEIR Which

In response to comments made by the author, significant new facts were added to the Final EIR on page . That information is as follows:

“Furthermore, a report prepared by the United Kingdom’s Environment Agency, “Life Cycle Assessment of Supermarket Carrier Bags: a Review of the Bags Available in 2006,” evaluated the environmental impacts of various types of “supermarket carrier bags” using the HDPE plastic carryout bag as a baseline for estimating other bags’ “global warming potential.” The UK study reports estimates how many times reusable bags of various types would need to be used in order to take them “below the global warming potential of HDPE bags,” which are single-use plastic carryout bags. The UK report indicates that LDPE reusable bags have lower global warming potential than HDPE carryout bags after four uses, non-woven polypropylene bags after 11 uses, and cotton bags after 131 uses. Even if as many as 40.3% of HDPE carryout bags are re-used as “bin liners” (trash can liners), the report states that LDPE reusable bags have lower global warming potential after 5 uses, non-woven polypropylene bags after 14 uses, and cotton bags after 173 uses. These levels of a multiple use are within the reusable bags’ design life of 125 uses, are reasonably attained through typical use over a longer period of time.”

“The UK study concludes that reusable bags of any type initially require more “upstream” material and energy resources as they are designed to be more durable than single-use carryout bags, but since the reusable bags’ higher production impacts are distributed over multiple uses, they have a lower overall impact over time on climate change.”

The information was derived from a 120 page report which is the most comprehensive analysis of the various shopping bags and It was published in 2012 so that it is current. The information contained therein refutes many of the assumptions made in the FEIR and places emphasis on the increased global warming impacts if single-use plastic carryout bags are banned.

More significantly, placing it in the EIR calls attention to the subject which may encourage both the public and the decision makers to read it and learn that banning single-use plastic carryout bags may not be such a good idea. It provides food for thought.

Council File 11-1531 (Koretz) Final Environmental Impact Report for Proposed Single-use Carryout Bag Ordinance

Therefore, the Final EIR should be recirculated for further comment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jack Allen", with a long horizontal flourish extending to the right.

JACK ALLEN