

RICHLAND COUNTY
DEVELOPMENT & SERVICES
COMMITTEE AGENDA



Tuesday, MARCH 26, 2019

5:00 PM

COUNCIL CHAMBERS

The Honorable Gwen Kennedy, Chair

County Council District 7

The Honorable Allison Terracio

County Council District 5

The Honorable Jim Manning

County Council District 8

The Honorable Chip Jackson

County Council District 9

The Honorable Chakisse Newton

County Council District 11

RICHLAND COUNTY COUNCIL 2019



Bill Malinowski
District 1
2018-2022



Joyce Dickerson
District 2
2016-2020



Yvonne McBride
District 3
2016-2020



Paul Livingston
District 4
2018-2022



Allison Terracio
District 5
2018-2022



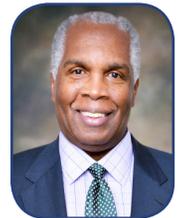
Joe Walker, III
District 6
2018-2022



Gwendolyn Kennedy
District 7
2016-2020



Jim Manning
District 8
2016-2020



Calvin "Chip" Jackson
District 9
2016-2020



Dalhi Myers
District 10
2016-2020



Chakisse Newton
District 11
2018-2022



Richland County Development & Services Committee

March 26, 2019 - 5:00 PM
Council Chambers
2020 Hampton Street, Columbia, SC 29204

1. **CALL TO ORDER** The Honorable Gwen Kennedy

2. **APPROVAL OF MINUTES** The Honorable Gwen Kennedy
 - a. February 26, 2019 [PAGES 8-12]

3. **ADOPTION OF AGENDA** The Honorable Gwen Kennedy

4. **ITEMS FOR ACTION**
 - a. I move that all RC contracts must be reviewed & approved by the Office of the County Attorney & that notices under or modifications to RC contracts must be sent to the County Attorney, but may be copied to external counsel, as desired [MYERS] [PAGES 13-14]

 - b. Rural Zoning vs. Open Space Provision – Rural minimum lot size is 0.76 acre lots. Open space provision will allow high density lots with green space set aside. The uses for housing are similar but the capacity is different; therefore, there should be a zoning change from any current zoning to another defined use [N. JACKSON] [PAGES 15-49]

 - c. I move to amend Richland County Code of Ordinances, Chapter 16, Licenses and Miscellaneous Business Regulations by adding Section 16-23, Health Massage, Bodywork Therapists, and Massage Establishments [MANNING] [PAGES 50-58]

 - d. Bulk Item Collection Procedure [PAGES 59-60]

- e. Petition to Close Portion of Old Percival Rd/Spears Creek Rd [PAGES 61-65]

5. ITEMS FOR DISCUSSION/INFORMATION

- a. Determine if there is any state/federal law that prohibits a county from creating an ordinance that will address the use of plastic bags by commercial entities. If not, create an ordinance that would prohibit the use of plastic bags for use in putting product purchases, with certain exceptions if deemed necessary. Example: many products already come prepackaged in plastic and could not come under these restrictions [MALINOWSKI and N. JACKSON] [PAGES 66-237]

6. ITEMS PENDING ANALYSIS: NO ACTION REQUIRED

- a. I move to direct the County Administrator to solicit proposals for a survey to residents of Richland County. The purpose of the survey will be to help the County strategically plan for the future as they continue to grow and meet new challenges. The survey will also assist elected officials, as well as County administrators, in making critical decisions about prioritizing resources and helping set the direction for the future of the County. The survey will gather and analyze input and data from residents on service quality, priorities and overall performance and satisfaction with County services. [WALKER]
- b. I move that Richland County Council secure the services of a public relations firm to, among other things, assist Council as a whole and its individual members in informing the media and general public of the body's collective work and activities and community engagements of individual members. A public relations contractor will complement the work of the Clerk's Office, as well as the Public Information Office, which promotes activities of the entire County organization; while a public relations firm will focus solely on Council and its members. The assistance of a contractor will ensure Council abides by state law in its interactions with staff, as the nature of public relations assistance can involve individual requests or directives to staff, which falls outside the authority of individual members. [DICKERSON]
- c. Request staff to consider a public/private partnership for ambulance services in Richland County. Private ambulance companies could be utilized at various sporting events or in response to situations that are not

life and death with where immediate qualified EMT personnel are not needed. This would reduce the current incident responses for Richland County personnel.
[MALINOWSKI]

- d. Revisit the bed and breakfast ordinance to increase the number of rooms up to 20, so the business can be profitable and flourish. This would be in line with keeping the rural character and allow opportunities for small businesses [N. JACKSON\

7. ADJOURNMENT



Special Accommodations and Interpreter Services Citizens may be present during any of the County's meetings. If requested, the agenda and backup materials will be made available in alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), as amended and the federal rules and regulations adopted in implementation thereof. Any person who requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may request such modification, accommodation, aid or service by contacting the Clerk of Council's office either in person at 2020 Hampton Street, Columbia, SC, by telephone at (803) 576-2061, or TDD at 803-576-2045 no later than 24 hours prior to the scheduled meeting.



Richland County Council

DEVELOPMENT AND SERVICES COMMITTEE

February 26, 2019 – 5:00 PM

Council Chambers

2020 Hampton Street, Columbia, SC 29204

COMMITTEE MEMBERS PRESENT: Gwen Kennedy, Chair, Allison Terracio, Jim Manning, Calvin Jackson and Chakisse Newton

OTHERS PRESENT: Michelle Onley, Trena Bowers, Sandra Yudice, Kimberly Williams-Roberts, Larry Smith, Stacey Hamm, Edward Gomeau, Ashiya Myers, Ashley Powell

1. **CALL TO ORDER** – Mr. Manning called the meeting to order at approximately 5:00 PM.
2. **APPROVAL OF MINUTES**
 - a. December 18, 2018 – Mr. C. Jackson moved, seconded by Ms. Kennedy, to approve the minutes as submitted.

In Favor: C. Jackson, Manning and Kennedy

The vote in favor was unanimous.
3. **ADOPTION OF AGENDA** – Mr. Jackson moved, seconded by Ms. Kennedy, to adopt the agenda as published.

In Favor: C. Jackson, Manning and Kennedy

The vote in favor was unanimous.
4. **ELECTION OF CHAIR** – Mr. Jackson nominated Mr. Manning for the position of Chair.

Mr. Manning declined the nomination.

Mr. Manning moved, seconded by Mr. Jackson, to nominate Ms. Kennedy for the position of Chair.

The vote was in favor.
5. **ITEMS FOR ACTION**
 - a. I move that all RC contracts must be reviewed & approved by the Office of the County Attorney & that notices under of modifications to RC contracts must be sent to the County Attorney, but may be copied to external counsel, as desired [MYERS] – Mr. Smith stated the Legal Department concurred that contract and amendments could come through its office; however, if those

documents would include work orders, or similar documents, given the contract level of Richland County, they would not have the staff to review those kinds of documents.

Mr. Manning moved, seconded by Mr. Jackson, to defer this to the March Committee meeting, and have Legal give the committee a listing of what they would and examples of what they feel like they would not be able to do, or would have costs associated with it.

In Favor: Jackson, Kennedy and Manning

The vote in favor was unanimous.

- b. I move that Richland County establish an Ordinance and/or Ordinance language revision to mirror or replicate that of the City of Columbia to reduce or eliminated the public safety concerns particularly with regard to those businesses that have had shootings on their business premises...[MANNING and KENNEDY] – Mr. Manning stated it is his understanding there may be some language in the ordinance that we may want to change or remove, but given the nature of this, he would move that we approve this item to go to Council for First, Second and Third Reading and a Public Hearing. There will be opportunities, as the ordinance moves along, to take those amendments up.

Mr. Manning moved, seconded by Mr. Jackson, to forward to Council with a recommendation to adopt the nuisance ordinance in its proposed form, with any amendments Council may desire.

Mr. Jackson inquired if this ordinance will enable the Richland County Sheriff's Department to enforce with the degree of permanency that they have told him they do not currently have.

Mr. Manning responded in the affirmative.

Mr. Jackson inquired if this is different than what we currently have, and if so, how is it different.

Mr. Manning stated it is different in that the Sheriff does not currently have the ability to go in and close down a business. They do not just go in and make the decision. It has to meet the listed criteria. The listed criteria are what the City of Columbia instituted. You are protected under this safety if you live in the City of Columbia, but not if you live in unincorporated Richland County.

Mr. Malinowski inquired, if there are violations against Federal and State law, do we need to repeat them in the ordinance because it is a violation of the law.

Mr. Manning stated that is an example of the language they may need to be amended. He would like for Legal to give us an opinion on this.

In Favor: Jackson, Kennedy and Manning

The vote in favor was unanimous.

Ms. Newton stated Council members received a request from the Sheriff's Department that we would consider an emergency ordinance that would approve this for a pilot. She did not know if it was appropriate to bring this before this body, or what the process is.

Mr. Smith stated what is on the agenda, at this point, for consideration, and which the committee voted to forward to full Council, was the ordinance that mirrored the City of Columbia was doing. He does not believe a part of the motion phased it in terms of doing anything on an emergency basis.

- c. Public Works: Medium Bulldozer procurement – Mr. Manning moved, seconded by Mr. Jackson, to forward to Council with a recommendation to approve the requested acquisition through the Sourcwell (formerly NJPA) cooperative purchasing contract.

Mr. Jackson inquired as to why this matter had to come before the committee, since it seemed to be a routine procurement process request.

Ms. A. Myers stated the pricing is over the threshold that can be approved by the County Administrator.

Mr. Jackson inquired as to what the threshold is.

Ms. A. Myers stated it is \$100,000.

In Favor: Terracio, Jackson, Newton, Kennedy, and Manning
The vote in favor was unanimous.

- d. Public Works: Asphalt Patch Truck procurement – Mr. Manning moved, seconded by Mr. Jackson, to forward to Council with a recommendation to approve the requested acquisition through the North Carolina Sheriff's Association.

In Favor: Terracio, Jackson, Newton, Kennedy and Manning

The vote in favor was unanimous.

- e. Utilities: Award of contract for SCADA System Upgrade – Mr. Jackson inquired as to the benefit of this process and what the upgrade will do that is not currently being done.

Mr. Khan stated the SCADA (Supervisory Control and Data Acquisition) System is the brain of the system. It has process logic controls and other equipment tied together, which automates the operation of the pump stations, treatment plants, water system. Essentially, if you have a pump station in your backyard, there are sensors, so that as soon as the water gets to a certain level it rings the alarm. At which point, it would turn the pump on. It is basically, an automated control system, which is a mandatory part of the treatment business.

Mr. Jackson stated it looks like the costs for it will be done in phases. He is curious what the total cost is.

Mr. Khan stated there are 3 phases. The 1st phase involves 7 major pump stations and the data control room. The other 2 phases are subject to the CIP (Capital Improvement Plan). The key part is it is one system. In order for it to operate in the right manner, Phase 2 and 3 have to be synchronized equipment as opposed to different types of equipment.

Mr. Jackson stated he is glad Mr. Khan said that. He does not want us to approve this part, and then hesitate or stumble when we get to Phases 2 and 3.

Ms. Wladischkin stated the Phase 1 cost is \$94,249; Phase 2, which includes Broad River - Central Site and Lift Station Remote Terminal Unit, Broad River Wastewater Treatment Plant, Eastover Wastewater Treatment Plant – Central Site and 7 RTUs is \$805,009; Phase 3, which

**Development and Services
February 26, 2019**

-3-

includes Hopkins Water System and Lift Station Remote Terminal Unit is \$100,687. The total costs would be \$999,945.

Mr. Jackson inquired how the financing for the larger piece will be done.

Mr. Khan stated it is a part of their current CIP, which will be brought to Council as a part of the fiscal budget. Subject to approval, he would like to move forward. The 2nd phase, is tentatively intended to go out in the next fiscal year, and the 3rd phase the year after.

Ms. Newton stated, for clarification, in addition to the things that Mr. Khan indicated, implementing this system will make it easier for us to prevent overflows and environmental problems.

Mr. Khan responded in the affirmative.

Mr. Malinowski stated, on the evaluation sheet, the higher the point value the better, but what about the cost proposal. Is it the higher the point value, the higher the cost?

Ms. Wladischkin stated the highest points awarded are for the lowest costs.

Ms. Newton moved, seconded by Ms. Terracio, to forward to Council with a recommendation to approve the upgrade of Process Control system to SCADA system.

In Favor: Terracio, Jackson, Newton, Kennedy and Manning

The vote in favor was unanimous.

6. **ITEMS FOR INFORMATION/DISCUSSION**

- a. Public Works: Bulk Item Collection Procedure – Community Input Report – Mr. Manning inquired if there was a list of how many meetings there were, where they were held and how many participants were at each meeting.

Mr. Braswell stated there were 6 meetings held around the county (Beatty Road, Campground Road, Blythewood, Hampton Street, Hopkins and Ballentine) and there were up to 30 people at some of the meetings. The meetings were approximately 2 hours in length. The majority of the citizens preferred keeping the same process for bulk item collection.

Mr. Manning inquired as to who made up the “Situation Team”.

Mr. Braswell stated the team was put together by the former Administrator and consisted of the Ombudsman’s Office, PIO, HR, Dr. Yudice, former Assistant to the County Administrator, Brandon Madden, and himself.

Mr. Manning inquired if this was specifically for this item.

Mr. Braswell responded in the affirmative.

Mr. Manning inquired if the proposal was outlined in the briefing document.

Mr. Braswell stated the proposal of the Situation Team is:

- Haulers will collect bulk items from the curbside every other week on the same day as yard waste collection, alternating with the recycling week;

**Development and Services
February 26, 2019**

- The number of bulk items collected shall be limited to four (4) each collection day; and,
- The items must be able to be handled and lifted by human power.

Residents currently call into the division to schedule a pick up by the hauler.

Mr. Manning inquired if the proposal is more user-friendly.

Mr. Braswell stated the concern the residents expressed, about the proposal, was that if the bulk item were put out every other week, but happened to be put out late, it would remain on the curb for 2 weeks before pickup.

Mr. Manning inquired as to what the process will be now regarding this item.

Mr. Braswell stated it was before Council and they requested it be taken to the community.

Mr. Jackson stated, as a fact, he raised some objections during that Council meeting, and he used the term that “not all communities are created equal.” He had some major reservations with this policy, as it relates to communities with HOAs and other organizations that monitor this much more closely. In communities where those organizations did not exist, there may be debris out there for weeks at a time, and debris larger than individuals could lift. He believes that is how it got referred to this committee.

Mr. Malinowski suggested having someone on the committee to make a motion to place this on the next committee agenda for action.

7. **ITEMS PENDING ANALYSIS: NO ACTION REQUIRED:**

- a. Rural Zoning vs. Open Space Provision – Rural minimum lot size is 0.76 acre lots. Open space provision will allow high density lots with green space set aside. The uses for housing are similar but the capacity is different; therefore, there should be a zoning change from any current zoning to another defined use [N. JACKSON] – No action was taken.

8. **ADJOURNMENT** – The meeting adjourned at approximately 5:30 PM.



Briefing Document

Agenda Item

During its December 11, 2018 County Council meeting, Councilmember Dalhi Myers made the following motion:

“I move that all RC contracts must be reviewed & approved by the Office of the County Attorney & that notices under or modifications to RC contracts must be sent to the County Attorney, but may be copied to external counsel, as desired”

Background

Contracts and/or modifications thereto which may obligate the County in some manner should be reviewed and approved by the County’s Legal Department prior to signature. Chapter 2; Article 3; Division 5; Section 2095 of the Richland County Code of Ordinances states “[t]he county attorney...shall advise the county administrator and all county officers and department heads in all matters wherein they may seek advice or counsel.” The County’s Legal department has concurred that contract and amendments should come through its office; however, it does not review work orders or similar documents.

At its February 26, 2019 meeting, the committee requested a list of those documents the County’s Legal Department would review. The response follows:

- *Exclusions from contractual type items routinely sent to Legal*
 - *Routine work orders, work authorizations, or Notices to Proceed where the master contract has already been reviewed by Legal. Legal will review the “template” of these documents, which may then be used as a guide.*
 - *Notices regarding contract performance. These fall under the Procurement Manager.*
 - *Contract renewals where there are no amendments and Legal has previously reviewed the contract.*

Legal’s review is in addition to, not in lieu of, the Department and/or Procurement’s review. Legal is not the technical or subject matter expert of your contract. Legal reviews for certain language and contract provisions, in addition to spotting liability and other legal issues with the contract - not substance.

There is not an exhaustive list. Legal will assist anytime there is a question involving the above items, or any other matter.

Issues

None.

Fiscal Impact

Costs associated with the use of outside counsel may be incurred and will be determined upon engagement thereof.

Past Legislative Actions

None.

Alternatives/Solutions

None.

Staff Recommendation

This is a Council initiated request. Staff in concurrence with the County's Legal Department will develop a policy and mechanism to track the review and approval of all contracts and amendments thereto.



Development and Services Committee Meeting Briefing Document

Agenda Item

During its December 4, 2018 County Council meeting, Councilman Norman Jackson brought forth the following motion:

“Rural Zoning vs. Open Space Provision – Rural minimum lot size is 0.76 acre lots. Open space provision will allow high density lots with green space set aside. The uses for housing are similar but the capacity is different; therefore, there should be a zoning change from any current zoning to another defined use.”

Background

Section 26-186 (adopted 9-10-13; Ord. 045-13 HR), *Development with Open Space Design Standards*, of the Richland County Land Development Code (LDC) provides for optional standards that will preserve land for conservation by permitting variation in lot sizes. At a minimum, residential developments which set aside all constrained open space and a minimum of ten (10) percent unconstrained open space are eligible to vary from the minimum lot area requirements of the zoning district in which the development is located. In cases where the constrained open space area is at least twenty-five (25) percent, no unconstrained open space is required.

This provision of the LDC is only applicable to the RU, RR, RS-E, RS-LD, RS-MD, and RS-HD zoning districts. While the lot sizes and lot widths can be reduced from the required development standards of the respective zoning districts, the densities for each district are not increased due to the application of the *Development with Open Space Design Standards*.

The difference between Open Space and standard developments is found mainly in the size and location of the parcels. The reduction of the lot sizes and lot widths, coupled with the constrained/unconstrained areas, lends to development occurring in concentrated areas of the property. This concentration of lots can assume the appearance of a higher density development which is typically attributed to other zoning designations.

Issues

Any substantial changes to the current LDC could impact the ongoing Land Development Code rewrite.

Fiscal Impact

None.

Past Legislative Actions

Since the adoption of the 2005 Richland County Land Development Code, there have been three (3) versions of open space provisions which have provided lot dimensional flexibility for development in return for the reservation of land area:

- Parks and Open Space – adopted 11-09-04; Ord. 074-04HR
- Green Code – adopted 6-17-08; Ord. 035-08HR
- Development with Open Space Design Standards – adopted 09-10-13; Ord. 045-13HR

Alternatives

1. Consider the motion and require a zoning change in order to achieve lot size reduction.
2. Consider the motion and do not require any changes.
3. Consider the motion and require amendments to Section 26-186.

Staff Recommendation

Council discretion.

Submitted by: Ashley Powell, Interim Director, Divisions of Planning, Zoning and Conservation

Date: December 11, 2018

Attachments: See also Ord. 074-04HR Parks and Open Space; Ord. 035-08HR Green Code;
Ord. 045-13HR Development with Open Space Design Standards

ATTACHMENT A

Sec. 26-184. Parks and open space.

(a) *Purpose and applicability.*

- (1) *Purpose.* The common open space and park standards contained herein are established to provide an option for the reservation of open space in residential development in Richland County. Preservation of open space and parks in developing areas serves a variety of purposes, including meeting the recreational needs of residents, reducing stormwater runoff, and enhancing air quality.
- (2) *Applicability.* The parks and open space options contained in this section shall apply to minor and major residential land developments and to minor and major residential subdivisions.

(b) *General parks and open space requirements.*

- (1) *Minimum amount of park land or open space to be reserved.* Developers wishing to use the design flexibility standards of subsection (c) below, must reserve at least ten percent (10%) of the total project area as park land or open space. In addition, at least 50% of the reserved park areas or open space shall be usable, i.e. made accessible for pedestrian and/or aquatic use, or consists of land that could otherwise be developed and does not slope more than 33°.
- (2) *Acceptable land for park land or open space reservation.* Land reserved to meet the requirements of this section shall be subject to the following standards:
 - a. *Water features.* Bodies of water, such as ponds, lakes, streams, wetlands, and flood plains, may be used to fulfill the open space requirement.
 - b. *Land burdened with easements.* Land that is burdened with easements may be used, provided that the easements do not interfere with the use of the land for open space and recreation purposes and do not permit future development.
 - c. *Minimum required yards.* Minimum required yards may provide up to fifty percent (50%) of the required open space.
- (3) *Unacceptable land for park or open space reservation.* The following types of land are unacceptable for park or open space reservation:

- a. *Occupied land.* Land occupied by roads, drives, parking areas, or structures, other than those related to recreational structures or parks.
 - b. *Land with hazardous materials.* Land containing or contaminated by hazardous materials.
 - c. *Narrow areas.* Land with a minimum width of less than ten (10) feet, unless specifically approved by the planning department.
- (c) *Design flexibility for additional open space reservation.* It is the intent of this subsection to encourage variety and flexibility in design and development of residential areas and to provide a means of preserving larger areas of open space. This development design relaxes conventional zoning and/or subdivision standards to permit modifications in lot size and shape by concentrating single-family dwellings in specific areas of an overall tract, leaving more open space in which to preserve natural features, such as woodlands and streams, and in so doing, to provide for the active or passive use of such lands as recreational space for the residents of these developments. Depending on the zoning district in which the development is located, housing may be detached or attached if building code standards are met. This flexibility in design shall be available to any major residential development or major subdivision in which ten percent (10%) of the project area is reserved for open space. This flexibility shall take the form of reductions in the dimensional standards (lot area, minimum lot width, and setback) for the applicable zoning district. Reductions shall be as follows:
- (1) *Open space of more than ten percent (10%) but less than fifteen percent (15%).* If the total open space provided, in meeting the standards listed in (b)(2) and (b)(3) above, is more than ten percent (10%) and less than fifteen percent (15%) of the total project area, each dimensional requirement may be reduced ten percent (10%).
 - (2) *Open space of fifteen percent (15%) or more, but less than twenty percent (20%).* If the total open space provided, in meeting the standards listed in (b)(2) and (b)(3) above, is fifteen percent (15%) or more, but less than twenty percent (20%) of the total project area, each dimensional requirement may be reduced by fifteen percent (15%).
 - (3) *Open space of twenty percent (20%) or more, but less than twenty-five percent (25%).* If the total open space provided, meeting the standards listed in (b)(2) and (b)(3) above, is twenty percent (20%) or more, but less than twenty-five percent (25%) of the total project area, each dimensional requirement may be reduced by twenty percent (20%).
 - (4) *Open space of twenty-five percent (25%) or more.* If the total open space provided, meeting the standards listed in (b)(2) and (b)(3) above, is

twenty-five percent (25%) or more of the total project area, the zoning district dimensional requirements may be waived. The then newly established minimum lot size, lot coverage, and setback requirements must be approved by the planning staff and development review team.

- (d) *Maintenance.* Arrangements for the perpetual maintenance of open space that meet these requirements must be approved by the planning department. Any conveyance to a homeowner's association shall be subject to appropriately recorded and filed restrictive covenants and easements. The covenants and easements shall prohibit future development of the open space for other than open space and recreation purposes and shall provide for continued maintenance of the open space and recreation facilities. Failure to maintain the area designated for open space shall constitute a violation of this chapter.

ATTACHMENT B

Sec. 26-186. Green Code standards. (Ord. 035-08HR; 6-17-08)

- (a) *Purpose.* Green Code standards are intended to encourage the development of residential communities based upon the *Comprehensive Plan for Richland County*, and which are designed to:
- (1) Preserve and protect environmental resources, scenic vistas, and natural and cultivated landscapes; and
 - (2) Enhance land, water, air and tree resources by minimizing the area of land disturbance, reducing impervious surface, optimizing stream buffers, preserving tree cover and encouraging retention and protection of Conservation Areas; and
 - (3) Reduce infrastructure maintenance costs as a result of efficient community design; and
 - (4) Provide a Conservation Area and pedestrian linkages and wildlife corridors among residential communities and to encourage recreation opportunities; and
 - (5) Preserve significant historical and archeological features; and to preserve and protect contiguous undeveloped areas within the development.
- (b) *Applicability/Establishment.* The owner of property within an RU, RS-E, RS-LD, RS-MD, or RS-HD zoning district may apply the development standards found within this section, in lieu of the development standards set forth for the applicable zoning district, subject to meeting the requirements of this section.
- (c) *Application.* A property owner desiring to use the development standards of this section must first submit an application to the Planning department. The application shall be accompanied by an "Existing Features Site Analysis Plan" (see subsection (e), below), and a "Concept Plan" (see subsection (f), below). An application will not be accepted if the property has been clear-cut (i.e. marketable timber has been removed; provided, however, thinning of pine timber is permitted pursuant to a certified forest management plan, with such plan addressing reforestation) within the past twenty-four (24) months. In addition, property must utilize a public sanitary sewer, unless the owner obtains prior approval from DHEC to utilize a well and septic tank system.
- (d) *Approval by the County's Soil and Water Department.* A Conservation Area that delineates the land that is to be set aside for conservation purposes must be certified and accepted by the Richland County Soil and Water department. The Planning department shall submit this information to the Soil and Water department for review.

(e) *Existing Features Site Analysis Plan.* At time of development, and prior to preparing the Concept Plan, an Existing Features Site Analysis Plan, sealed by a registered engineer or landscape architect, shall be prepared and submitted by the applicant or developer.

(1) The purposes of the Existing Features Site Analysis Plan are to:

- a. Delineate areas that have been identified as worthy of permanent protection as a Conservation Area because of their environmental values.
- b. Set forth the particulars of the site, including boundary, topographic data (minimum 2 foot contour intervals), existing structures and utility easements. County topographical data, current GIS data other published data will be acceptable.
- c. Provide the starting point for design of the conservation subdivision with built areas being designed as separate from the areas delineated as worthy of permanent protection.

(2) The Existing Features Site Analysis Plan shall include, at a minimum, the following information:

- a. Perennial and intermittent streams, wetlands, and FEMA designated 100-Year Flood Hazard Zones. The source of this information shall also be indicated. USACE approved delineation is not required. Delineation of stream buffers along intermittent streams and perennial streams. The required buffers are:

For an Intermittent stream – a 25 foot buffer on each side, and

For a Perennial stream – a 50 foot buffer on each side.

For a delineated wetland area – a 50 ft buffer.

- b. Identification of tree lines, native woodlands, open fields or meadows, peaks or rock outcroppings, and prime agricultural land.
- c. Delineation of tree resource areas by type, such as hardwoods, pines or mixed; and old or new growth, as determined by existing and published data.
- d. Delineation of steep slope areas (25% or greater). The plan shall provide for protective vegetative cover on slopes greater than forty percent (40%).

- e. Identification of historical, archeological or other significant features.
 - f. Identification of the Conservation Area, Open Space, or common areas contiguous to the project.
 - g. Identification of protected plant species as listed by the South Carolina Department of Natural Resources, to be certified by a registered landscape architect, forester, arborist, biologist, botanist or horticulturist.
 - h. The plan also shall include a notarized statement by the landowner that marketable timber has not been removed (provided, however, thinning of pine timber is permitted pursuant to a certified forest management plan, with such plan addressing reforestation) within the past twenty-four (24) months within stream and/or wetland buffer areas in the previous twenty-four (24) months prior to the approval of a Concept Plan.
- (f) *Concept Plan.* At time of development application, a Concept Plan shall be submitted by the developer for review and approval in accordance with the requirements and procedures of this chapter. A Concept Plan shall consist of either a site plan or a sketch plan, including the following information:
- (1) Delineation and specifications of a Conservation Area, including calculations, and any "Neighborhood Greens," play areas, or trail system to be constructed.
 - (2) A typical detail on the plan indicating minimum lot width, building setback lines, off-street parking, street trees, sidewalks, and street pavement and right-of-way width.
 - (3) Minimum Lot width area and percent of floodplain specifications in tabular form; and density calculations (gross and net).
- (g) *Conservation Area Requirements.* In order to use the development standards of this section, the Conservation Area shall meet the following requirements:
- (1) *Delineation.* Priority shall be given in delineating Conservation Areas as those areas of significance identified in the Existing Features Site Analysis Plan, around which the built areas are designed.
 - (2) *Undeveloped and Natural.* The Conservation Area shall remain undeveloped and natural except for the provision of non-motorized passive recreation opportunities, such as running, walking, biking, and similar outdoor activities. Trail construction and maintenance activities

shall be allowed, including trail markers and routine mowing. For trail systems, boardwalks are allowed. Trail wetland and stream bank mitigation projects are also permitted. Natural vegetation shall not be disturbed, except for utility crossings within the required buffers.

- a. "Primary Conservation Areas" are required to be included in the Conservation Area. These areas shall be covered by a provision for permanent protection and shall include 100-Year floodplains, stream buffer zones, and slopes greater than forty percent (40%) consisting of a contiguous area of at least 5,000 square feet, wetlands, endangered or threatened species or their habitat, archeological sites, cemeteries or burial grounds.
 - b. "Secondary Conservation Areas" are features that are acceptable and desirable for Conservation Area designation, and may be covered by the provisions for permanent protection. These include important historic sites, existing healthy, native forests of at least one (1) contiguous acre, scenic view sheds, peaks and rock outcroppings, prime agriculture lands consisting of at least five (5) contiguous acres, and existing trails that connect the tract to neighboring areas. Also considered Secondary Conservation Areas are "Neighborhood Greens" and storm water management facilities and practices, and these may be constructed and maintained in the Conservation Area. However, "Neighborhood Greens" shall not exceed twenty percent (20%) of the total required Conservation Area.
 - c. Proposed Permanent Lakes that will be used for wet detention shall be credited at fifty percent (50%) of the land area.
 - d. Existing lakes that are used for stormwater detention shall be credited at one hundred percent (100%), and no more than fifty percent (50%) of land area located within a proposed permanent wet stormwater basin may be credited.
- (3) *Exclusions.* The following features are excluded from the minimum amount of Conservation Area that must be set aside:
- a. Residential yards.
 - b. Impervious surfaces in recreation areas shall not be credited.
 - c. Land area within power, gas pipeline easements, sewer line easements or pump stations shall not be credited unless these easements contain sensitive areas and are approved for common use areas.

- d. Land area devoted to public or private streets or any land that has been, or is to be, conveyed to a public agency for such use as parks, schools, or other public facilities, shall not be credited.
 - e. Dry stormwater detention basins shall not be credited.
- (4) *Ownership of Conservation Areas.* Prior to any building permits being issued for the subdivision, the Conservation Area that is delineated on the Final Plat shall be permanently protected by either one or both of the following options:
- a. Option 1. *Conveyance to Qualified Organizations or Entities.* Except for “Neighborhood Greens,” developed recreation areas or Secondary Conservation Areas not desired for permanent protection, the Conservation Area shall be permanently protected by the: 1) recording of a covenant or conveyance of an easement which runs in perpetuity under South Carolina law in favor of any corporation, trust, or other organization holding land for the use of the public or certain governmental entities; or 2) conveyance of a conservation easement running in perpetuity to a third party “qualified organization” recognized by Federal Treasury Regulation Section 1.170A-14(c)(1). Qualified organizations recognized by this Treasury Regulation include, but may not be limited to, governmental entities, local and national land trusts, or other conservation groups that are organized or operated primarily or substantially for one of the conversation purposes specified in the Internal Revenue Code. Governmental entities that qualify to be named in covenants or to receive conservation easements under the Treasury Regulation referred to above for purposes of this section shall include the Federal government, the State of South Carolina, Richland County, or authorities of the State of South Carolina or Richland County. If a covenant is recorded or an easement conveyed in favor of a governmental entity, formal acceptance by the governmental entity or qualified conservation organization shall be obtained prior to the recording of the covenant or conveyance of the easement. The developer shall record the necessary legal instrument to accomplish protection of the Conversation Area prior to, or concurrent with, the recording of the Final Plat. Both the deed and the Final Plat shall contain, at a minimum, the following covenant:

“The Conservation Area conveyed by deed and shown on the Final Plat shall remain permanently protected and shall not be disturbed or cleared except to clean up storm damage, or to create or maintain hiking trails, and shall have the following goals: 1)

protection of streams, floodplains and wetlands; 2) protection of steep slopes; 3) protection of woodlands, open fields and meadows; 4) protection of historical and archeological features; 5) protection of significant wildlife habitats; 6) protection of scenic vistas; and 7) passive recreation and connectivity with nearby open spaces. The following uses may be allowed: passive recreational amenities, such as pervious-surface paths and minimal parking spaces; picnic and restroom facilities (constructed facilities shall not exceed fifteen percent (15%) of the Conservation Area). This covenant is intended to benefit said area to the public and the use of same to the subdivision lot owners and residents, and it shall run in perpetuity.”

- b. Option 2. *Conveyance to the Property Owners' Association.* A deed conveying ownership of the Conservation Area in fee-simple to a property owner's association shall be recorded and delivered prior to, or concurrent with, the recording of the Final Plat for the first phase of the subdivision. The legal instrument shall contain, at a minimum, the same language required to be placed on a deed as stated in Option 1 of this Section.

The property owner's association bylaws or covenants, at a minimum, shall contain the following provisions:

1. Governance of the association.
 2. Lien rights to the association for maintenance expenses and tax obligations.
 3. Responsibility for maintenance of the open space, including, if applicable, low impact development stormwater management mechanisms.
 4. Responsibility for insurance and taxes.
 5. Automatic compulsory membership of all lot purchasers and their successors; and compulsory assessments.
- f. Conditions and timing of transferring control of the association from the developer to the lot owners.

The property owner's association, or other entity approved in advance by the Planning department, shall be responsible for the continuous maintenance and/or preservation of buffers, Conservation Area, trails and recreation areas.

- (h) *Development Requirements.* Subdivisions shall meet the following requirements:
- (1) Minimum Subdivision Size: 10 contiguous acres.
 - (2) Lot Area: No minimum.
 - (3) Minimum Yard Areas (Setbacks):
 - a. Front: 20 feet; provided, however, the front yard setback may be reduced to 5 feet if dwellings are provided side or rear entry garages.
 - b. Rear: 20 feet.
 - c. Side: 5 feet.
 - d. Corner lots secondary side $\frac{1}{2}$ front or 10 feet
 - e. For alley loaded developments:
 - Front: 10 feet
 - Rear: 15 feet
 - Side: 3 feet, 6 feet combined
 - Corner lots secondary side 10 feet
 - f. For a zero "lot line" development:
 - Front: 15 feet
 - Rear: 15 feet
 - Side: 0 feet, 6 feet combined
 - Corner lots secondary side $7 \frac{1}{2}$ feet
 - (4) Street Frontage Buffer along existing roads: Twenty-five (25) feet in width (not part of any building lot). The street frontage buffer shall remain undisturbed and natural, except for entrance features, necessary street construction activities, right-of-way crossings, public utility easements, and corner right-of-way miters or radii. If the required street frontage buffer is void of vegetation, it shall be planted in accordance to landscape buffer type "A" to provide an effective visual screen, which may include landscaped berms and decorative fences. The street frontage buffer may be counted towards Conservation Area calculations.
 - (5) Maximum Height: Three (3) stories above ground level. (For the purpose of this subparagraph, "ground level" shall mean: the average finished ground elevation at the base of a structure to the highest point of the roof of the structure; provided that spires, belfries, cupolas, chimneys, antennas, water tanks, ventilators, elevator housing, mechanical equipment, or other such structures that are placed above roof level and

are not intended for human occupancy, shall not be subject to height limitations).

- (6) Yards: All disturbed areas on dwelling lots shall be stabilized with sod, or landscaped with mulch and native plants for landscaping and stabilization of the entire lot.
- (7) Street trees shall be provided along all roads at intervals of twenty-five (25) feet and shall be 2½ inch caliper/10 feet in height at time of planting.
- (8) Proposed utilities shall be located underground.
- (9) Community streets shall be as follows:
 - a. Main Roads – twenty-four (24) feet pavement width with 1.5 feet minimum rolled curb.
 - b. Park Roads – seventeen (17) feet pavement width with 1.5 feet minimum rolled curb. On cul-de-sac bulbs, the inside curb shall be one (1) foot ribbon curb.
 - c. Street Lighting - if street lighting is proposed, a pedestrian scale shall be utilized (maximum 12 feet in height).
 - d. All streets shall conform to Richland County standards for pavement section, horizontal and vertical curvature. All streets in the community will have sidewalks on at least one side.
 - e. Sidewalks shall provide access to community trail systems. All sidewalks shall be a minimum of five (5) feet wide and meet ADA standards. Sidewalks shall be setback five (5) feet from the curb, providing a grass or landscaped buffer between the sidewalk and roadway.
- (10) Storm water management. Where possible, detention shall be accomplished in wet ponds. In addition, low impact development (LID) options shall be utilized when feasible throughout the community. However, in either case, storm water controls shall meet Richland County's standards. LID stormwater mechanisms, such as grassy cul-de-sacs and neighborhood greens shall be owned and maintained by the Home Owners' Association.
- (11) Pervious material may be used for sidewalks and driveways. The maximum impervious surface allowed is fifty percent (50%) of the developed area.

- (12) Certification shall be issued by the Richland County Council for the completion of development that meets the within Green code standards, which enhances the environment, improves our quality of life, and prioritizes Green Development.
- (i) *Density.* The residential gross density in each zoning district is established in other sections of this Code; provided, however, bonus density shall be granted based on meeting open space conservation targets as follows:
- 30% required minimum open space – 10% bonus density
 - 40% open space provided – 20% bonus density
 - 50% open space provided – 30% bonus density

Density bonus can be applied on a pro-rata basis for open space amounts falling between the benchmarks.

- (j) *Appeals.* The Board of Zoning Appeals, consistent with section 26-58, shall hear appeals of decisions of the Planning Department pertaining to this section (26-186).

Secs. 26-187 – 26-200. Reserved.

ATTACHMENT C

(g) *Open space design standards.* (Ord. 045-13HR; 9-10-13)

(1) To use these standards, one of the following alternatives must be utilized, as appropriate for the applicable zoning district:

a. To utilize the density-based zoning and flexibility in lot size, in all allowable zoning districts per subsection (b), above, all constrained open space on a site must be set aside, plus a minimum of ten percent (10%) unconstrained open space, for a total actual acreage set aside of fifteen percent (15%). Open space set asides between fifteen percent (15%) and twenty-five percent (25%) are based on a 1:1 ratio open space area to actual area. Open space credits, as determined by the “Unconstrained Open Space Credit Calculations” table in Section 26-186 (h) (1) b. 2., cannot be utilized to meet the open space requirements under this alternative.

If the constrained open space meets the twenty-five percent (25%) minimum, then no additional unconstrained open space is required.

b. To utilize a density bonus over the base density, allowable only in RU, RR, RS-E and RS-LD, a minimum of twenty-five percent (25%) open space credits are required, which includes a minimum of ten percent (10%) unconstrained open space credits, calculated using the “Unconstrained Open Space Credit Calculations” table below. Constrained open space areas are based on a 1:1 ratio of open space area to actual acreage.

1. A five percent (5%) density bonus is awarded for twenty-five percent (25%) open space credits, under this alternative. Then, one percent (1%) density bonus for every additional one percent (1%) of open space credits, up to a maximum density bonus of twenty percent (20%) for RU, RR and RS-E and fifteen percent (15%) for RS-LD zoning districts.

2. Open Space will be credited based upon the following:

i. Constrained open space shall be credited at one hundred percent (100%) of the land area.

ii. Restored open space shall be credited at two hundred percent (200%) of the land area; except where exceptions apply per subsection (f)(3), above.

iii. Recreational open space shall be credited at fifty percent (50%) of the land area.

- iv. Unconstrained open space shall be credited based on the following table titled “Unconstrained Open Space Credit Calculations”.

“Unconstrained Open Space Credit Calculations”

Unconstrained Open Space Category	Credit Calculation with Multiplier
Natural Resource Factors	
Water Quality Buffer Extension (1)	Total Additional Buffer Area* 1.75
Water Quality Buffer Extension (303d listed water) (1)	Total Additional Buffer Area* 2.0
Upstream Headwater Protection (2)	Total Headwater Area* 2.0
Steep Slopes – Erosive Soils (Average $\geq 15\% \leq 20\%$)	
B Hydrologic Group	Total Steep Slope Area* 1.25
C Hydrologic Group	Total Steep Slope Area* 1.5
(Average $\geq 21\% \leq 25\%$)	
B Hydrologic Group	Total Steep Slope Area* 1.75
C Hydrologic Group	Total Steep Slope Area* 2.0
Native, Mixed Forests (0.5 acre minimum) (3)	
Clear Cut within last 2 years (Unmanaged)	Total Forest Area* 0.5
Clear Cut within last 2 years (Managed)	Total Forest Area* 0.75
Clear Cut within 2 to 10 years (Unmanaged)	Total Forest Area* 0.75
Clear Cut within 2 to 10 years (Managed)	Total Forest Area* 1.0
Clear Cut within 10 to 20 years (Unmanaged)	Total Forest Area* 1.25
Clear Cut within 10 to 20 years (Managed)	Total Forest Area* 1.5
Forest older than 20 years (Unmanaged)	Total Forest Area* 1.75
Forest older than 20 years (Managed)	Total Forest Area* 2.0
Pine, Monoculture Forests (0.5 acre minimum)	
Clear Cut within last 2 to 10 years (Unmanaged)	Total Forest Area* 0.5
Clear Cut within last 2 to 10 years (Managed)	Total Forest Area* 0.75
Clear Cut within last 10 to 20 years (Unmanaged)	Total Forest Area* 1.0
Clear Cut within last 10 to 20 years (Managed)	Total Forest Area* 1.25
Forest older than 20 years (Unmanaged)	Total Forest Area* 1.75
Forest older than 20 years (Managed)	Total Forest Area* 2.0
Protective Area of Groupings of Grand Trees (4)	Area* Percentage of All Grand Trees Protected* 1.75
Prime Agricultural Soils (0.5 acre minimum)	Total Prime Agricultural Soil Area* 1.5
Important Historic Sites/Structures not considered constrained	Total Historic Site Area* 1.5
Scenic Viewsheds (5)	Total Parcel Viewshed Area Protected* 1.0
Rock Outcrops	Total Rock Outcrop Area* 1.0

Pasture or Meadow (Unmanaged)	Total Area* 0.75
Pasture or Meadow (Managed)	Total Area* 1.25
Engineered Factors	
LID Practice (6)	
Green/Permeable Pavement (only in open space)	LID Practice Area* 1.5
Infiltration Bio-retention	LID Practice Area* 2.0
Neighborhood Greens	Neighborhood Green Area* 1.0
Trails	Trail Area* 1.25
Wet Stormwater Detention Ponds serving as an amenity (Managed)	Total Area* 0.5
Notes:	
(1) Not to exceed a total width of 300 feet, including the Constrained Water Quality Buffer. Must be within the stream watershed area.	
(2) Drainage area upstream of the jurisdictional line	
(3) Clear cut date based on best available data and estimated age of trees. To determine whether a forest, meadow, or pasture is managed, the applicant must provide proof to the Planning Department consistent with the Richland County Open Space Management Manual.	
(4) Cluster area = critical root zone; percent of all grand trees on the site.	
(5) Viewshed area = area on the parcel where the view is visible.	

- (2) Unconstrained open space areas may only be credited once per the calculations in this section. When an unconstrained open space area qualifies in two categories, it shall be credited as follows:
 - a. Where both categories have a factor of 1.0 or greater, the greater credit shall be applied.
 - b. If one of the two categories has a factor of less than 1.0, the lesser credit shall be applied.
- (3) The following activities or land uses may not be counted as a part of designated open space:
 - a. Existing rights-of-way and utility easements
 - b. Setbacks and lawns
 - c. Dry stormwater detention ponds

(h) *Open Space Management.* (Ord. 045-13HR; 9-10-13)

- (1) *Open Space Areas.* To maintain, enhance and sustain the environmental, conservation, wildlife, recreational, historic, public and community values and benefits of open space areas, property owners or his/her authorized agents using the provisions of this Section must develop an Open Space Management Plan. The Plan shall include guidance on how to best manage

open space areas in their current condition, increase conservation values through enhancement of existing conditions or establish processes to modify open spaces to other intended open space functions and resultant conservation values and benefits. The plan shall incorporate approved and current best management practices (BMPs) for all constrained and unconstrained open space areas as set forth in the Richland County Open Space Management Manual.

The Open Space Management Plan must be approved by the Planning Department prior to approval of the Final Plat.

- a. *Open Space Area Management and Maintenance.* Management of the open space area includes specific limitations on alteration of the natural conditions. The following practices and activities are restricted within open space areas, except with prior approval by the Planning Department:
 1. Clearing or grubbing of existing vegetation,
 2. Clear cutting of vegetation,
 3. Soil disturbance by grading, stripping, or other practices,
 4. Filling or dumping,
 5. Use, storage, or application of pesticides, herbicides, and fertilizers,
 6. Conversion of vegetation from native to exotic species, and
 7. Motor vehicles are not permitted in open space areas unless during the installation of certain permitted utilities.

- b. The following structures, practices, and activities are permitted in open space areas, subject to prior approval from the County, and when specific design or maintenance features are adhered to:
 1. All activities within water quality buffers located within open space areas shall be consistent with Section 26-187.
 2. Pedestrian crossings, public or neighborhood bicycle or pedestrian access, passive recreational amenities, such as pervious-surface paths and minimum green infrastructure parking spaces, stream bank stabilization efforts and LID stormwater control practices.

3. Utilities are allowed; however, utility easements shall not qualify as open space areas.
- (2) *Open Space Area Plat Requirements.* All preliminary, bonded and final plats prepared for recording and all right-of way-plats (submitted under this Section) shall clearly:
- a. Delineate and label all open space areas,
 - b. Provide a note to state: “There shall be no clearing, grading, disturbance or construction or construction runoff impacts to the open space areas except as allowed by the Public Works Department”,
 - c. Provide a note to state: “All open space areas shown on the plat are subject to perpetual conservation easements which are contained in land records or covenants pertaining to the development”,
 - d. Provide a note indicating ownership of the open space areas by the property owners association, and
 - e. Show the location of all permanent open space boundary marker signs.
 - f. All water quality buffer access easements shall be consistent with Section 26-187.
- (3) *Open Space Area Protection Requirements during Construction.* The following steps shall be taken during the site plan development and site construction process to protect existing open space areas:
- a. Open space areas must be clearly identified on all plan submittals and construction drawings and marked with the statement “Open Space Area. Do Not Disturb or Encroach”.
 - b. Open space areas cannot be encroached upon or disturbed at any time, unless in accordance with Section 26-187 (c), Section 26-187 (k) or without approval from the County.
 - c. Open space areas must be clearly marked with a warning barrier prior to any construction activities. The marking(s) shall be maintained until completion of all construction activities. All contractors and others working on the construction site must be made aware of the existence of the open space areas and the restrictions on disturbing these areas.

- d. All open space areas must be left in the existing condition upon completion of construction activities. Should any activities during construction, including encroachment, cause damage or degradation to any of the open space areas, these areas must be restored based upon pre-existing conditions or to conditions acceptable through a Richland County-approved restoration plan.
 - e. If any trees are allowed to be removed, the tree location shall be shown and a note shall be provided stating that the tree must be hand cleared.
 - f. Where stormwater is concentrated into open space areas, best management practices must be placed to protect it, as approved by the County.
 - g. The open space areas shall be shown and labeled on the engineering plans, preliminary, bonded and final plat.
- (4) *Open Space Area Protection Requirements after Construction.* Open space areas must be protected in perpetuity by either of the following options and be in compliance with the Open Space Management Plan:
- a. Option 1. *Previous Granting to Qualified Organization or Entity.* Any proposed open space area found in this section and having previously been granted in a conservation easement running in perpetuity to a third party “qualified organization” recognized by Federal Treasury Regulation Section 1.170A-14(c)(1), or successor provision, may qualify as open space area under this section with certain exceptions. The owner must submit a copy of the recorded easement, baseline assessment and annual monitoring inspections for the previous three years to the Planning Department for review. Based on a review of the information, the Department will determine if the proposed open space areas and permitted uses protected in the easement qualify under this section.

Potential exceptions include, but are not limited to, active timberlands or areas of the easement on which the conservation values have been damaged by poor cutting and harvesting practices (conflicting with current BMP's), encroachment by development, illegal dumping, above or below-ground utility easements, runoff and erosion, fires, storms, insect infestation or other damaging activity which has or continues to diminish the conservation value of the open space area. Failure of the monitoring organization to adequately enforce the provisions of the conservation easement shall be grounds for refusing to accept such easement into the program.

The Property Owner or Property Owners' Association (POA) shall be responsible for the continuous and perpetual protection, management, maintenance and annual monitoring of all open space areas.

- b. *Option 2. Easement Granted to Richland County.* Any proposed open space area found in this section may be granted in a conservation easement running in perpetuity to the Richland County Conservation Commission at the time of application for an Open Space development. The purpose of the granting to the Richland County Conservation Commission is to ensure the protection and proper management of the open space areas and has no impact or bearing on the acceptance of any open space areas or approval under this section by Richland County.

The property owner or POA (once deeded) agrees to pay a one-time stewardship fee, to be established by the Richland Conservation Commission, to cover the cost of annual monitoring, compliance and enforcement of the conservation easement.

The property owner or POA assumes the responsibility for the continuous and perpetual protection, management, and maintenance of all open space areas consistent with the guidance contained in the Richland County Open Space Management Manual.

- c. *Option 3. Conveyance to the Property Owners' Association.* If not utilizing Option 1 or 2 of this subsection, the property owner shall convey ownership in a deed all open space areas in fee-simple to the POA which shall be recorded and delivered prior to, or concurrent with, the recording of the Bonded Plat for the first phase of the subdivision. To meet the purposes of this section, the deed and covenants of the POA shall contain the following language:

“The conservation values and benefits of the areas conveyed by deed and shown on the Final Plat shall remain permanently protected and shall not be disturbed, or modified without prior approval from the Planning Department. The open space areas identified in this covenant are intended for public benefit, but for association members use, and it shall run in perpetuity.”

The POA may establish criteria for public use of open space areas protected under this section. The POA assumes the responsibility for the continuous and perpetual protection, management, maintenance and annual monitoring of all open space areas consistent with the guidance contained in the Richland County Open

Space Management Manual.

- d. Option 4. *Retention by the Property Owner.* If not utilizing the Options above in this subsection, the property owner shall retain ownership of all open space areas, which shall be recorded and delivered prior to, or concurrent with, the recording of the Bonded Plat for the first phase of the subdivision. To meet the purposes of this section, the deed shall contain the following language:

“The conservation values and benefits of the areas covered base by deed and shown on the Final Plat shall remain permanently protected and shall not be disturbed, or modified without prior approval from the Planning Department. The open space areas identified in this covenant are intended for public benefit, but for residents use, and it shall run in perpetuity.”

The property owner may establish criteria for public use of open space areas protected under this section. The property owner assumes the responsibility for the continuous and perpetual protection, management, maintenance and annual monitoring of all open space areas consistent with the guidance contained in the Richland County Open Space Management Manual.

- e. Regardless of which option above is utilized, conservation easements and/or open space areas are the property of the property owner or POA. If a POA is established to manage open space areas, the following criteria are recommended:
1. Membership in the POA is mandatory and automatic for all property owners for the subdivision and their successors;
 2. The POA shall have lien authority to ensure the collection of dues from all members; and
 3. The POA is responsible for informing each property owner at the time of closing of the location of the open space areas and the requirement not to disturb or encroach upon these areas.
- f. Richland County retains an independent right of entry and enforcement under such conservation easements independent of the property owner or POA and such right of enforcement shall be included in all conservation easements granted under this section and contained in the covenants for the subdivision.

- (5) *Open Space Baseline Surveys and Annual Monitoring.* To quantify the pre-construction condition and conservation values of the open space areas, the developer shall:
- a. Conduct a baseline survey by the applicant prior to any earth-moving, tree clearing, infrastructure installation or home construction. The baseline survey shall photo-document the condition of the open space areas prior to the above activities. Photos must be of adequate quality, number and distribution to adequately document all open space areas. Each photograph should be geocoded to indicate both the location and bearing of the photograph and each digital photographic file must be submitted electronically in a high-resolution digital format.
 - b. Annual monitoring shall be conducted by the developer, POA or qualified entity and document the existing condition of the protected open space area. The annual monitoring shall photo-document the condition of the open space areas. Photos must be taken at the same location and bearing as the original baseline survey. Each photograph should be geocoded to indicate both the location and bearing of the photograph and each digital photographic file must be submitted electronically in a high-resolution digital format.

As an alternative, the POA can retain the services of a qualified entity (which could include Richland County) to perform the annual monitoring survey.

The annual monitoring should document any violations or changes that have taken place since the last monitoring report, such as:

1. Homeowner or POA encroachment,
2. Removal of sand, gravel, loam, rock, etc,
3. Trash accumulation, dumping, organic debris,
4. Alteration of the open space,
5. Storm damage, erosion, etc,
6. Construction of roads, parking lots, utility lines, trails,
7. Removal or planting of trees or other vegetation,

8. Invasion of non-native species, and/or
 9. Current use of adjacent properties and whether there are any problems with encroachment and/or trespassing.
 - c. All baseline surveys and annual monitoring documents shall be submitted to the Planning Department.
- (6) *Signage.* For subdivisions, final permanent open space area boundary marker signs are to designate open space areas prior to bonding of the subdivision and/or finalizing the subdivision with the intent to transfer property. Permanent boundary markers are required to ensure that property owners are aware of the buffer. The Planning Department has the authority to require the POA to replace boundary markers that have been removed or destroyed.

The following requirements shall apply to buffer boundary markers:

- a. Open space area boundary markers shall be located in such a manner as to accurately delineate the boundary. For commercial developments, markers shall be posted every one hundred (100) feet along the buffer boundary. For subdivisions where multiple lots are located along the boundary, a boundary marker must be located at the intersection of every other lot line and the boundary. The developer or POA may petition the Planning Department for a lesser marker density as long as the markers are adequate to clearly mark the boundary.
- b. Open space area boundary markers shall include the statement "Open Space Area – Do Not Disturb or Encroach".
- c. The markers should be mounted to a treated wood or metal signpost or on a non-grand tree, if not encroaching on the open space, between four (4) and six (6) feet above the ground surface. The post must extend below the ground surface at least twenty four (24) inches.
- d. The boundary markers must be at least eight by twelve inches (8"x12") and have a white or yellow background with dark lettering.
- e. When water quality buffers are contained within an open space area, the Public Works Department may forgo boundary markers for the water quality buffer. This decision is at the discretion of the Public Works Director.
- f. In dark lettering, include a number for Ombudsman to call for encroachment or issues.

- (7) *Open Space Area Restoration and Enhancement Plans.* Prior to reestablishing or planting the open space area, a restoration or enhancement plan must be submitted to and approved by the Planning Department. Buffer restoration and/or enhancement plans must include the following:
- a. A drawing or plan that shows the location of the open space area in relation to the existing or planned development; the disturbance limits for the planned buffer restoration; direction of flow of runoff from the area; erosion prevention and sediment control measures to be installed to protect the open space area; access to a water source for the purposes of irrigating vegetation; and other pertinent information. For large scale restoration and enhancement projects the plan(s) must be stamped by a registered landscape architect or engineer.
 - b. A visual plan and a narrative describing the vegetation plan to restore or enhance the open space area: the area must be planted with native trees, grasses and shrubs. Suitable native plants can be chosen from plant species recommended and approved by the Planning Department.
 - c. The schedule for when plantings will occur and a two (2) year survival guarantee provided by the responsible party.
- (8) *Penalty for noncompliance.* In the event that the party responsible for maintenance of the open space fails to maintain all or any portion of such area as enumerated, upon ninety (90) days' notice served to the owner, Richland County may assume responsibility for the maintenance and may enter the premises and take corrective action, including the provision of extended maintenance. The costs of said corrective action and maintenance by Richland County may be charged to the owner or property owners' association.

(i) *Development Requirements.* Subdivisions shall meet the following requirements: (Ord. 045-13HR; 9-10-13)

- (1) Minimum Subdivision Size: Two (2) contiguous acres.
- (2) The following densities will apply to the application of these standards, based on the applicable property zoning:
 - a. RU = 1.32
 - b. RR = 1.32
 - c. RS-E = 2.20

- d. RS-LD = 3.63
- e. RS-MD = 5.12
- f. RS-HD = 8.7

- (3) The total number of units allowed shall be determined by using the density of the zoning district and the following formula:

$$T = D * A * B$$

Where:

T = total units (dwelling units)

D = density (dwelling units/gross acre)

A = total site area (acres)

B = density bonus per Section 26-186(g) (percent)

- (4) Lot Size: No minimum.
- (5) Lot Width: No minimum.
- (6) Minimum Yard Areas (Setbacks):

- a. Front:

For front loaded – 20 feet to garage, where the front porch can extend into setback no more than 10 feet.

For Side or Rear loaded – 10 feet, inclusive of front porch.

For secondary front – half (0.5) the front or 10 feet on the road intersecting the local residential road.

- b. Rear: 20 feet for front loaded lots (or 5 feet from rear garage on alley).

- c. Side: 5 feet.

- d. For a zero “lot line” parallel development:

No side setbacks; front and rear setbacks are as stated in paragraphs (6) a. and (6) b., above.

- (7) Buffer Transition Yards: A twenty five foot (25’) minimum, vegetated buffer transition yard is required along any lot line that abuts an existing

residential use. Properties with a residential plan approved by the Planning Department are considered to have an existing residential use. Provided, however, this requirement does not apply when continuity exists by way of all of the following: the streets provide connectivity between developments, the developer is the same, and the parcels within the development are similar in lot size.

- a. *Location:* As set forth in Sections 26-176(f)(2)(a) and (b). Residential yards (front, side or rear) shall not apply towards buffer transition yards.
 - b. *Buffer yard credits:* All existing healthy, mature trees retained in buffer areas, can be credited toward meeting the buffer yard requirements, upon determination that adequate screening is provided. This may require a field visit and determination by the Planning Department.
 - c. *Buffer yard reductions:* Reductions of the minimum transition buffer yard widths are not permitted.
 - d. *Buffer material specifications:* As set forth in Section 26-176(f)(7).
- (8) **Maximum Height:** Three (3) stories above ground level. (For the purpose of this subparagraph, “ground level” shall mean: the average finished ground elevation at the base of a structure to the highest point of the roof of the structure; provided that spires, belfries, cupolas, chimneys, antennas, water tanks, ventilators, elevator housing, mechanical equipment, or other such structures that are placed above roof level and are not intended for human occupancy, shall not be subject to height limitations).
 - (9) **Street trees** shall be provided along all roads at intervals of thirty-five (35) feet and shall be 2½ inch caliper/10 feet in height at time of planting.
 - (10) **Proposed utilities** shall be located underground.
 - (11) **Roads** shall follow the provisions of Section 26-181.
 - (12) **Street Lighting** - if street lighting is proposed, a pedestrian scale shall be utilized (maximum 12 feet in height).
 - (13) **Stormwater Controls:** Low Impact Development (LID) techniques are the preferred stormwater Best Management Practice (BMPs) within open space developments. In order to use LID as open space credit, the applicant must assess the feasibility of LID practices as the exclusive stormwater BMPs or the use of LID techniques as part of an integrated stormwater management system incorporating traditional stormwater BMPs unless shown to not

meet Richland County's stormwater standards, or pertinent State or Federal statutes or regulations. The applicant must submit data and design standards detailing the engineering and technical specifications on the use of LID techniques. Such data and design include:

- a. An assessment of the existing pre and post development runoff and the feasibility of the existing onsite soils, or engineered soils, to handle LID techniques.
- b. Stormwater controls shall meet Richland County's standards.
- c. All stormwater systems, including LID, should be owned and maintained by the POA.

Sec. 26-187. Water Quality Buffer Requirements.
(Ord. 006-10HR; 1-19-10)

- (a) *Purpose and applicability.* It is the intent of the Public Works Department to establish minimal acceptable requirements for the design of buffers to protect the streams, wetlands and floodplains of the County of Richland; to protect the water quality of watercourses, reservoirs, lakes, and other significant water resources; to protect riparian and aquatic ecosystems; and to provide for the environmentally sound use of the county's land resources. (Ord. 006-10HR; 1-19-10)
- (1) *Purpose.* A water quality buffer is an area of original or re-established vegetation that borders streams, rivers, ponds, lakes, wetlands, and seeps. Buffers are most effective when stormwater runoff is flowing into and through the buffer zone as shallow sheet flow, rather than concentrated flow such as channels, gullies, or wet weather conveyances. Therefore, it is critical that design of all development include management practices, to the maximum extent practical, that will result in stormwater runoff flowing into the buffer zone as shallow sheet flow. Water quality buffers provide numerous environmental protection and resource management benefits including: (Ord. 006-10HR; 1-19-10)
- a. Restoring and maintaining the chemical, physical and biological integrity of the water resources,
 - b. Removing pollutants delivered in urban stormwater,
 - c. Reducing erosion and controlling sedimentation,
 - d. Stabilizing stream banks,
 - e. Providing infiltration of stormwater runoff,
 - f. Maintaining base flow of streams,
 - g. Contributing the organic matter that is a source of food and energy for the aquatic ecosystem,
 - h. Providing tree canopy to shade streams and promote desirable aquatic organisms,
 - i. Providing riparian wildlife habitat, and
 - j. Furnishing scenic value and recreational opportunity.
- (2) *Applicability.* Water quality buffers are required along all perennial and intermittent streams, waterways, shorelines and wetlands according to a

USACE jurisdictional determination, to be submitted from the developer and approved by the Public Works Department. In addition, water quality buffers may be required to protect waters (such as isolated wetlands) pursuant to the S.C. Pollution Control Act, as determined by the Public Works Department. (Ord. 006-10HR; 1-19-10)

(3) *This Section shall apply to the following:* (Ord. 006-10HR; 1-19-10)

- a. All proposed development except for that development which meets the criteria for an exemption [Section 26-187 (b)] and/or a waiver [Section 26-187 (k)].
- b. All surface mining operations except active surface mining operations which are operating in compliance with an approved DHEC surface mining permit. A copy of the approved surface mining permit shall be provided to the Public Works Department.
- c. The construction of agricultural structures as stated in this chapter.
- d. Except as provided in Sections 26-187 (b), and 26-187 (k), this shall apply to all parcels of land, structures and activities which are causing or contributing to:
 1. Pollution, including non-point pollution, of the waters of Richland County,
 2. Erosion or sedimentation of stream channels, or
 3. Degradation of aquatic or riparian habitat.

(b) *Exemptions.* The water quality buffer requirements shall not apply to the following: (Ord. 006-10HR; 1-19-10)

- (1) Ephemeral streams, ditches, manmade ponds, and lakes, which are outside of natural hydrologic connectivity.
- (2) Any existing structure or structure under construction located within the buffer area, provided the land owner can document prior existence.
- (3) The addition or expansion to an existing structure, provided it does not result in an increase in the total impervious area within the buffer area.
- (4) Activities associated with emergency operations, such as hazardous materials removal, flood or fire control, evacuations, and storm damage clean up.

- (5) Single-family parcels of land, which exist as individual lots that are two (2) acres or less and are not part of a new subdivision development.
- (6) All “Entitled Property”; provided, however, this exemption shall no longer be in effect after January 19, 2017. In addition, all entitled property shall comply with the stormwater regulations that were in effect prior to January 19, 2010.

If any portion of a parcel proposed for development lies within an area designated on an officially adopted Conservation Easement as a proposed trail or greenway, the developer shall construct the designated improvements in accordance with county standards and dedicate such land to the county.

(c) *Stream Buffers.* (Ord. 006-10HR; 1-19-10)

- (1) Stream buffers shall be considered a “no disturb zone” along jurisdictional lines. Vegetation cannot be disturbed, removed or replanted unless a buffer restoration plan has been approved by the Public Works Department. Section 26-187 (g) provides requirements to expand the buffer widths depending on slopes, water pollution hazards, or other uses that may contribute to water quality degradation. The buffer width shall be calculated as follows: (Ord. 006-10HR; 1-19-10)
 - a. Along jurisdictional perennial streams identified by the USACE, not associated with a floodplain or wetlands, the buffer shall be at least fifty (50) feet perpendicular from the jurisdictional line on each side of the waterway.
 - b. In areas where a floodway profile has been computed along a perennial stream (AE Zones) as part of an approved flood study, the buffer area shall be equal to the width of the floodway, but never less than fifty (50) feet.
 - c. In areas where a floodway profile has not been computed along a perennial stream (A Zones) the developer shall perform a flood study, determine the floodway and follow the buffer requirements outlined above. As an alternative to preparing the flood study, the buffer limits shall extend to the delineated flood plain limits.
 - d. Along jurisdictional intermittent streams identified by the USACE, the buffer shall be at least fifty (50) feet perpendicular from the jurisdictional line on each side of the waterway. If these streams have associated floodway as described above, the same requirements would apply to have a total width of fifty (50) feet.

- e. For delineated wetland areas associated with perennial streams, the buffer shall be at least fifty (50) feet. This buffer width is independent of any wetland offset requirements of the USACE.
 - f. For delineated wetland areas associated with intermittent streams, the buffer shall be at least fifty (50) feet. This buffer width is independent of any wetland offset requirements of the USACE.
 - g. For wetland areas not associated with perennial, intermittent streams, or floodway, the buffer shall be the extent of the wetland area plus an additional fifty (50) feet perpendicular beyond the wetland edge.
- (2) Stream Buffer Management and Maintenance. The function of the stream buffer is to protect the physical and ecological integrity of the waterway, to reduce flooding potential, and to filter runoff from all development. The objective of a stream buffer is undisturbed native vegetation. (Ord. 006-10HR; 1-19-10)
- a. Management of the stream buffer includes specific limitations on alteration of the natural conditions. The following practices and activities are restricted within stream buffers, except with prior approval by the Public Works Department:
 - 1. Clearing or grubbing of existing vegetation,
 - 2. Clear cutting of vegetation,
 - 3. Soil disturbance by grading, stripping, or other practices,
 - 4. Filling or dumping,
 - 5. Use, storage, or application of pesticides, herbicides, and fertilizers,
 - 6. Conversion of vegetation from native to exotic species.
 - 7. Motor vehicles are not permitted in stream buffers unless during the installation of certain utilities permitted in the buffer zone.
 - b. The following structures, practices, and activities are permitted in the stream buffer, subject to prior approval of the Public Works Department, and when specific design or maintenance features are adhered to: (Ord. 006-10HR; 1-19-10)
 - 1. Stream crossings and utilities:



Briefing Document

Agenda Item

At its February 19, 2019 County Council meeting, Councilmember Jim Manning made the following motion:

I move to amend Richland County Code of Ordinances, Chapter 16, Licenses and Miscellaneous Business Regulations by adding Section 16-23, Health Massage, Bodywork Therapists, and Massage Establishments

Background

As a part of a larger effort to address concerns over blight and negative secondary effects from some businesses in the unincorporated portion of the County, Councilmember Manning has proposed amendments to the Richland County Code of Ordinances, Chapter 16, Licenses and Miscellaneous Business Regulations.

The proposed amendment seeks to prohibit the unlawful operation of some establishments that, though identified as health massage, bodywork therapists, or massage establishments, their use may be associated with certain negative secondary effects including, but not limited to their use as commercial sex operations, for prostitution, to spread disease, lewdness, public indecency, illicit sexual activity, sexual assault and exploitation, and human trafficking.

Issues

The proposed amendments may, as an unintentional effect, restrict or negatively impact legitimate businesses that offer needed services, such as those that provide beneficial health benefits (rehab and therapy, e.g.).

Fiscal Impact

Unknown; however, additional staff may be necessary to enforce the proposed ordinance.

Past Legislative Actions

None.

Alternatives/Solutions

1. Adopt the proposed amendments with any amendments Council may desire, or
2. Do not adopt the proposed amendments.

Staff Recommendation

This is a Council initiated request with concurrence among County public safety and law enforcement entities.

Motion Requested

N/A

Attachment

1. Proposed ordinance amendments

Submitted by

This is a Council initiated request. The briefing document was prepared by Administration and Legal staff.

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. ____-19HR

AN ORDINANCE AMENDING RICHLAND COUNTY CODE OF ORDINANCES CHAPTER 16, LICENSES AND MISCELLANEOUS BUSINESS REGULATIONS, BY ADDING SECTION 16-23, "HEALTH MASSAGE, BODYWORK THERAPISTS, AND MASSAGE ESTABLISHMENTS"

Pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, BE IT ENACTED BY THE COUNTY COUNCIL FOR RICHLAND COUNTY:

SECTION I. Richland County Codes of Ordinances, Chapter 16, Licenses and Miscellaneous Business Regulations, is hereby amended by adding Section 16-23, "Health Massage, Bodywork Therapists, and Massage Establishments," as follows:

Section 26-23. Health Massage, Bodywork Therapists, and Massage Establishments.

(1) Authority.

This section is adopted and pursuant to S.C. Code of Laws Annotated Section 4-9-25 which confers upon counties the authority to "enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them." Such "powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties." This section is further adopted pursuant to S.C. Code of Laws Annotated Section 4-9-30 which authorizes counties acting through their governing bodies "(14) to enact ordinances for the implementation and enforcement of the powers granted in this section and provide penalties for violation thereof not to exceed the penalty jurisdiction of magistrates' courts."

(2) Purpose.

The purpose of this section is to regulate health massage, bodywork therapists and massage establishments in order to promote the health, safety, and general welfare of the citizens of Richland County. In adopting this ordinance, Richland County hereby establishes reasonable and uniform regulations to prevent or reduce to any extent the deleterious secondary effects of health massage bodywork therapists and massage establishments within the County. The provisions of this section have neither the purpose nor the intent nor effect of restricting or denying access to health massage, bodywork therapists and massage establishments. Among the deleterious secondary effects of imminent and growing concern associated with the unlawful operation of some

establishments subject hereto that obtain business licenses under the guise of legitimate health massage, body therapy or massage establishments are a) their use as commercial sex operations, 2) prostitution, 3) the potential to spread disease, 4) lewdness, 5) public indecency, 6) illicit sexual activity, 7) sexual assault and exploitation, and 8) human trafficking. The negative secondary effects of businesses associated with commercial sexual exploitation are manifest. See, e.g., *City of Littleton v. Z.J. Gifts D-4, LLC*, 124 S. Ct. 2219 (2003); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.* 475 U.S. 41 (1986); *Young v. American Mini Theatres*, All U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 06 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *Chesapeake B&M, Inc. v. Harford County*, 58 F.3d 1005 (4th Cir. 1995); *Giovani Caradola, Ltd. V. Fox*, 470 F.3d 1074 (4th Cir. 2006); *Centaur v. Richland County*, 392 S.E.2d 165 (S.C. 1990); *U.S. v. Pendergrass*, Petition to Enter a Plea of Guilty and Plea Agreement on the Charge of Tax Evasion (3:06-00147, M.D. Term. 2007); and other cases; and on reports of secondary effects occurring in and around such businesses, including, but not limited to, Phoenix, Arizona (1979); Minneapolis, Minnesota (1980); Houston, Texas (1987); Indianapolis, Indiana (1984); Amarillo, Texas (1977); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978).; Austin, Texas (1986); Seattle, Washington (1989); Oklahoma City, Oklahoma (1986); El Paso, Texas (1986); New York City, New York (1994); Dallas, Texas (1997); Newport News, Virginia (1996); New York Times Square Study (1994); Phoenix, Arizona (1995-1998); Greensboro, North Carolina (2003); Toledo, Ohio (2002); Centralia, Washington (2004); and also from the reports of "Human Trafficking in Illicit Massage Businesses," by Polaris (January 2018), which reports that in 2017, "The United Nations estimates that more than 40 million people in the world today are living in some form of modern slavery," and that "illicit massage businesses (IMBs) that front for commercial sex operations have been ubiquitous in the American landscape for decades, with an estimate of more than 9,000 operating today."

(3) Findings.

Based on this breadth of case law, research and data regarding negative secondary effects of commercial sex and related operation, the Richland County Council finds:

- (a) Illicit massage establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to their use as commercial sex operations, for prostitution, to spread disease, lewdness, public indecency, illicit sexual activity, sexual assault and exploitation, and human trafficking.
- (b) Each of the foregoing negative secondary effects constitutes a harm with the County has a substantial government interest in preventing or abating. Additionally, the County's interest in regulating illicit massage businesses extends to future secondary effects that could occur in the County related to such establishments as well as such future businesses that may locate in the County. The County finds that the cases and

secondary effects documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

(4) Exemptions.

This section shall not apply to physicians, surgeons, chiropractors, osteopaths, physical therapists or podiatrists duly licensed to practice in the State of South Carolina, registered or licensed nurses, athletic directors or trainers, who are affiliated with an approved educational institution or professional sports team and whose work is limited to athletic team members, licensed cosmetologists, barbers or beauticians, who do not give or hold themselves out to give massage treatments other than those customarily given in such establishments.

(5) Definitions.

The following words, terms and phrases, shall have the meanings ascribed to them herein, unless the context of their usage clearly indicates a different meaning:

- (a) "Bodywork establishment" means any building, structure, room, place, or any establishment whose business includes advertising or offering a massage or other massage services upon the human body for compensation by any person whether with or without the use of mechanical, therapeutic or bathing devices, and shall include bathhouses. This terms shall not include beauty parlors or barbershops duly licensed by the State of South Carolina, or licensed hospitals, medical clinics, or licensed physical therapy facilities or establishments wherein registered physical therapists treat only patients recommended and referred by a licensed physician and operate only under such physician's direction. "Bodywork establishment" includes any business or establishment wherein bodywork therapy is performed by a bodywork therapist.
- (b) "Bodywork therapy" means the application of a system of structured touch of the superficial tissues of the human body with the hand, foot, arm, or elbow whether or not the structured touch is aided by hydrotherapy, thermal therapy, a massage device, human hands, or the application to the human body of an herbal preparation. Bodywork therapy includes the manual manipulation of soft body tissues (muscle, connective tissue, tendons and ligaments) to enhance a person's health and well-being. Bodywork therapy also includes the application of pressure with the hands, feet, arms or elbows for the therapeutic or relaxation purposes to the superficial or deep tissues (muscles, tendons, ligaments, connective tissue, skin) of the body. Soft tissue health massage and bodywork practices are designed to promote general relaxation, improve flexibility and pliability of the soft tissues or relieve stress and muscle hypertension, and to enhance a general sense of well-being in the person receiving the massage or bodywork. Bodywork therapy also includes any process consisting in kneading, rubbing or otherwise manipulating the skin of the body of an

- individual, either with the hand, or by means of electrical instruments, devices, or apparatus, but shall not include massage by duly licensed physicians and chiropractors, registered physical therapists, who treat only patients recommended by a licensed physician and who operate only under such physicians' direction, or massage of the face practiced by duly licensed personnel of beauty salons or barbershops. The term "therapy" does not include the diagnosis or treatment of illness or disease, medical procedures, or treatment for which a license to practice medicine, chiropractic, physical therapy, acupuncture or podiatry is required by law.
- (c) "Bodywork therapist" means a person who performs or administers massage or bodywork therapy, whether licensed, as required by the South Carolina Department of Labor, Licensing and Regulation, or not. Bodywork therapist includes a person who practices massage therapy or administers massages or other massage services to a person. The term includes a licensed or unlicensed massage therapist, therapeutic massage practitioner, massage technician, masseur, masseuse, body massager, body rubber, health massager, or any derivation of those titles or similar designations.
 - (d) "Health massage establishment" or any derivative or similar designation has the same meaning as "Bodywork establishment."
 - (e) "Health massage therapist" or any derivative or similar designation has the same meaning as "Bodywork therapist."
 - (f) "Health massage therapy" or any derivative or similar designation has the same meaning as "Bodywork therapy."
 - (g) "Hydrotherapy" means the use of water, vapor, or ice for treatment of superficial tissue.
 - (h) "Illicit Massage Establishment" means any business, establishment, undertaking or enterprise that operates in violation of the provisions of this section.
 - (i) "Massage device" means a mechanical device that mimics or enhances bodywork therapy by means of vibration or other artificial action.
 - (j) "Massage establishment" or any derivative or similar designation has the same meaning as "Bodywork establishment."
 - (k) "Massage therapy" or any derivative or similar designation has the same meaning as "Bodywork therapy."
 - (l) "Massage therapist" or any derivative or similar designation has the same meaning as "Bodywork therapist."

(m) "Thermal therapy" means the use of ice or a heat lamp or moist heat on superficial tissue.

(6) Use of only licensed therapists; posting of license.

No person or business or establishment shall permit anyone to perform bodywork, health massage or massage work upon the premises operated by that person or business or establishment unless the individual performing the bodywork, health massage or massage work has been issued a license as required by this article. Every bodywork therapist, health massage therapist and massage therapist shall post the license required by this article in the therapist's work area at all time. A bodywork, health massage or massage establishment or a place of business that advertises bodywork, health massage or massage therapy or offers such work, therapy or other massage services must be licensed by the South Carolina Department of Labor, Licensing and Regulation in accordance with Title 40, Professions and Occupations, Chapter 30, the "Massage/Bodywork Practice Act," and must display the establishment's license along with any Richland County business license needed for the establishment to operate in a prominent location available for inspection by the public and by law enforcement and code enforcement officers and inspectors.

(7) Maintenance of premises and equipment.

It shall be the duty of every person conducting or operating a bodywork, health massage or massage establishment to keep the establishment in a clean and sanitary condition at all times. All instruments and mechanical, therapeutic and bathing devices or parts thereof that come into contact with the human body shall be sterilized on a regular basis and shall be rendered free from harmful organisms in a manner consistent with State laws and local ordinances and regulations. Towels and linens furnished for use of one patron shall not be furnished for use of another until thoroughly laundered.

(8) Operation in connection with living or sleeping quarters prohibited.

A bodywork, health massage and massage establishment shall not contain rooms used wholly or in part for residential or sleeping purposes unless such establishment is located within and properly zoned as a residence, in which case the establishment shall maintain separation from rooms used wholly or in part for residential or sleeping purposes by a solid wall or by a wall with a solid door which shall be inaccessible other than for emergency purposes during business hours.

(9) Hours of operation.

No bodywork, health massage or massage establishment shall be kept open for any purpose between the hours of 10 p.m. and 5 a.m. on any day.

(10) Management to keep list of employees.

The owner, manager, operator or person in charge of a bodywork, health massage or massage establishment shall maintain on the premises a list of the name and addresses of all employees therein, whether such employees are on duty or off duty, and such list shall be made available for inspection upon the request of any law enforcement or code enforcement officer. Failure to comply with this provision shall be an offense.

(11) Employment of persons found guilty of criminal sexual offenses.

It shall be unlawful for any person operating a bodywork, health massage or massage establishment to knowingly employ, in any capacity, any person who has been convicted, entered a plea of nolo contendere or guilty to an offense involving prostitution or any other sexual offense.

(12) Hygiene.

All massage therapists and operators at a massage establishment shall wash their hands thoroughly before administering massage manipulations to any patron, and shall at all times observe proper cleanliness and hygiene practices.

(13) Access; right of entry.

Any officer appointed or employed by any law enforcement agency of this State, or any Richland County code enforcement officer commissioned pursuant to S.C. Code of Laws Annotated Section 4-9-145, may enter the premises of a bodywork, health massage or massage establishment for purposes of inspection or investigation to ensure compliance with this article. If entry and access to the premises of the bodywork, health massage or massage establishment is denied, entry may be made under the authority of a warrant or other lawful process.

(14) Penalties.

Failure to comply with any of the requirements of this section shall constitute a violation punishable by a fine not exceeding five hundred dollars (\$500.00) and imprisonment not exceeding thirty (30) days. Each day any violation of this section continues shall constitute a separate offense. Nothing in this section prevents the County or any interested party from seeking an injunction, issuing a stop work order or otherwise attempting to enforce the provisions of this section or to obtain relief or any remedy provided for by law.

(15) Cumulative effect.

The provisions of this section are cumulative to and not in lieu of laws and other ordinances, such as sexually oriented businesses and nuisance laws and ordinances, applicable to the businesses described in this section.

(16) Education institutions.

Nothing in this section may be construed so as to prevent the teaching of bodywork, health massage or massage in the County at a duly licensed and authorized bodywork, health massage or massage school.

SECTION II. Severability. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION IV. Effective Date. This ordinance shall be enforced from and after _____, 2019.

RICHLAND COUNTY COUNCIL

BY: _____
Paul Livingston, Chair

ATTEST THE _____ DAY OF _____, 2019

Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

Approved As To LEGAL Form Only.
No Opinion Rendered As To Content.

First Reading:
Second Reading:
Public Hearing:
Third Reading:



Briefing Document

Agenda Item

Bulk Item Collection Procedure

Background

This is a follow up report on the implementation of the proposed Bulk Item Collection Procedure based on a series of community meetings conducted throughout the County between July and October 2018.

Bulk items are items that are too large to fit into roll carts and cannot be collected with the regular garbage collection. Examples of bulk items are furniture, appliances, mattresses, swing sets, bicycles, and lawn mowers. Currently, bulk items are collected by appointment only. Residents are required to call the County to schedule the pickup.

Bulk items make up the majority of the solid waste service requests received by the Ombudsman's Office and the Solid Waste & Recycling Division. During some months, there are over 900 called requests for bulk item pickup. In an effort to make the collection of bulk items more customer friendly and reduce the number of calls to the Ombudsman's Office, the previous County Administrator directed the formation of a Bulk Item Situation Team to develop an easier way for residents to dispose of bulk items. The situation team proposed the following:

- Haulers will collect bulk items from the curbside every other week on the same day as yard waste collection, alternating with recycling week;
- The number of bulk items collected shall be limited to four (4) items each collection day; and,
- The items must be able to be handled and lifted by human power.

The proposal was discussed by the Richland County Council at their Special Called Meeting on July 10, 2018. The County Council voted to postpone implementation of the proposed bulk item process until staff conducted meetings with residents to receive their opinions regarding the proposed change.

The Solid Waste & Recycling (SWR) Division staff, with assistance and support from the Public Information Office (PIO), held a series of "Talkin' Trash" community meetings throughout Richland County and discussed all aspects of the Solid Waste and Recycling Program, including the proposed changes to the bulk item collection.

Issues

An overwhelming majority (almost 96%) of the residents who attended the meetings and voiced their opinions preferred the current method for bulk item collection. Residents were concerned about items possibly remaining on the curb for up to two weeks if the item was placed out late on the collection day. Haulers were concerned about the unknown quantity of items that would have to be collected every other week, if their trucks would have the capacity to collect unknown quantities of items, and if they would be able to complete their routes on time.

Fiscal Impact

None.

Past Legislative Actions

None.

Alternatives/Solutions

1. Proceed with the method of bulk item pick-up service suggested by the former County Administrator and the Situation Team, or
2. Maintain the status quo method of requesting bulk item pick up service by making an appointment through the Solid Waste and Recycling Division.

Staff Recommendation

Staff recommends maintaining the status quo method of requesting bulk item pick up service by making an appointment through the Solid Waste and Recycling Division.

Motion Requested

Move to accept staff recommendation to maintain the status quo method of requesting bulk item pick up service by making an appointment through the Solid Waste and Recycling Division and forward it to County Council.

Submitted by: Department of Public Works – Solid Waste Division



Briefing Document

Agenda Item

Petition to Close Portion of Old Percival Rd/Spears Creek Rd

Background

County Council is requested to approve, deny or make a recommendation with respect to a Petition for a Road/Right of Way Closing regarding Old Percival Rd/Spears Creek Rd in accordance with Richland County Code of Ordinances (Roads, Highways and Bridges) section 21-14. The road is more particularly described in the attached Notice of Intention to File a Petition for Road Closing and Abandonment from Attorney Rip Sanders who represents Petitioner Spears Creek Quadrant Partners. Also, see attached plat provided by Petitioner. A portion of this road has already been closed without objection from County Council in 2018; this Petition is to close the remainder of that road/right of way.

Richland County Code of Ordinances (Roads, Highways and Bridges) section 21-14 requires the County Attorney to consult with the County's Community Planning and Development, Public Works, and Emergency Services departments and to forward the request to abandon or close a public road or right-of-way to County Council for disposition. All afore-mentioned departments have been informed of the need for input, and none have an objection. According to Public Works, this particular road/right of way has been abandoned for several years. Petitioners contend this portion of Old Percival Rd/Spears Creek Rd has not been used in decades and is currently impassable by any vehicular or pedestrian traffic. Petitioners have received no objections from surrounding landowners to the closure of this road. Also, this road was not affected by the 2015 flood.

Issues

None.

Fiscal Impact

None.

Past Legislative Actions

None.

Alternatives/Solutions

1. Approve petitioner's request to close the subject road and direct Legal to answer the forthcoming lawsuit accordingly, or
2. Deny petitioner's request to close the road, state reasons for such denial, and direct Legal to answer the suit accordingly.

Staff Recommendation

Staff does not have a recommendation.

Motion Requested

n/a

Attachment

1. Notice of Intention to File a Petition for Road Closing and Abandonment

2. Plat

Submitted by

Lauren Hogan, Assistant County Attorney, County Attorney's Office

BERNSTEIN & BERNSTEIN
ATTORNEYS AT LAW

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BETH E. BERNSTEIN

ISADORE S. BERNSTEIN
(1922 - 2010)

OVERTURE E. WALKER
KNOWLTON "RIP" SANDERS

November 8, 2018

VIA CERTIFIED MAIL, RESTRICTED
DELIVERY, RETURN RECEIPT REQUESTED

c/o Lauren Hogan, Assistant County Attorney
Richland County Attorney's Office
2020 Hampton Street, Room 4018
Columbia, South Carolina 29202

RE: Notice of Intention to File a Petition to Close an approximately 1,150' portion of State Road S-40-1098, also now or formerly known as Old Percival Road and/or Spear Creek Road, in or near the City of Columbia, Richland County, South Carolina.

Dear Sir/Madam:

Please allow this letter to inform you that this firm has been retained to represent Spears Creek Quadrant Partners ("SCQP") to bring an action to close and abandon a portion of State Road S-40-1098, in or near the City of Columbia, Richland County, South Carolina. The public record reveals that you currently own real property abutting this road.

As required by South Carolina Code of Laws Section 57-9-10, I am hereby notifying you of the intent to file an action with the Richland County Clerk of Court. A copy of the Notice of Intent is enclosed herewith.

I have included herewith for your information, a copy of the tax map annotated to indicate the portion of the subject to be closed.

With kind regards, I am

Very truly yours,


Knowlton (Rip) Sanders
Bernstein & Bernstein,

KS/cw

**NOTICE OF INTENTION TO FILE A PETITION TO
CLOSE A PORTION OF SOUTH CAROLINA STATE ROAD S-40-1098, ALSO NOW
OR FORMERLY KNOWN AS SPEAR CREEK ROAD AND/OR OLD PERCIVAL
ROAD IN OR NEAR THE CITY OF COLUMBIA, RICHLAND COUNTY, SOUTH
CAROLINA**

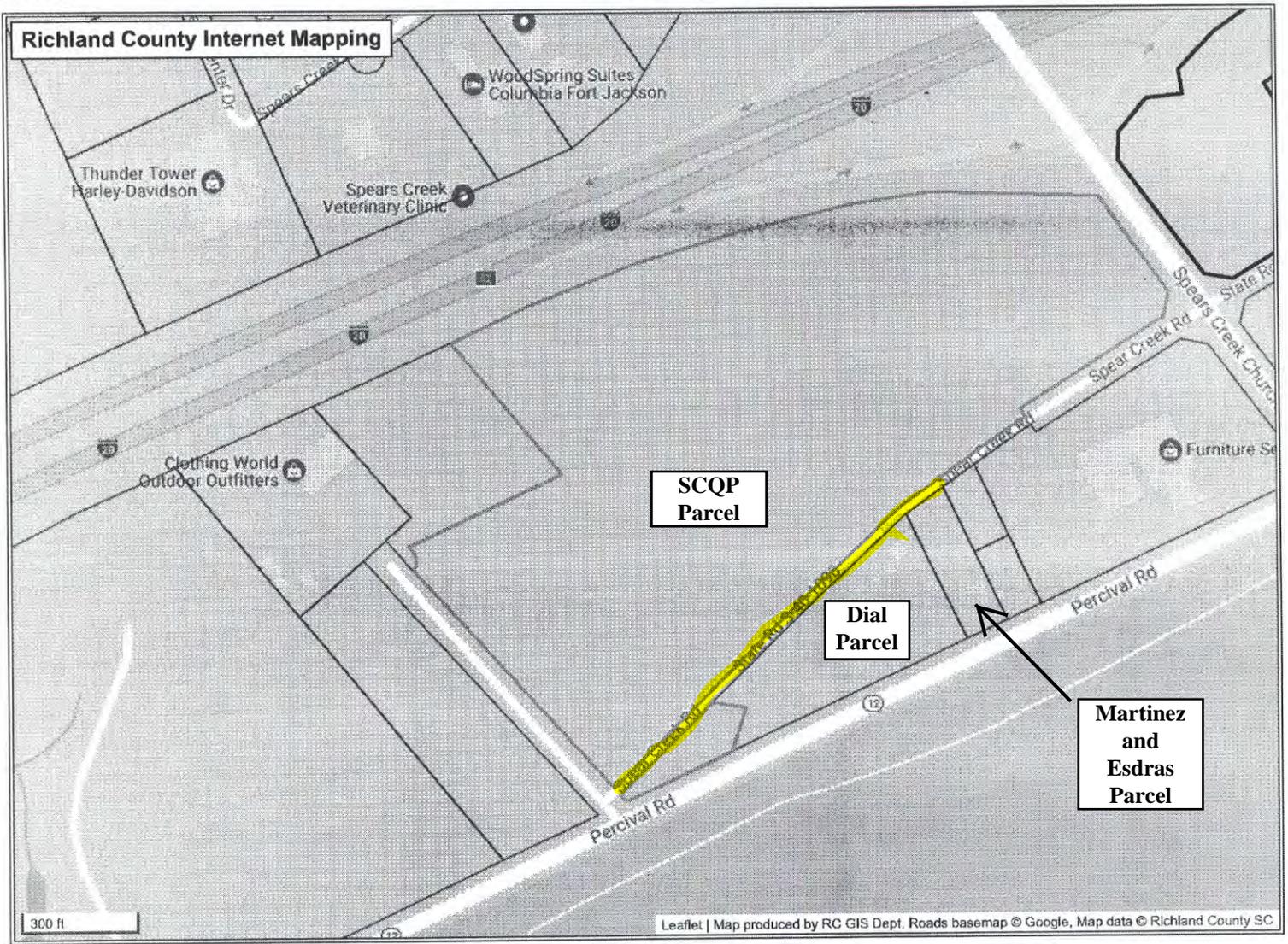
TO ALL INTERESTED PARTIES:

YOU WILL PLEASE TAKE NOTICE that the undersigned Petitioner hereby gives notice that he intends to petition the Court of Common Pleas for the Fifth Judicial Circuit for an Order of the Court closing and forever abandoning a certain portion of South Carolina State Road S-40-1098, also formerly known as Spear Creek Road, located in or near the City of Columbia, Richland County, State of South Carolina. The portion of State Road S-40-1098 sought to be abandoned is that portion of the road located on the western side of Spears Creek Church Road and beginning from its western terminus into an unnamed Richland County public right-of-way serving as an access drive for those certain parcels of real property commonly referred to as (i) 4681 Percival, Richland County Tax Map# R28800-06-02 & (ii) Richland County Tax Map# R28800-06-03, and running in an easterly direction for approximately 1,150' (+/-), ending at its eastern terminus into that certain parcel of real property bearing Richland County Tax Map Number R28800-05-02, and currently owned by Spears Creek Storage, LLC. This Petition will be filed pursuant to section 57-9-10 of the Code of Laws for the State of South Carolina.

All inquiries regarding this action should be addressed to the attorneys representing the Petitioner: Bernstein & Bernstein, LLC, 1019 Assembly Street, Columbia, South Carolina 29201 Telephone (803) 799-7900, attn: Rip Sanders, Esq..



Rip Sanders, Esq.
Bernstein & Bernstein Law Firm



Highlighted area indicates portion of road to be closed.



Briefing Document

Agenda Item

At its July 10, 2018 Special Called Council Meeting, Councilmember Malinowski and former Councilmember Norman Jackson made the following motion:

Determine if there is any state/federal law that prohibits a county from creating an ordinance that will address the use of plastic bags by commercial entities. If not, create an ordinance that would prohibit the use of plastic bags for use in putting product purchases, with certain exceptions if deemed necessary. Example: many products already come prepackaged in plastic and could not come under these restrictions

Background

As noted in the companion document provided to the Development and Services committee during its July 24, 2018 meeting, staff research did not yield any state and/or federal laws that prohibit a county from enacting an ordinance as described in the aforementioned Council motion. During its discussion, the committee directed staff to look at other counties and states that have implemented a plastic bag ordinance and/or fee/tax to offer recommendations and options.

As of September 2018, a Forbes.com article indicated there were 349 known cities, counties, and states in the United States that have, in some way, banned or taxed the use of plastic bags. California has a state - wide ban; Hawaii has a de facto state ban as all of its most populous counties prohibit non-biodegradable plastic bags at checkout. In the state of South Carolina, Charleston, Mount Pleasant, Isle of Palms, Sullivan's Island, Folly Beach, Surfside Beach, Hilton Head Island, Bluffton, Beaufort, Port Royal and Beaufort County have at least some form of a restriction to mitigate pollution caused by single use plastics. On Tuesday, February 26, 2019, the City of Camden held a public hearing for public comments concerning the desire to eliminate single-use plastic bags.

During its search, staff identified analysis of plastic bag bans and fees/taxes as published by Tulane University in its environmental law journal and by the Surfrider Foundation.

Issues

Efforts continue at the State Legislature to prevent local governments from enacting similar bans.

Fiscal Impact

Should the Council enact a plastic ban and/or fee, the fiscal impact will be contingent upon staff necessary to enforce the ban and/or anticipated additional revenue.

Past Legislative Actions

None.

Alternatives/Solutions

1. Propose a plastic ban ordinance based upon the examples provided, or
2. Propose a plastic fee ordinance based upon the examples provided, or
3. Do not propose a plastic fee ordinance nor a plastic ban ordinance.

Staff Recommendation

This is a Council initiated request.

Motion Requested

n/a

Attachment

1. July 24, 2018 Development & Services Committee Companion Document
2. Charleston Ordinance
3. Mount Pleasant Ordinance
4. Isle of Palms Ordinance
5. Sullivan's Island Ordinance
6. Folly Beach Ordinance
7. Surfside Beach Ordinance
8. Hilton Head Island Ordinance
9. Bluffton Ordinance
10. Port Royal Ordinance
11. Beaufort County Ordinance
12. City of Camden Proposed Ordinance
13. SC Bill H3371
14. SC Bill H3529
15. State of California 2014 SB 270
16. State of North Carolina Senate Bill 1018
17. *Plastic Bag Reduction Ordinances: New York City's Proposed Charge on All Carryout Bags as a Model for U.S. Cities*
18. "Here's A List Of Every City In The US To Ban Plastic Bags, Will Your City Be Next?"
19. Model Ordinances from the Product Stewardship Institute
20. Surfrider Foundation's Plastic Bag Law Activist Toolkit for U.S. Cities & States

Submitted by

This is a Council initiated request. Elizabeth McLean, Deputy County Attorney, and Ashiya Myers, Assistant to the County Administrator, prepared the briefing document.



Development & Services Committee Meeting Briefing Document

Agenda Item

State and/or Federal law prohibitions against a county plastic bag ordinance

Background

During its July 10, 2018 Council meeting, Vice-Chairperson Malinowski and Councilperson N. Jackson brought forth the following motion:

“Determine if there is any state/federal law that prohibits a county from creating any use of plastic bags by an ordinance that would for use in putting product exceptions if deemed already come prepackaged in under these restrictions.”

Staff research of this matter did not reveal any state and/or federal laws that prohibits a county from enacting an ordinance as described in the aforementioned Council motion.

Issues

Plastic bag ordinance.

Fiscal Impact

None.

Past Legislative Actions

Motion brought forth by Vice-Chairperson Malinowski and Councilperson N. Jackson during the July 10, 2018 Council meeting.

Alternatives

1. Consider the Council motion and proceed accordingly.
2. Consider the Council motion and do not proceed.

Staff Recommendation

Staff research of this matter did not reveal any state and/or federal laws that prohibits a county from enacting an ordinance as described in the aforementioned Council motion. The County Legal Department concurs with this conclusion. Staff will proceed as directed by Council.



Ratification
Number 2018-146

AN ORDINANCE

TO AMEND THE CODE OF THE CITY OF CHARLESTON, SOUTH CAROLINA, CHAPTER 14, TO ADD A NEW ARTICLE V PERTAINING TO ENVIRONMENTALLY ACCEPTABLE PACKAGING AND PRODUCTS (AS AMENDED)

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

WHEREAS, plastic bags, first introduced in the 1950s, have since developed into a global scourge, littering streets, parks, public squares, roadways, clogging sewer drains and amassing in landfills. Plastic bags are ingested by animals and marine life, and in recent years, they are so prevalent that they now comprise a significant portion of the plastic and other garbage that has collected in huge ocean gyres.

WHEREAS, the City of Charleston is desirous of eliminating the use of polystyrene/plastic foam and single use plastic products and other non-locally recyclable and non-properly compostable food packaging in order to protect the marine life and wildlife of its surrounding waterways, maximize the operating life of landfills, and lessen the economic and environmental costs of managing waste;

WHEREAS, countries around the world, including, the United States, Canada, Argentina, Brazil, Chile, Colombia, China, India, Australia, Greece, Ireland, Italy, England, Wales, Netherlands, Scotland, Germany, Israel, South Africa, Rwanda, Kenya, Congo, Japan, Taiwan and others have taken measures to reduce plastic bag use;

WHEREAS, to discourage and decrease the use of certain expanded polystyrene food service products, single use plastic carryout bags, and disposable food service ware, it is necessary to regulate such use; and,

WHEREAS, regulating and eventually prohibiting the use of polystyrene/plastic foam take-out food packaging and replacing it with food service ware that is locally recyclable or compostable, and, restricting the use of polystyrene/plastic foam products that are not wholly encapsulated or encased by a more durable material will further protect the City, its marine life and wildlife, its residents and visitors, and will support the City's goal of reducing waste and litter for a cleaner environment for generations to come.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. Chapter 14 of the Code of the City of Charleston is hereby amended by adding thereto a new Article V which shall read as follows:

ARTICLE V. ENVIRONMENTALLY ACCEPTABLE PACKAGING AND PRODUCTS

Sec. 14-53. DEFINITIONS.

Unless otherwise expressly stated, whenever used in this Article the following terms shall have the meanings set forth below:

AFFORDABLE shall mean that a compostable or recyclable product may cost up to 15% more than the purchase cost of the non-compostable or nonrecyclable alternative(s) and not be regarded, on balance, as exorbitant, overpriced, unreasonable or invaluable.

ASTM STANDARD shall mean meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for compostable plastics, as those standards may be amended.

BUSINESS ESTABLISHMENT shall mean any commercial enterprise that provides carryout bags to its customers through its employees or independent contractors associated with the business. The term includes sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity whether for profit or not for profit. This term is inclusive of any store or business which sells or offers goods or merchandise, located or operating within the City, including those referenced in FOOD OR GROCERY ESTABLISHMENT and FOOD PROVIDER.

CITY OF CHARLESTON FACILITY shall mean any building, structure or vehicle owned and operated by the City of Charleston, its agents, agencies, and departments.

COMPOSTABLE shall mean all the materials in the product or package, when composted in an industrial or municipal compost operation, will break down, or otherwise become part of, usable compost (e.g. soil-conditioning material, mulch) in a safe and timely manner. Compostable food service ware must meet ASTM-Standards for compostability and any bio-plastic or plastic-like product must be clearly labeled, preferably with a color symbol, to allow proper identification such that the collector and processor can easily distinguish the ASTM standard compostable plastic from non-ASTM standard compostable plastic. Compostable products are considered compostable under this section only if a business establishment or food or grocery establishment using the products is composting them with an industrial or municipal compost operation.

DISPOSABLE FOOD SERVICE WARE Interchangeable with TO GO packaging and FOOD PACKAGING MATERIAL and includes, but is not limited to: all containers, clamshells, bowls, plates, trays, cartons, cups, straws, stirrers, napkins, cutlery and other items designed for one-time use associated with prepared foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by food providers.

EVENTS PROMOTER shall mean an applicant for any event permit issued by the City.

FOOD OR GROCERY ESTABLISHMENT shall mean all sales outlets, stores, shops, vehicles or other places of business located within the City which operate to sell or convey foods, or beverages, which foods or beverages are predominantly contained, wrapped or held in or on packaging. FOOD ESTABLISHMENT shall include, but not be limited to, any place where food is prepared, mixed,

cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured and sold or offered for sale, including, but not limited to, any fixed or mobile restaurant, drive-in, convenience store, coffee shop, cafeteria, short-order cafe, delicatessen, luncheonette, grill, sandwich shop, soda fountain, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, takeout prepared food place, industrial feeding establishment, catering kitchen, mobile food preparation unit, commissary, event, grocery store, public food market, produce stand, food stand, or similar place in or at which food or drink is prepared for sale, or for service, on the premises or elsewhere, and any other establishment or operation where food is processed, prepared, stored, served, sold, or provided for the public and any organization, group or individual which provides food as part of its service.

FOOD PROVIDER shall mean any vendor, business, organization, entity, group, or individual, including food establishments, as defined herein, located in the City that offers food or beverage to the public.

PERSON shall mean an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, partnership, or association.

POLYSTERENE/PLASTIC FOAM shall mean blown expanded and extruded polystyrene (sometimes called Styrofoam™) or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic). Polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, egg cartons, coolers, ice chests, shipping boxes, packing peanuts, and beach or pool toys. The term POLYSTYRENE also includes clear or solid polystyrene which is known as ORIENTED POLYSTYRENE.

POLYSTYRENE/PLASTIC FOAM PRODUCTS shall mean any item such as coolers, ice chests, cups, bowls, plates, clamshells, shipping boxes, containers, cutlery, or any other merchandise containing polystyrene/plastic foam that is not wholly encapsulated or encased by a more durable material.

PREPARED FOOD shall mean food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the City. PREPARED FOOD does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.

RECYCLABLE shall mean any material that is accepted by the Charleston County recycling program, including, but not limited to, paper, glass, aluminum, cardboard and plastic bottles, jars and tubs. This also means any approved alternative products which are accepted by the county recycling centers.

REUSABLE CARRYOUT BAG shall mean a carryout bag that is specifically designed and manufactured for multiple reuse, and meets the following criteria:

- (1) Displays in a highly visible manner on the bag exterior language describing the bag's ability to be reused and recycled;
- (2) Has a handle;
- (3) Is constructed out of any of the following materials:
 - (a) Cloth, other washable fabric, or other durable materials whether woven or non-woven **capable of being cleaned and disinfected;**

(b) ~~Recyclable plastic, Plastic film~~ with a minimum thickness of ~~2.25~~ four (4.0) mils and capable of being cleaned and disinfected; ~~and~~

(4) Has a minimum lifetime of 125 uses, which for purposes of this section means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet.

SINGLE-USE PLASTIC CARRYOUT BAG. A bag provided by a business establishment to a customer typically at the point of sale for the purpose of a onetime use to transport purchases, which is made predominantly of plastic derived from either petroleum or a biologically-based source.

Sec. 14-54. REGULATIONS.

(A) No business establishment or food or grocery establishment may provide single-use plastic carryout bags at any City of Charleston facility, City sponsored event, or any event held on City owned property.

(B) No business establishment or food or grocery establishment within the City of Charleston limits may provide single-use plastic carryout bags to its customers. All business establishments shall provide or make available to a customer reusable carryout bags or recyclable paper bags.

(C) Food providers within the City of Charleston may not provide food in any disposable food service ware that contains polystyrene/plastic foam.

(D) Disposable food service ware that contains polystyrene/plastic foam is prohibited from use in all City of Charleston facilities.

(E) All food or grocery establishments, food providers and event promoters within the City of Charleston utilizing, selling or otherwise providing disposable food service ware shall use recyclable or compostable products, subject to the provisions of §§ 14-55 and 14-56.

(F) No business establishment or event promoter or food or grocery establishment within the City of Charleston may sell, rent, or otherwise provide any polystyrene/plastic foam product which is not wholly encapsulated or encased within a more durable material, except as exempted in this Article. This specifically includes, but is not limited to, cups, plates, bowls, clamshells, bags, and other products intended primarily for food service use, as well as coolers, containers, ice chests, shipping boxes, or packing peanuts.

(G) Business establishments within the city limits are strongly encouraged to provide prominently displayed signage advising customers of the benefit of reducing, reusing and recycling and promoting the use of reusable carryout bags by customers.

Sec. 14-55. EXEMPTIONS. Although the City of Charleston encourages the use of recyclable or compostable products throughout, the following shall be exempt from the provisions of this Article:

(A) Products made from polystyrene/plastic foam which is wholly encapsulated or encased by a more durable material are exempt from the provisions of this Article. Examples include surfboards, boats, life preservers, and craft supplies which are wholly encapsulated or encased by a more durable material, and durable coolers not principally composed of polystyrene/plastic foam;

(B) Construction products made from polystyrene/plastic foam are exempted from this Article if the products are used in compliance with the City of Charleston Code and used in a manner preventing the polystyrene/plastic foam from being released into the environment;

(C) During a declared state of emergency or in an emergency situation where the immediate preservation of the public peace, health or safety is involved, any organization providing emergency services shall be exempt from the provisions of this Article;

- (D) Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, recycling, pet waste, yard waste or similar use; although the City of Charleston encourages the use of recyclable or compostable products throughout;
- (E) Bags provided by physicians, dentists, pharmacists or veterinarians to contain prescription drugs or other medical necessities;
- (F) Bags used by a customer inside a business establishment to:
 - (1) Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
 - (2) Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
 - (3) Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or
 - (4) Contain unwrapped prepared foods or bakery goods;
- (G) Bags used by a non-profit corporation or other hunger relief charity to distribute food, grocery products, clothing, or other household items;
- (H) Bags of any type that the customer brings to the store for their own use for carrying away from the store goods that are not placed in a bag provided by the store;
- (I) Meat trays, egg cartons, plastic drink lids, to-go condiment packages and cutlery (i.e.: forks, spoons, knives) are exempt from the provisions of this Article;
- (J) Plastic drinking straws when needed by customers due to medical or physical conditions and for whom other straws are unsuitable are exempt from the provisions of this Article; ~~and~~
- ~~(K) Any product purchased, prepared or packaged outside the City of Charleston and sold in or delivered into the City of Charleston are exempt from the provisions of this Article.~~

Sec. 14-56. REQUESTS FOR EXEMPTION.

- (A) The ~~Resiliency & Sustainability Advisory Committee~~ Director of Public Service, or the Director's designee, may exempt a food or grocery establishment or food provider from the requirements set forth in this Article for up to a one-year period upon the food provider showing, in writing, that this Article would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The ~~Resiliency & Sustainability Advisory Committee~~ Director of Public Service, or the Director's designee, shall put the decision to grant or deny up to a one-year exemption in writing, ~~however and~~ the decision may be appealed to ~~City Council~~ the Public Works and Utilities Committee.
- (B) Exemptions to allow for the sale or provision of polystyrene/plastic foam products may be granted by the ~~Resiliency & Sustainability Advisory Committee~~ Director of Public Service, or the Director's designee, if the food or grocery establishment or food provider can demonstrate in writing a public health and safety requirement or medical necessity to use the product. The ~~Resiliency & Sustainability Advisory Committee~~ Director of Public Service, or the Director's designee, shall put the decision to grant or deny the exemption in writing and the decision may be appealed to ~~City Council~~ the Public Works and Utilities Committee.
- (C) An exemption application shall include all information necessary for the ~~Resiliency & Sustainability Advisory Committee~~ Director of Public Service, or the Director's designee, to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The ~~Resiliency & Sustainability Advisory Committee~~ Director of Public Service, or the Director's designee, may require the applicant to provide additional information.
- (D) The ~~Resiliency & Sustainability Advisory Committee~~ Director of Public Service, or the Director's designee, may approve the exemption application in whole or in part, with or without conditions.
- (E) Any person aggrieved by the decision of the Director of Public Service or the Director's designee may appeal the decision to the City's Public Works and Utilities Committee within thirty

(30) days of the Director's or Designee's issuance of the written decision. In evaluating the appeal, the Public Works and Utilities Committee shall determine whether the decision of the Director of Public Service or the Director's designee was made in compliance with the standards, policies, and criteria of this Article. The decision of the Public Works and Utilities Committee shall be final.

Sec. 14-57. ENFORCEMENT AND PENALTIES.

(A) The Livability and Tourism Department has primary responsibility for enforcement of this Article. The Livability and Tourism Department is authorized to take any and all other actions reasonable and necessary to enforce this Article, including, but not limited to, investigating violations, entering the premises of any business establishment during business hours.

(B) If a code enforcement officer determines that a violation of this Article has occurred, he/she will issue a written warning notice to the owner or operator of the business establishment that a violation has occurred and the potential fines that will apply for future violations.

(C) Any business establishment that violates or fails to comply with any of the provisions of this Article after a written warning notice has been issued for that violation shall be subject to a fine that shall not exceed \$200 for a first violation; \$350 for a second violation within any 12-month period; and \$500 for each additional violation within any 12-month period. Every 30 days that a violation continues will constitute a separate offense.

(D) In addition to the penalties set forth in this section, repeated violations of this Article by a person who owns, manages, operates, is a business agent of, or otherwise controls a business establishment may result in the suspension or revocation of the business license issued to the premises on which the violations occurred. No City of Charleston business license shall be issued or renewed until all fines outstanding against the applicant for violations of this Article are paid in full.

(E) Violation of this Article is hereby declared to be a public nuisance, which may be abated by the City by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.

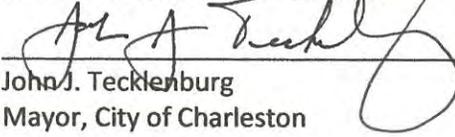
Sec. 14-58. EFFECTIVE DATE. All of the requirements set forth in this Article shall take effect and become operative and enforceable on January 1, 2020.

Section 2. Severability. If any subsection, sentence, clause, phrase, or word of this Ordinance be for any reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such declaration shall not affect the validity or the effectiveness of the remaining portions of this Ordinance or any part thereof which can be given meaning without the offensive subsection, sentence, clause, phrase or word.

Section 3. This Ordinance shall become effective ~~one year from the date of~~ upon ratification.

Ratified in City Council this 27th day of November in the Year of Our Lord, 2018, in the 243rd Year of Independence of the United States of America.

By:



John J. Tecklenburg
Mayor, City of Charleston

ATTEST:



Vanessa Turner-Maybank
Clerk of Council

STATE OF SOUTH CAROLINA)	AN ORDINANCE AMENDING TITLE V
)	(PUBLIC WORKS) BY ADDING A NEW
COUNTY OF CHARLESTON)	CHAPTER 53 PERTAINING TO
)	ENVIRONMENTALLY ACCEPTABLE
TOWN OF MOUNT PLEASANT)	PACKAGING AND PRODUCTS

WHEREAS the Town of Mount Pleasant, South Carolina has a duty to protect its natural environment, its economy, and the health of its citizens; and

WHEREAS, the Town Council of the Town of Mount Pleasant, South Carolina desires to eliminate the use of polystyrene/plastic foam and single-use plastic products and other non-locally recyclable and non-properly compostable food packaging in order to protect the marine life and wild life of its surrounding waterways, maximize the operating life of landfills and lessen the economic and environmental costs of managing waste; and

WHEREAS, to discourage and decrease the use of certain expanded polystyrene food service products, single use plastic carryout bags, and disposable food service ware, i.e. plastic straws in the Town, it is necessary to regulate such use; and

WHEREAS, regulating and eventually prohibiting the use of polystyrene/plastic foam take-out food packaging and replacing it with food service ware that is locally recyclable or compostable, and, restricting the use of polystyrene/plastic foam products that are not wholly encapsulated or encased by a more durable material will further protect the Town, its marine life and wild life, its residents and visitors, and will support the Town’s goal of reducing waste and litter for a cleaner environment for generations to come.

NOW THEREFORE, The Town of Mount Pleasant, South Carolina, duly assembled, hereby ordains that Title V of the Town Code of Ordinances be amended by adopting a new Chapter 53: PERTAINING TO ENVIRONMENTALLY ACCEPTABLE PACKAGING AND PRODUCTS which shall read as follows:

§ 53.01: DEFINITIONS

Unless otherwise expressly stated, whenever used in this chapter the following terms shall have the meanings set forth below:

- (a) "Affordable" means that a compostable or recyclable product may cost up to 15 percent more than the purchase cost of the non-compostable or nonrecyclable alternative(s) and not be regarded, on balance, as exorbitant, overpriced, unreasonable or invaluable.
- (b) “ASTM Standard” means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for compostable plastics, as those standards may be amended.
- (c) “Business Establishment” means any “commercial enterprise that provides carryout bags

to its customers through its employees or independent contractors associated with the business. The term includes sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity whether for profit or not for profit. This term is inclusive of any store or business which sells or offers goods or merchandise, located or operating within the Town of Mount Pleasant, including those referenced in "Food or Grocery Establishment," and "Food Provider."

- (d) "Compostable" means all the materials in the product or package, when composted in an industrial or municipal compost operation, will break down, or otherwise become part of, usable compost (e.g. soil-conditioning material, mulch) in a safe and timely manner. Compostable food service ware must meet ASTM-Standards for compostability and any bio-plastic or plastic-like product must be clearly labeled, preferably with a color symbol, to allow proper identification such that the collector and processor can easily distinguish the ASTM standard compostable plastic from non-ASTM standard compostable plastic. Compostable products are considered compostable under this section only if a Business Establishment or Food or Grocery Establishment using the products is composting them with an industrial or municipal compost operation.
- (e) "Disposable Food Service Ware" is interchangeable with "to go" packaging and "food packaging material" and includes, but is not limited to: all containers, clamshells, bowls, plates, trays, cartons, cups, straws, stirrers, napkins and other items designed for one-time use associated with prepared foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by Food Providers.
- (f) "Events Promoter" means an applicant for any event permit issued by the Town or any Town employee(s) responsible for any Town-organized event.
- (g) "Food or Grocery Establishment" means all sales outlets, stores, shops, vehicles or other places of business located within the Town which operate to sell or convey foods, or beverages, which foods or beverages are predominantly contained, wrapped or held in or on packaging. Food establishment shall include, but not be limited to, any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured and sold or offered for sale, including, but not limited to, any fixed or mobile restaurant, drive-in, convenience store, coffee shop, cafeteria, short-order cafe, delicatessen, luncheonette, grill, sandwich shop, soda fountain, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, take-out prepared food place, industrial feeding establishment, catering kitchen, mobile food preparation unit, commissary, event, grocery store, public food market, produce stand, food stand, or similar place in or at which food or drink is prepared for sale, or for service, on the premises or elsewhere, and any other establishment or operation where food is processed, prepared, stored, served, sold, or provided for the public and any organization, group or individual which provides food as part of its service.
- (h) "Food Provider" means any vendor, business, organization, entity, group or individual, including food establishments, as defined herein, located in the Town of Mount Pleasant that offers food or beverage to the public.
- (i) "Person" means an individual, business, event promoter, trust, firm, joint stock company,

corporation, non-profit, including a government corporation, partnership, or association.

- (j) "Polystyrene/Plastic Foam" means blown expanded and extruded polystyrene (sometimes called Styrofoam™) or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic). Polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, egg cartons, coolers, ice chests, shipping boxes, packing peanuts, and beach or pool toys. The term "polystyrene also includes clear or solid polystyrene which is known as "oriented polystyrene."
- (k) "Prepared Food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the Town of Mount Pleasant. Prepared food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.
- (l) "Polystyrene/plastic foam products" means any item such as coolers, ice chests, cups, bowls, plates, clamshells, shipping boxes, containers, cutlery, or any other merchandise containing polystyrene/plastic foam that is not wholly encapsulated or encased by a more durable material.
- (m) "Recyclable" means any material that is accepted by the Town of Mount Pleasant recycling program or the Charleston County recycling program, including, but not limited to, paper, glass, aluminum, cardboard and plastic bottles, jars and tubs. This also means any approved alternative products which are accepted by the County recycling centers.
- (n) "Reusable carryout bag" means a carryout bag that is specifically designed and manufactured for multiple reuse, and meets the following criteria:
 - i. displays in a highly visible manner on the bag exterior, language describing the bag's ability to be reused and recycled;
 - ii. has a handle;
 - iii. is constructed out of any of the following materials:
 - 1. Cloth, other washable fabric, or other durable materials whether woven or non-woven; or
 - 2. Recyclable plastic, with a minimum thickness of 2.25 mils; and
 - 3. has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet.
- (o) "Single-Use Plastic Carryout Bag" means a bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases, which is made predominantly of plastic derived from either petroleum or a biologically-based source.
- (p) "Town of Mount Pleasant Contractor" means any person or entity that has a contract with the Town of Mount Pleasant for work or improvement to be performed, for a franchise,

concession, for grant monies, goods and services, or supplies to be purchased at the expense of the Town of Mount Pleasant, or to be paid out of monies deposited in the Treasury or out of trust monies under the control or collected by the Town of Mount Pleasant.

- (q) "Town of Mount Pleasant facility" means any building, structure or vehicle owned and operated by the Town of Mount Pleasant, its agents, agencies, and departments.

§ 53.02: SINGLE-USE PLASTIC CARRYOUT BAGS

- a) No Business Establishment or Food or Grocery Establishment may provide Single-Use Plastic Carryout Bags at any Town facility, Town-sponsored event, or any event held on Town property.
- b) No Business Establishment or Food or Grocery Establishment within the Town limits may provide single use plastic bags to its customers.

§ 53.03: POLYSTYRENE/PLASTIC FOAM DISPOSABLE FOOD SERVICE WARE

- a) Food Providers within the Town of Mount Pleasant may not provide food in any disposable food service ware that contains polystyrene/plastic foam.
- b) Disposable food service ware that contains polystyrene/plastic foam is prohibited from use in all Town of Mount Pleasant facilities.
- c) Town of Mount Pleasant Contractors in the performance of Town contracts and events promoters may not provide food in disposable food service ware that contains polystyrene/plastic foam.

§ 53.04: DISPOSABLE FOOD SERVICE WARE

- a) All Food or Grocery Establishments and Food Providers within the Town of Mount Pleasant utilizing disposable food service ware shall use recyclable or compostable products, subject to the provisions of §§ 53.06 and 53.07.
- b) All Food Providers may give straws, lids, cutlery, and to-go condiment packages upon request of the customer.
- c) All Town of Mount Pleasant facilities utilizing disposable food service ware shall use products that are recyclable or compostable.
- d) Town of Mount Pleasant Contractors and events promoters utilizing disposable food service ware shall use recyclable or compostable products while performing under a Town of Mount Pleasant contract or permit.

§53.05: PROHIBITED SALES

- a) No Business Establishment or event promoter within the Town of Mount Pleasant may sell, rent, or otherwise provide any polystyrene/plastic foam product which is not wholly encapsulated or encased within a more durable material, except as exempted in this Ordinance. This specifically includes, but is not limited to, cups, plates, bowls, clamshells, bags, and other products intended primarily for food service use, as well as coolers, containers, ice chests, shipping boxes, or packing peanuts.

§53.06: EXEMPTIONS FOR RECYCLABLE OR PROPERLY COMPOSTED FOOD SERVICE WARE AND OTHER POLYSTYRENE/PLASTIC FOAM PRODUCTS

- a) Products made from polystyrene/plastic foam which is wholly encapsulated or encased by a more durable material are exempt from the provisions of this chapter. Examples include surfboards, boats, life preservers, and craft supplies which are wholly encapsulated or encased by a more durable material, and durable coolers not principally composed of polystyrene/plastic foam.
- b) Construction products made from polystyrene/plastic foam are exempted from this ordinance if the products are used in compliance with Town Code and used in a manner preventing the polystyrene/plastic foam from being released into the environment
- c) Emergency, Hospital, and Medical Supply and Services Procurement: In an emergency situation and for the immediate preservation of the public peace, health or safety, Town facilities, food vendors, Town franchises, contractors and vendors doing business with the Town shall be exempt from the provisions of this Chapter.
- d) Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste; although the town encourages the use of recyclable or compostable products throughout.
- e) Bags provided by physicians, dentists, pharmacists or veterinarians to contain prescription drugs or other medical necessities;
- f) Bags used by a customer inside a business establishment to:
 - i. Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
 - ii. Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
 - iii. Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or
 - iv. Contain unwrapped prepared foods or bakery goods;
- g) Bags used by a non-profit corporation or other hunger relief charity to distribute food, grocery products, clothing, or other household items; and

- h) Bags of any type that the customer brings to the store for their own use for carrying away from the store goods that are not placed in a bag provided by the store.
- i) Meat trays are exempt from the provisions of this Chapter.
- j) Any product purchased, prepared or packaged outside the Town of Mount Pleasant and sold in or delivered into the Town are exempt from the provisions of this Chapter.

§53.07: REQUESTS FOR EXEMPTION.

- a) The Public Services Committee may exempt a Food or Grocery Establishment or Food Provider from the requirements set forth of this ordinance for up to a one-year period upon the Food Provider showing, in writing, that this ordinance would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The Public Services Committee shall put the decision to grant or deny up to a one- year exemption in writing, however the decision may be appealed to Town Council.
- b) Exemptions to allow for the sale or provision of polystyrene/plastic foam products may be granted by the Public Services Committee if the Food or Grocery Establishment or Food Provider can demonstrate in writing a public health and safety requirement or medical necessity to use the product. The Public Services Committee shall put the decision to grant or deny the exemption in writing and the decision may be appealed to Town Council.
- c) An exemption application shall include all information necessary for the Public Services Committee to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The Public Services Committee may require the applicant to provide additional information.
- d) The Public Services Committee may approve the exemption application in whole or in part, with or without conditions.

§53.08 ENFORCEMENT AND PENALTIES

- a) The Police Department has primary responsibility for enforcement of this chapter. The Police Department is authorized to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, investigating violations, issuing fines and entering the premises of any business establishment during business hours.
- b) If a Police Officer determines that a violation of this chapter has occurred, he/she will issue a written warning notice to the owner or operator of the business establishment that a violation has occurred and the potential penalties that will apply for future violations.
- c) Any business establishment that violates or fails to comply with any of the provisions of this chapter after a written warning notice has been issued for that violation shall be subject to a civil penalty that shall not exceed Two Hundred (\$200.00) Dollars

for a first violation; Three Hundred Fifty (\$350.00) Dollars for a second violation within any twelve (12) month period; and Five Hundred (\$500.00) Dollars for each additional violation within any twelve (12) month period. Every thirty (30) days that a violation continues will constitute a separate offense.

- d) In addition to the penalties set forth in this section, repeated violations of this chapter by a person who owns, manages, operates, is a business agent of, or otherwise controls a business establishment may result in the suspension or revocation of the business license issued to the premises on which the violations occurred. No Town business license shall be issued or renewed until all fines outstanding against the applicant for violations of this chapter are paid in full.
- e) Violation of this chapter is hereby declared to be a public nuisance, which may be abated by the Town by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Town may take action to recover the costs of the nuisance abatement.

§53.09: EFFECTIVE DATE AND WAIVERS

All of the requirements set forth in this chapter shall take effect one year from the date this Ordinance is signed.

THIS ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON FINAL READING.

SIGNED, SEALED AND DELIVERED THIS ____ DAY OF _____, 2018.

J.W. Haynie, Mayor
Town of Mount Pleasant

Attest:

Christine Barrett
Clerk of Council

_____, 2018
Mount Pleasant, SC

Introduced: _____, 2018
Final Reading: _____, 2018

APPROVED AS TO FORM:

David G. Pagliarini
Corporation Counsel

CHAPTER 4. - SINGLE-USE PLASTIC BAGS

Sec. 3-4-1. - Purpose.

This chapter is adopted to improve the environment of the City of Isle of Palms by encouraging the use of reusable checkout bags and banning the use of single-use plastic bags for retail checkout of purchased goods. Business establishments are encouraged to make reusable bags available for sale.

(Ord. No. 2015-08, § 1, 6-23-2015)

Sec. 3-4-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Business establishment* means any commercial enterprise that provides carryout bags to its customers through its employees or independent contractors associated with the business. The term includes sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity whether for profit or not for profit.
- (2) *Carryout bag* means a bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases.
- (3) *Reusable carryout bag* means a carryout bag that is specifically designed and manufactured for multiple reuse, and meets the following criteria:
 - a. Displays in a highly visible manner on the bag exterior, language describing the bag's ability to be reused and recycled;
 - b. Has a handle, except that handles are not required for carryout bags constructed out of recyclable paper with a height of less than fourteen (14) inches and width of less than eight (8) inches; and
 - c. Is constructed out of any of the following materials:
 - (i) Cloth, other washable fabric, or other durable materials whether woven or non-woven;
 - (ii) Recyclable plastic, with a minimum thickness of 2.25 mils; or
 - (iii) Recyclable paper.
- (4) *Single-use carryout bag* means a carryout bag that is not a reusable carryout bag.
- (5) *Customer* means a person who purchases merchandise from a business establishment.

(Ord. No. 2015-08, § 1, 6-23-2015)

Sec. 3-4-3. - Regulations.

- (1) No person may provide single-use carryout bags at any city facility, city-sponsored event, or any event held on city property.
- (2) No business establishment within the city limits may provide single-use carryout bags to its customers.
- (3) Business establishments within the city limits are strongly encouraged to provide prominently displayed signage advising customers of the benefit of reducing, reusing and recycling and promoting the use of reusable carryout bags by customers.

- (4) A business establishment within the city limits may provide or sell reusable carryout bags to its customers or any person. Subject to hours of operation and applicable regulations regarding the use of public property, including those pertaining to solicitation and commercial activities on public property, a person may provide or sell reusable carryout bags at any city facility, city-sponsored event, or any event held on city property.

(Ord. No. 2015-08, § 1, 6-23-2015)

Sec. 3-4-4. - Exemptions.

This chapter shall not apply to:

- (1) Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste;
- (2) Bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities;
- (3) Bags used by restaurants to take away prepared food;
- (4) Bags used by a customer inside a business establishment to:
 - a. Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
 - b. Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
 - c. Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or
 - d. Contain unwrapped prepared foods or bakery goods;
- (5) Bags used by a non-profit corporation or other hunger relief charity to distribute food, grocery products, clothing, or other household items; and
- (6) Bags of any type that the customer brings to the store for their own use for carrying away from the store goods that are not placed in a bag provided by the store.

(Ord. No. 2015-08, § 1, 6-23-2015)

Sec. 3-4-5. - Enforcement and penalties.

- (1) The police department has primary responsibility for enforcement of this chapter. The designated livability officer is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, investigating violations, issuing fines and entering the premises of any business establishment during business hours.
- (2) If the livability officer determines that a violation of this chapter has occurred, he/she will issue a written warning notice to the owner or operator of the business establishment that a violation has occurred and the potential penalties that will apply for future violations.
- (3) Any business establishment that violates or fails to comply with any of the provisions of this chapter after a written warning notice has been issued for that violation shall be deemed guilty of a misdemeanor and shall for each violation, upon conviction thereof, be punished as provided in section 1-3-66. The penalty shall not exceed one hundred (\$100.00) dollars for a first violation; two hundred (\$200.00) dollars for a second violation within any twelve-month period; and five hundred (\$500.00) dollars for each additional violation within any twelve-month period. Each day that a violation continues will constitute a separate offense.

- (4) In addition to the penalties set forth in this section, repeated violations of this chapter by a person who owns, manages, operates, is a business agent of, or otherwise controls a business establishment may result in the suspension or revocation of the business license issued to the premises on which the violations occurred. No city business license shall be issued or renewed until all fines outstanding against the applicant for violations of this chapter are paid in full.
- (5) Violation of this chapter is hereby declared to be a public nuisance, which may be abated by the city by restraining order, preliminary and permanent injunction, or other means provided for by law, and the city may take action to recover the costs of the nuisance abatement.

(Ord. No. 2015-08, § 1, 6-23-2015)

Sec. 3-4-6. - Effective date and waivers.

All of the requirements set forth in this chapter shall take effect January 1, 2016. In the event that compliance with the effective date of this chapter is not feasible for a business establishment because of either unavailability of alternative checkout bags or economic hardship, city council may grant a waiver of not more than twelve (12) months upon application of the business owner or owner's representative.

(Ord. No. 2015-08, § 1, 6-23-2015)

ORDINANCE 2018-06

AN ORDINANCE PROHIBITING THE USE AND DISTRIBUTION OF SINGLE-USE PLASTIC BAGS, PLASTIC STRAWS, POLYSTYRENE COOLERS, POLYSTYRENE FOOD CONTAINERS OR POLYSTYRENE CUPS BY ANY BUSINESS ESTABLISHMENT IN THE TOWN OF SULLIVAN'S ISLAND, ANY PROPERTY OF THE TOWN OF SULLIVAN'S ISLAND OR IN THE RC-1 ZONING DISTRICT OF THE TOWN OF SULLIVAN'S ISLAND

WHEREAS, the Town of Sullivan's Island has the authority to enact ordinances which promote the public health, safety and general welfare of its residents; and,

WHEREAS, THE Town enjoys a pristine beach environment which is enjoyed by residents and has become a destination popular destination; and,

WHEREAS, the Town has an obligation to protect the unique coastal resources and environmentally sensitive habitat areas and reduce the amount of plastic and polystyrene waste generated in the community; and,

WHEREAS, the Town continues to confront littered plastic in its public areas;

NOW, THEREFORE, BE IT ORDAINED by the Town of Sullivan's Island, in meeting assembled that Section 14-36 be codified as follows:

Sec. 14-36 Use and distribution of single-use plastic bags, plastic straws, polystyrene coolers, polystyrene food containers or cups.

This section is adopted to improve the environment of the Town of Sullivan's Island by requiring the use of reusable checkout bags and recyclable paper carryout bags and food containers, banning the use of single-use plastic bags for retail checkout of purchased goods, use of polystyrene food containers, polystyrene cups and plastic straws. Further, to improve and maintain the pristine beach and ocean environment of the Town of Sullivan's Island, single-use plastic bags, plastic straws, polystyrene coolers and polystyrene food containers and cups will be prohibited in in the CD and RC-1 Zoning Districts.

A. Definitions

Unless otherwise expressly stated, whenever used in this section the following terms shall have the meanings set forth below:

- (1) *Business Establishment*. Any commercial enterprise that provides carryout bags to its customers through its employees or independent contractors associated with the

business. The term includes sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity whether for profit or not for profit. This term is inclusive of any store or business which sells or offers goods or merchandise, located or operating within the town, including those referenced as a food establishment or food provider.

- (2) *Carryout Bag*. A bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases.
- (3) *Customer*. A person who purchases merchandise from a business establishment.
- (4) *Disposable Food Service Ware*. Interchangeable with *To Go* packaging and *Food Packaging Material*. Includes but is not limited to: all containers, clamshells, bowls, plates, trays, cartons, cups, straws, stirrers, napkins and other items designed for one-time use associated with prepared foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by food providers.
- (5) *Polystyrene/Plastic Foam*. Blown expanded and extruded polystyrene (sometimes called Styrofoam) or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic). Polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, egg cartons, coolers, ice chests, shipping boxes, packing peanuts, and beach or pool toys. The term *polystyrene* also includes clear or solid polystyrene which is known as *oriented polystyrene*.
- (6) *Reusable Carryout Bag*. A carryout bag that is specifically designed and manufactured for multiple reuse, and meets the following criteria:
 - a. Displays in a highly visible manner on the bag exterior, language describing the bag's ability to be reused and recycled;
 - b. Has a handle, except that handles are not required for carryout bags constructed out of recyclable paper with a height of less than fourteen (14) inches and width of less than eight (8) inches; and,
 - c. Is constructed out of any of the following materials:
 - i. Cloth, other washable fabric, or other durable materials whether woven or non-woven;
 - ii. Recyclable plastic, with a minimum thickness of 2.25 mils; or
 - iii. Recyclable paper.

- (7) *Single-Use Plastic Carryout Bag*. A bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases, which is made predominantly of plastic derived from either petroleum or a biologically-based source. “Single-use plastic carryout bag” includes compostable and biodegradable bags but does not include reusable carryout bags.
- (8) *Town of Sullivan’s Island Facility (hereafter “Town”)*. Any building, structure, vehicle or property owned and operated or leased by the Town, its agents, agencies, departments or lessee.

B. Regulations

- (1) No business establishment may provide single-use plastic carryout bags or polystyrene products at any Town facility, town-sponsored event, or any event held on Town property or on any Town property.
- (2) No business establishment within the Town may provide single-use carryout bags to its customers.
- (3) Food providers within the Town shall not provide food in any disposable food service ware that contains polystyrene/plastic foam. All food establishments within the Town shall use recyclable or compostable products.
- (4) Food providers within the Town shall not use plastic straws.
- (5) A business establishment within the Town limits may provide or sell reusable carryout bags to its customers or any person. Subject to hours of operation and applicable regulations regarding the use of public property, including those pertaining to solicitation and commercial activities on public property, a person may provide or sell reusable carryout bags at any Town facility, Town-sponsored event, or any event held on Town property.
- (6) All single-use carry out plastic bags, plastic straws and polystyrene/plastic foam products such as but not limited to cups, bowls, plates, trays, clamshell containers, meat trays, egg cartons, coolers, ice chests, are expressly prohibited from use on in the RC-1 Zoning District commonly known as the beach or on any other Town owned properties.

C. Exceptions.

- (1) Products made from polystyrene/plastic foam which is wholly encapsulated or encased by a more durable material are exempt from the provisions of this section. Examples include surfboards, boats, life preservers, and craft supplies which are wholly encapsulated or encased by a more durable material, and durable coolers not principally composed of polystyrene/plastic foam.
- (2) Construction products made from polystyrene/plastic foam are exempted from this chapter if the products are used in compliance with Town code and used in a manner preventing polystyrene/plastic foam from being released into the environment.
- (3) In an emergency situation and for the immediate preservation of the public peace, health or safety, town facilities business establishments, food vendors, contractors and other vendors doing business with and in the Town shall be exempt from the provisions of this chapter.
- (4) Laundry dry cleaning bags, ice bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste, although the Town encourages the use of recyclable or compostable products throughout.
- (5) Bags provided by physicians, dentists, pharmacists, veterinarians or other health care providers to contain prescription drugs or other medical necessities.
- (6) Bags used by a customer inside a business establishment to:
 - a. Contain or wrap frozen foods, meat, or fish, whether or not prepackaged.
 - b. Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases.
 - c. Contain unwrapped prepared foods or bakery goods.
- (7) Bags used by a non-profit corporation or other hunger relief charity to distribute food, grocery products, clothing, or other household items.
- (8) Bags of any type that the customer brings to the store for their own use for carrying away from the store goods that are not placed in a bag provided by the store.
- (9) Plastic drink lids and cutlery are exempt from the provisions of this section.
- (10) Plastic straws are permitted for individuals with special needs.

D. Enforcement and penalties.

- (1) The Police Department has primary responsibility for enforcement of this section. The Police Department is authorized to take any and all other actions reasonable and necessary to enforce this section, including, but not limited to, investigating violations, issuing fines and entering the premises of any business establishment during business hours. However, any enforcement officer or official of the Town, including Beach Services Officers, and other Code Enforcement officials may enforce this section.
- (2) In addition to the penalties set forth in this section, repeated violations of this section by a person who owns, manages, operates, is a business agent of, or otherwise controls a business establishment may result in the suspension or revocation of the business license issued to the premises on which the violations occurred. No Town business license shall be issued or renewed until all fines outstanding against the applicant for violations of this section are paid in full.
- (3) Violation of this chapter is hereby declared to be a public nuisance, which may be abated by the Town by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Town may act to recover the costs of the nuisance abatement.
- (4) Any violation of the regulations provided in this article by any person or owner, manager, employee or representative of a business establishment shall be punishable as a misdemeanor and by a fine of up to five-hundred (\$500.00) dollars plus State of South Carolina assessments per day violation and/or a sentence of thirty (30) days in jail. Each day the violation continues or occurs shall constitute a separate offense.

E. Requests for exemption.

- (1) Town Council may exempt a food establishment or food provider from the requirement set forth in this section for up to a one-year period upon the provider showing, in writing, that this section would create an undue hardship or practical difficulty not generally applicable to other business establishments or persons in similar circumstances.

- (2) Exemptions to allow for the provision of single-use carry out bags or disposable food service ware may be granted by Town Council if the business establishment or food provider can demonstrate in writing a public health and safety requirement, medical necessity or that the product will not damage the environment of the Town of Sullivan's Island.
- (3) Town Council may approve the exemption application in whole or in part, with or without conditions.

F. Effective Date.

All requirements set forth in this section shall take effect December 1, 2018.

G. Severability and inconsistency.

If any court of competent jurisdiction holds any section, provision, clause, phrase, or application of this Zoning Ordinance invalid or unconstitutional for any reason, the remaining provisions of this ordinance shall be deemed severable there from and shall be construed as reasonable and necessary to achieve the lawful purposes of the ordinance.

ATTEST:

Courtney Liles, Town Clerk

Patrick M. O'Neil, Mayor

First Reading: September 25, 2018

Second Reading: October 16, 2018

Third Reading and Ratification: November 20, 2018

CHAPTER 112: SINGLE-USE PLASTIC BAGS, POLYSTYRENE COOLERS, CONTAINERS AND CUPS

Section

- 112.01 Purpose
- 112.02 Definitions
- 112.03 Regulations
- 112.04 Exemptions
- 112.05 Effective date and waivers

- 112.99 Penalties

§ 112.01 PURPOSE.

This chapter is adopted to improve the environment of the city by encouraging the use of reusable checkout bags and recyclable paper carryout bags and banning the use of single-use plastic bags for retail checkout of purchased goods. Business establishments are encouraged to make reusable bags available for sale and recyclable paper carryout bags available for distribution.

(Ord. 29-16, passed 9-13-16)

§ 112.02 DEFINITIONS.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

BUSINESS ESTABLISHMENT. Any commercial enterprise that provides carryout bags to its customers through its employees or independent contractors associated with the business. The term includes sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity whether for profit or not for profit.

SINGLE-USE PLASTIC CARRYOUT BAG. A bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases, which is made predominantly of plastic derived from either petroleum or a biologically-based source. "Single-use plastic carryout bag" includes compostable and biodegradable bags but does not include reusable carryout bags.

REUSABLE CARRYOUT BAG. A carryout bag that is specifically designed and manufactured for multiple reuse, and meets the following criteria:

- (1) Displays in a highly visible manner on the bag exterior, language describing the bag's ability to be reused and recycled;
- (2) Has a handle; except that handles are not required for carryout bags constructed out of recyclable paper with a height of less than 14 inches and width of less than eight inches; and
- (3) Is constructed out of any of the following materials:
 - (a) Cloth, other washable fabric, or other durable materials whether woven or non-woven; or
 - (b) Recyclable plastic, with a minimum thickness of 2.25 mils;

CUSTOMER. A person who purchases merchandise from a business establishment.

EXPANDED POLYSTYRENE COOLER, SINGLE USE CONTAINER, OR CUP ALSO KNOWN AS STYROFOAMT.

Any cooler/ice chest, single-use container, or cup made of polystyrene foam, where such foam is not fully encased in a durable material.

(Ord. 29-16, passed 9-13-16)

§ 112.03 REGULATIONS.

(A) No person may provide single-use plastic carryout bags at any city facility, city-sponsored event, or any event held on city property.

(B) No business establishment within the city limits may provide single use plastic carryout bags to its customers.

(C) Business establishments within the city limits are strongly encouraged to provide prominently displayed signage advising customers of the benefit of reducing, reusing and recycling and promoting the use of reusable carryout bags and recyclable paper carryout bags by customers.

(D) All business establishments shall provide or make available to a customer reusable carryout bags or recyclable paper bags.

(E) No business establishment in the city may sell, rent or otherwise provide an expanded polystyrene foam (also known as Styrofoam™) cooler single-use container, or cup; or purchase, obtain, keep, distribute sell, or give for home or personal use, or otherwise provide to customers any expanded polystyrene foam coolers, single-use containers, or cups in the city.

(Ord. 29-16, passed 9-13-16)

§ 112.04 EXEMPTIONS.

This chapter shall not apply to:

(A) Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste;

(B) Bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities;

(C) Bags used by a customer inside a business establishment to:

(1) Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;

(2) Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;

(3) Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or

(4) Contain unwrapped prepared foods or bakery goods; and

(D) Bags of any type that the customer brings to the store for their own use for carrying away from the store goods that are not placed in a bag provided by the store.

(Ord. 29-16, passed 9-13-16)

§ 112.05 EFFECTIVE DATE AND WAIVERS.

All of the requirements set forth in this chapter shall take effect January 1, 2017. In the event that compliance with the effective date of this chapter is not feasible for a business establishment because of either unavailability of alternative checkout bags or economic hardship, City Council may grant a waiver of not more than 12 months upon application of the business owner or owner's representative.

(Ord. 29-16, passed 9-13-16)

§ 112.99 PENALTIES.

(A) Any business establishment that violates or fails to comply with any of the provisions of this chapter after a written warning notice has been issued for that violation shall be deemed guilty of a misdemeanor. The penalty shall not exceed \$100 for a first violation; \$200 for a second violation within any 12-month period; and \$500 for each additional violation within any 12-month period. Each day that a violation continues will constitute a separate offense.

(B) In addition to the penalties set forth in this section, repeated violations of this chapter by a person who owns, manages, operates, is a business agent of, or otherwise controls a business establishment may result in the suspension or revocation of the business license issued to the premises on which the violations occurred. No city business license shall be issued or renewed until all fines outstanding against the applicant for violations of this chapter are paid in full.

(C) Violation of this chapter is hereby declared to be a public nuisance, which may be abated by the city by restraining order, preliminary and permanent injunction, or other means provided for by law, and the city may take action to recover the costs of the nuisance abatement.

(Ord. 29-16, passed 9-13-16)

not affect the other provisions of this article, which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

EFFECT OF SECTION HEADINGS. The headings or titles of the sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this ordinance.

REPEAL AND EFFECTIVE DATE. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed. This ordinance shall take effect immediately upon second reading by the Mayor and Town Council of the Town of Surfside Beach.

BE IT ORDERED AND ORDAINED by the Mayor and Town Council of the Town of Surfside Beach, South Carolina, in assembly and by the authority thereof, this 9th day of October 2018.

Surfside Beach Town Council

VOTE:	Yes	No	
	<input type="checkbox"/>	<input type="checkbox"/>	_____ Robert F. Childs, III, Mayor
	<input type="checkbox"/>	<input type="checkbox"/>	_____ David L. Pellegrino, Mayor Pro Tempore
	<input type="checkbox"/>	<input type="checkbox"/>	_____ Bruce Dietrich, Town Council
	<input type="checkbox"/>	<input type="checkbox"/>	_____ Mark L. Johnson, Town Council
	<input type="checkbox"/>	<input type="checkbox"/>	_____ Ron Ott, Town Council
	<input type="checkbox"/>	<input type="checkbox"/>	_____ Debbie Scoles, Town Council
	<input type="checkbox"/>	<input type="checkbox"/>	_____ Randle M. Stevens, Town Council

Attest: _____
Debra E. Herrmann, CMC, Town Clerk

Chapter 4 - REGULATIONS AND REQUIREMENTS RELATING TO THE USE OF SINGLE-USE PLASTIC BAGS

Sec. 9-4-10. - Purpose and intent.

This chapter is adopted to improve the environment of the town by encouraging the use of reusable checkout bags and recyclable paper carryout bags and banning the use of single-use plastic bags for retail checkout of purchased goods. Business establishments are encouraged to make reusable bags available for sale, to make recyclable paper carryout bags available for distribution and to continue offering bins for all recyclable products including but not limited to plastic products.

(Ord. No. 2018-01, § 1, 1-9-18)

Sec. 9-4-20. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- *Business establishment.* Any commercial enterprise that provides carryout bags to its customers through its employees or independent contractors associated with the business. The term includes sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity, whether for profit or not for profit.
- *Customer.* A person who purchases merchandise from a business establishment.
- *Reusable carryout bag.* A carryout bag that is specifically designed and manufactured for multiple reuse, and meets the following criteria:
 - (1) Displays in a highly visible manner on the bag exterior, language describing the bag's ability to be reused and recycled;
 - (2) Has a handle; except that handles are not required for carryout bags constructed out of recyclable paper with a height of less than fourteen (14) inches and width of less than eight (8) inches; and
 - (3) Is constructed out of any of the following materials:
 - a. Cloth, other washable fabric, or other durable materials, whether woven or non-woven; or
 - b. Recyclable plastic, with a minimum thickness of two and one-quarter (2.25) mils;
- *Single-use plastic carryout bag.* A bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases, which is made predominantly of plastic derived from either petroleum or a biologically-based source. "Single-use plastic carryout bag" includes compostable and biodegradable bags, but does not include reusable carryout bags.

(Ord. No. 2018-01, § 1, 1-9-18)

Sec. 9-4-30. - Prohibitions.

- (a) No person may provide single-use plastic carryout bags at any town facility, town-sponsored event, or any event held on town property.

- (b) No business establishment within the town may provide single use plastic carryout bags to its customers.
- (c) Business establishments within the town are strongly encouraged to provide prominently displayed signage advising customers of the benefit of reducing, reusing and recycling and promoting the use of reusable carryout bags and recyclable paper carryout bags by customers.
- (d) All business establishments are encouraged to provide or make available to a customer reusable carryout bags or recyclable paper bags.

(Ord. No. 2018-01, § 1, 1-9-18)

Sec. 9-4-40. - Exemptions.

This chapter shall not apply to:

- (a) Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste;
- (b) Bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities, as required by the U.S. Food and Drug Administration (FDA);
- (c) Bags used by a customer inside a business establishment to:
 - (1) Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
 - (2) Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
 - (3) Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or
 - (4) Contain unwrapped prepared foods or bakery goods; and
- (d) Bags of any type that the customer bring to the store for their own use for carrying away from the store goods that are not placed in a bag provided by the store.

(Ord. No. 2018-01, § 1, 1-9-18)

Sec. 9-4-50. - Penalties.

- (a) Any business establishment that violates or fails to comply with any of the provisions of this chapter after a written warning notice has been issued for that violation shall be deemed guilty of a misdemeanor. The penalty shall not exceed one hundred dollars (\$100.00) for a first violation; two hundred dollars (\$200.00) for a second violation within any twelve-month period; and five hundred dollars (\$500.00) for each additional violation within any twelve-month period. Each day that a violation continues will constitute a separate offense.
- (b) In addition to the penalties set forth in this section, repeated violations of this chapter by a person who owns, manages, operates, is a business agent of, or otherwise controls a business establishment may result in the suspension or revocation of the business license issued to the premises on which the violations occurred. No business license shall be issued or renewed until all fines outstanding against the applicant for violations of this chapter are paid in full.
- (c) Violation of this chapter is hereby declared to be a public nuisance, which may be abated by the town by restraining order, preliminary and permanent injunction, or other means provided for by law, and the town may take action to recover the costs of the nuisance abatement.

(Ord. No. 2018-01, § 1, 1-9-18)

ARTICLE VI. - REGULATIONS AND REQUIREMENTS RELATING TO THE USE OF SINGLE-USE PLASTIC BAGS
IN THE TOWN OF BLUFFTON

Sec. 12-151. - Purpose and intent.

This article is adopted to improve the environment of the Town by encouraging the use of reusable checkout bags and recyclable paper carryout bags and banning the use of single-use plastic bags for retail checkout of purchased goods. Business establishments are encouraged to make reusable carryout bags available for sale, to make recyclable paper carryout bags available for distribution and to continue offering bins for all recyclable products including but not limited to plastic products.

(Ord. No. [2018-02](#), § 1(Exh. A), 2-13-2018)

Sec. 12-152. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Business establishment.* Any commercial enterprise that provides carryout bags to its customers through its employees or independent contractors associated with the business. The term includes sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity, whether for profit or not for profit.
- (2) *Single-use plastic carryout bag.* A bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases, which is made predominantly of plastic derived from either petroleum or a biologically-based source. "Single-use plastic carryout bag" includes compostable and biodegradable bags, but does not include reusable carryout bags.
- (3) *Reusable carryout bag.* A carryout bag that is specifically designed and manufactured for multiple reuses, and meets the following criteria:
 - a. Displays in a highly visible manner on the bag exterior, language describing the bag's ability to be reused and recycled;
 - b. Has a handle; except that handles are not required for carryout bags constructed out of recyclable paper with a height of less than 14 inches and width of less than eight inches; and
 - c. Is constructed out of any of the following materials:
 1. Cloth, other washable fabric, or other durable materials, whether woven or non-woven; or
 2. Recyclable plastic, with a minimum thickness of 2.25 mils.
- (4) *Customer.* A person who purchases or obtains goods or merchandise from a business establishment.

(Ord. No. [2018-02](#), § 1(Exh. A), 2-13-2018)

Sec. 12-153. - Prohibitions.

- (a) No person may provide single-use plastic carryout bags at any Town facility, Town-sponsored event, or any event held on Town property.
- (b) No business establishment within the Town may provide single-use plastic carryout bags to its customers.

- (c) Business establishments within the Town are strongly encouraged to provide prominently displayed signage advising customers of the benefit of reducing, reusing and recycling and promoting the use of reusable carryout bags and recyclable paper carryout bags by customers.
- (d) All business establishments are encouraged to provide or make available to a customer reusable carryout bags or recyclable paper bags.

(Ord. No. [2018-02](#), § 1(Exh. A), 2-13-2018)

Sec. 12-154. - Exemptions.

This article shall not apply to:

- (1) Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste;
- (2) Bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities;
- (3) Bags used by a customer inside a business establishment to:
 - a. Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
 - b. Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
 - c. Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or
 - d. Contain unwrapped prepared foods or bakery goods; and
- (4) Bags of any type that the customer brings to the business establishment for their own use for carrying away from the business establishment goods that are not placed in a bag provided by the business establishment.

(Ord. No. [2018-02](#), § 1(Exh. A), 2-13-2018)

Sec. 12-155. - Penalties.

- (a) Any business establishment that violates or fails to comply with any of the provisions of this article after a written warning notice has been issued for that violation shall be deemed guilty of a misdemeanor. The penalty shall not exceed \$100.00 for a first violation; \$200.00 for a second violation within any 12-month period; and \$500.00 for each additional violation within any 12-month period. Each day that a violation continues will constitute a separate offense.
- (b) In addition to the penalties set forth in this section, repeated violations of this article by a person who owns, manages, operates, is a business agent of, or otherwise controls a business establishment may result in the suspension or revocation of the business license issued to the premises on which the violations occurred. No business license shall be issued or renewed until all fines outstanding against the applicant for violations of this article are paid in full.
- (c) Violation of this article is hereby declared to be a public nuisance, which may be abated by the Town by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Town may take action to recover the costs of the nuisance abatement.

(Ord. No. [2018-02](#), § 1(Exh. A), 2-13-2018)

ARTICLE IV. - SINGLE-USE PLASTIC BAGS

Sec. 10-91. - Adopted by reference.

Beaufort County Ordinance Chapter 38, Article 6 (Single-Use Plastic Bags), is hereby adopted by reference, with the exception of section 38-163(D) requiring all business establishments to provide to customers reusable carryout bags or recyclable paper bags. A copy of the county ordinance is hereby made a part of this chapter as fully and completely as if the same were set forth herein verbatim. A copy of the county ordinance is on file in the office of the municipal clerk, and is attached to the ordinance from which this article is derived as Exhibit A for the language of the new ordinance.

(Ord. No. 2017-25, § 1, 2-14-18)

ARTICLE VI. - SINGLE-USE PLASTIC BAGS

Sec. 38-161. - Purpose and intent.

This article is adopted to improve the environment of the county by encouraging the use of reusable checkout bags and recyclable paper carryout bags and banning the use of single-use plastic bags for retail checkout of purchased goods. Business establishments are encouraged to make reusable bags available for sale, to make recyclable paper carryout bags available for distribution and to continue offering bins for all recyclable products including, but not limited to, plastic products. This article does not impose a tax on the use of plastic products of any kind including, but not limited to, single use plastic bags.

([Ord. No. 2018/5, 1-22-2018](#))

Sec. 38-162. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business establishment. Any commercial enterprise that provides carryout bags to its customers through its employees or independent contractors associated with the business. The term includes sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity, whether for profit or not for profit.

Customer. A person who purchases merchandise from a business establishment.

Reusable carryout bag. A carryout bag that is specifically designed and manufactured for multiple reuse, and meets the following criteria:

- (1) Displays in a highly visible manner on the bag exterior, language describing the bag's ability to be reused and recycled;
- (2) Has a handle; except that handles are not required for carryout bags constructed out of recyclable paper with a height of less than 14 inches and width of less than eight inches; and
- (3) Is constructed out of any of the following materials:
 - (a) Cloth, other washable fabric, or other durable materials, whether woven or non-woven; or
 - (b) Recyclable plastic, with a minimum thickness of 2.25 mils;

Single-use plastic carryout bag. A bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases, which is made predominantly of plastic derived from either petroleum or a biologically based source. "Single-use plastic carryout bag" includes compostable and biodegradable bags, but does not include reusable carryout bags.

([Ord. No. 2018/5, 1-22-2018](#))

Sec. 38-163. - Regulations.

- (a) No person may provide single-use plastic carryout bags at any county facility, county-sponsored event, or any event held on county property.
- (b) No business establishment within the unincorporated county limits may provide single-use plastic carryout bags to its customers.
- (c) Business establishments within the county limits are strongly encouraged to provide prominently displayed signage advising customers of the benefit of reducing, reusing and recycling and promoting the use of reusable carryout bags and recyclable paper carryout bags by customers.

([Ord. No. 2018/5, 1-22-2018](#))

Sec. 38-164. - Exemptions.

This article shall not apply to:

- (a) Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste;
- (b) Bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities;
- (c) Bags used by a customer inside a business establishment to:
 - (1) Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
 - (2) Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
 - (3) Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or
 - (4) Contain unwrapped prepared foods or bakery goods; and
- (d) Bags of any type that the customer bring to the store for their own use for carrying away from the store goods that are not placed in a bag provided by the store.

([Ord. No. 2018/5, 1-22-2018](#))

Sec. 38-165. - Penalties.

- (a) Any business establishment that violates or fails to comply with any of the provisions of this chapter after a written warning notice has been issued for that violation shall be deemed guilty of a misdemeanor. The penalty shall not exceed \$100.00 for a first violation; \$200.00 for a second violation within any 12-month period; and \$500.00 for each additional violation within any 12-month period. Each day that a violation continues will constitute a separate offense.
- (b) In addition to the penalties set forth in this section, repeated violations of this chapter by a person who owns, manages, operates, is a business agent of, or otherwise controls a business establishment may result in the suspension or revocation of the business license issued to the premises on which the violations occurred. No business license shall be issued or renewed until all fines outstanding against the applicant for violations of this chapter are paid in full.
- (c) Violation of this chapter is hereby declared to be a public nuisance, which may be abated by the county by restraining order, preliminary and permanent injunction, or other means provided for by law, and the county may take action to recover the costs of the nuisance abatement.

([Ord. No. 2018/5, 1-22-2018](#))

Sec. 38-166. - Effective date and review.

- (a) The provisions of this article shall take effect eight months from the date county council enacts the ordinance codified in this article provided that the same or a substantially similar ordinance has been adopted by every municipality in Beaufort County. If the same or substantially similar ordinance has not been adopted by every municipality in Beaufort County on the date county council adopts this article, then this article shall take effect on the date the last municipality does adopt such an ordinance.
- (b) Provided this article takes effect, the county will implement a program to evaluate the success of this article by soliciting input, including statistical data, from all parties and organizations with an

interest in this legislation. County council will review the evaluation three years from the date this article goes into effect.

([Ord. No. 2018/5, 1-22-2018](#))

AN ORDINANCE ADDING TITLE IX, CHAPTER 103: SINGLE-USE PLASTIC BAGS TO THE CITY OF CAMDEN CODE OF ORDINANCES TO ENCOURAGE THE USE OF REUSABLE CHECKOUT BAGS AND RECYCLABLE PAPER CARRYOUT BAGS AND BANNING THE USE OF SINGLE-USE PLASTIC BAGS FOR RETAIL CHECKOUT OF PURCHASED GOODS IN THE CITY LIMITS.

WHEREAS, the City of Camden, South Carolina (the “*City*”) was created as a municipal corporation under the laws of the State of South Carolina (the “*State*”); and

WHEREAS, the City desires to eliminate the use of single-use plastic bags in order to protect the wildlife of its surrounding waterways, maximize the operating life of landfills and lessen the economic and environmental costs of managing waste; and

WHEREAS, to discourage and decrease the use of single-use plastic bags in the City, it is necessary to regulate such use; and

NOW, THEREFORE, BEING DULY ASSEMBLED, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF CAMDEN AS FOLLOWS:

Title IX “GENERAL REGULATIONS”, Chapter 103 “SINGLE-USE PLASTIC BAGS” shall be added to the City’s Code of Ordinances as follows:

Section 103.01 – Purpose

This chapter is adopted to improve the environment of the city by encouraging the use of reusable checkout bags and recyclable paper carryout bags and banning the use of single-use plastic bags for retail checkout of purchased goods. Business establishments are encouraged to make reusable bags available for sale and recyclable paper carryout bags available for distribution.

Section 103.02 – Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

BUSINESS ESTABLISHMENT. Any commercial enterprise that provides carryout bags to its customers through its employees or independent contractors associated with the business. The term includes sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity whether for profit or not for profit.

SINGLE-USE PLASTIC CARRYOUT BAG. A bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases, which is made predominantly of plastic derived from either petroleum or a biologically-based source. “Single-use plastic carryout bag” includes compostable and biodegradable bags but does not include reusable carryout bags.

REUSABLE CARRYOUT BAG. A carryout bag that is specifically designed and manufactured for multiple reuse, and meets the following criteria:

- (1) Displays in a highly visible manner on the bag exterior, language describing the bag's ability to be reused and recycled;
- (2) Has a handle; except that handles are not required for carryout bags constructed out of recyclable paper with a height of less than 14 inches and width of less than eight inches; and
- (3) Is constructed out of any of the following materials:
 - a. Cloth, other washable fabric, or other durable materials whether woven or non-woven;
 - b. Recyclable plastic, with a minimum thickness of 2.25 mils; or
 - c. Recyclable paper.

CUSTOMER. A person who purchases merchandise from a business establishment.

Section 103.03 – Regulations

- (1) No person may provide single-use carryout bags at any city facility, city-sponsored event, or any event held on city property.
- (2) No business establishment within the city limits may provide single-use carryout bags to its customers.
- (3) Business establishments within the city limits are strongly encouraged to provide prominently displayed signage advising customers of the benefit of reducing, reusing and recycling and promoting the use of reusable carryout bags by customers.
- (4) A business establishment within the city limits may provide or sell reusable carryout bags to its customers or any person. Subject to hours of operation and applicable regulations regarding the use of public property, including those pertaining to solicitation and commercial activities on public property, a person may provide or sell reusable carryout bags at any city facility, city-sponsored event, or any event held on city property.

Section 103.04 – Exemptions

This chapter shall not apply to:

- (1) Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste;
- (2) Bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities;
- (3) Bags used by a customer inside a business establishment to:
 - a. Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
 - b. Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
 - c. Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or

- d. Contain unwrapped prepared foods or bakery goods;
- (6) Bags of any type that the customer brings to the store for their own use for carrying away from the store goods that are not placed in a bag provided by the store.

Section 103.05 – Penalties

- (1) Any business establishment that violates or fails to comply with any of the provisions of this chapter after a written warning notice has been issued for that violation shall be deemed guilty of a misdemeanor. The penalty shall not exceed \$100 for a first violation; \$200 for a second violation within any 12-month period; and \$500 for each additional violation within any 12-month period. Each day that a violation continues will constitute a separate offense.
- (2) In addition to the penalties set forth in this section, repeated violations of this chapter by a person who owns, manages, operates, is a business agent of, or otherwise controls a business establishment may result in the suspension or revocation of the business license issued to the premises on which the violations occurred. No city business license shall be issued or renewed until all fines outstanding against the applicant for violations of this chapter are paid in full.
- (3) Violations of this chapter is hereby declared to be a public nuisance, which may be abated by the city by restraining order, preliminary and permanent injunction, or other means provided for by law, and the city may take action to recover the costs of the nuisance abatement.

Section 103.06 – Effective Date and Waivers

All of the requirements set forth in this chapter shall take effect six months from the date of the second reading before City Council. In the event that compliance with the effective date of this chapter is not feasible for a business establishment because of either unavailability of alternative carryout bags or economic hardship, City Council may grant a waiver of not more than 12 months upon application of the business owner or owner’s representative.

DONE AND ORDAINED IN COUNCIL ASSEMBLED, this ____ day of _____, 2019.

CITY OF CAMDEN, SOUTH CAROLINA

(SEAL)

By: _____
Alfred May Drakeford, Mayor

Attest:

By: _____
Brenda Davis, City Clerk
City of Camden, South Carolina

First Reading:
Second Reading:

South Carolina General Assembly
123rd Session, 2019-2020

H. 3371

STATUS INFORMATION

General Bill

Sponsors: Rep. Gilliard

Document Path: I:\council\bill\ncd\11030cz19.docx

Introduced in the House on January 8, 2019

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: Plastic bags

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
12/18/2018	House	Prefiled
12/18/2018	House	Referred to Committee on Labor, Commerce and Industry
1/8/2019	House	Introduced and read first time (House Journal-page 213)
1/8/2019	House	Referred to Committee on Labor, Commerce and Industry (House Journal-page 213)

View the latest [legislative information](#) at the website

VERSIONS OF THIS BILL

[12/18/2018](#)

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A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 77 TO TITLE 39 SO AS TO PROHIBIT A STORE IN THIS STATE FROM PROVIDING A SINGLE USE PLASTIC BAG TO A CUSTOMER.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 39 of the 1976 Code is amended by adding:

“CHAPTER 77

Single Use Plastic Bags

Section 39-77-10. As used in this chapter:

(1) ‘Produce bag’ or ‘product bag’ means a bag without handles used exclusively to carry produce, meats, other food items, or merchandise to the point of sale inside a store or to prevent the items from coming into direct contact with each other.

(2) ‘Single use plastic bag’ means a bag made of plastic or similar material that is not recyclable and is provided at the checkout stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment. The term does not include product bags, produce bags, or bags provided by pharmacists to transport prescription drugs.

(3) ‘Store’ means a retail establishment located in this State that is a:

(a) full-line, self-service market located in a permanent building that operates year round that sells a line of staple foods, meats, produce, household supplies, dairy products, or other perishable items at retail;

[3371]

1 (b) drug store, pharmacy, supermarket, grocery store,
2 convenience food store, food mart, or other entity engaged in the
3 retail sale of a limited line of goods that include milk, bread, soda,
4 and snack food; or

5 (c) store engaged in the retail sale of household supplies,
6 hardware, plumbing supplies, electrical supplies, and miscellaneous
7 merchandise or other items customarily placed in single-use
8 carryout bags.

9 The term 'store' does not include businesses where the sale of
10 prepared food is the essential part of the business or where the sale
11 of food is an incidental part of the business. Food sales are
12 considered incidental if the sales compromise no more than two
13 percent of the business's gross sales as measured by the dollar value
14 of food sales as a percentage of the dollar value of total sales at a
15 single location.

16
17 Section 39-77-20. No store in this State may provide a customer
18 with a single use plastic bag.”

19
20 SECTION 2. This act takes effect upon approval by the Governor.

21 ----XX----

22

South Carolina General Assembly
122nd Session, 2017-2018

H. 3529

STATUS INFORMATION

General Bill

Sponsors: Reps. Bedingfield, Sandifer, Hamilton, Forrester, Atwater, Yow, Clemmons, Crawford, Fry, Hill, Lowe, Pitts, Putnam, Anderson, Martin, G.R. Smith, Williams, Hixon, Henegan and Henderson
Document Path: l:\council\ills\dka\3054sa17.docx

Introduced in the House on January 18, 2017

Introduced in the Senate on February 8, 2018

Last Amended on February 7, 2018

Currently residing in the Senate

Summary: Auxiliary containers

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/18/2017	House	Introduced and read first time (House Journal-page 19)
1/18/2017	House	Referred to Committee on Labor, Commerce and Industry (House Journal-page 19)
1/19/2017	House	Member(s) request name added as sponsor: Putnam
1/25/2017	House	Member(s) request name added as sponsor: Henderson
2/1/2017	House	Member(s) request name removed as sponsor: Henderson
2/2/2017	House	Member(s) request name added as sponsor: Anderson
2/2/2017	House	Committee report: Favorable with amendment Labor, Commerce and Industry (House Journal-page 1)
2/7/2017	House	Member(s) request name added as sponsor: Martin, G.R.Smith
2/7/2017	House	Requests for debate-Rep(s). Bedingfield, Toole, Brown, Hiott, Mack, Cogswell, Crosby, Danning, Arrington, Clary, Bernstein, Stavrinakis, McCoy, Henderson, Burns, B Newton, Martin, Forrester, Robinson-Simpson, Dilliard, Mitchell, Norrell, GR Smith, VS Moss, Cobb-Hunter, McEachern, Ridgeway, Douglas, W Newton, Erickson, Clemmons, Williams, Ott, Knight, King, Bradley, Finlay, Henegan, Johnson, S Rivers, Yow, Jefferson (House Journal-page 16)
2/23/2017	House	Debate adjourned until Tues., 2-28-17 (House Journal-page 12)
2/28/2017	House	Debate adjourned until Wed., 3-1-17 (House Journal-page 12)
3/1/2017	House	Debate adjourned until Thur., 3-1-17 (House Journal-page 14)
3/2/2017	House	Debate adjourned until Tues., 3-7-17 (House Journal-page 28)
3/7/2017	House	Amended (House Journal-page 83)
3/7/2017	House	Continued (House Journal-page 83)
1/10/2018	House	Debate adjourned until Wed., 1-24-18 (House Journal-page 14)
1/25/2018	House	Debate adjourned until Tues., 1-30-18 (House Journal-page 53)
1/30/2018	House	Member(s) request name added as sponsor: Henderson
1/31/2018	House	Member(s) request name added as sponsor: Williams, Hixon, McGinnis
2/1/2018	House	Member(s) request name removed as sponsor: McGinnis
2/7/2018	House	Member(s) request name added as sponsor: Henegan
2/7/2018	House	Amended (House Journal-page 21)
2/7/2018	House	Read second time (House Journal-page 47)
2/7/2018	House	Roll call Yeas-73 Nays-41 (House Journal-page 47)

2/8/2018 House Read third time and sent to Senate ([House Journal-page 22](#))
2/8/2018 Senate Introduced and read first time ([Senate Journal-page 10](#))
2/8/2018 Senate Referred to Committee on **Labor, Commerce and Industry** ([Senate Journal-page 10](#))
4/17/2018 Senate Committee report: Favorable with amendment **Labor, Commerce and Industry** ([Senate Journal-page 8](#))
4/18/2018 Scrivener's error corrected

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VERSIONS OF THIS BILL

[1/18/2017](#)

[2/2/2017](#)

[3/7/2017](#)

[2/7/2018](#)

[4/17/2018](#)

[4/18/2018](#)

1 COMMITTEE REPORT

2 April 17, 2018

3

4

H. 3529

5

6 Introduced by Reps. Bedingfield, Sandifer, Hamilton, Forrester,
7 Atwater, Yow, Clemmons, Crawford, Fry, Hill, Lowe, Pitts,
8 Putnam, Anderson, Martin, G.R. Smith, Williams, Hixon, Henegan
9 and Henderson

10

11 S. Printed 4/17/18--S. [SEC 4/18/18 10:59 AM]

12 Read the first time February 8, 2018.

13

14

15

**THE COMMITTEE ON
LABOR, COMMERCE AND INDUSTRY**

16

17 To whom was referred a Bill (H. 3529) to amend the Code of
18 Laws of South Carolina, 1976, by adding Chapter 77 to Title 39 so
19 as to provide that any regulation regarding the use, disposition, sale,
20 etc., respectfully

21

REPORT:

22

23 That they have duly and carefully considered the same and
24 recommend that the same do pass with amendment:

24

25 Amend the bill, as and if amended, page 2, by striking lines 26
26 through 30 and inserting:

27

28 / (C) Nothing in this chapter may be construed as applying to
29 the use of auxiliary containers within the boundaries of a state,
30 county, or municipal park; on a property owned by a county or
31 municipality, including, but not limited to, coastal tidelands and
32 wetlands; or on a public beach, river, or other body of water
33 maintained by a county or municipality. A county or municipality
34 that elects to enact an ordinance pertaining to the use of auxiliary
35 containers on the exempted properties listed herein may fine a
36 person or business in violation of the ordinance up to one thousand
37 dollars per violation. /

37

Renumber sections to conform.

38

Amend title to conform.

39

40 THOMAS C. ALEXANDER for Committee.

41

42

[3529-1]

1 **STATEMENT OF ESTIMATED FISCAL IMPACT**

2 **Explanation of Fiscal Impact**

3 **Local Expenditure**

4 This bill defines an auxiliary container as a bag, cup, package,
5 container, bottle, or other packaging that is designed to consume or
6 transport food or beverage from a food service or retail facility. This
7 bill restricts enacting laws and regulations regarding the use, sale,
8 or taxation of auxiliary containers to the General Assembly. Any
9 county or municipality that has ordinances or regulations pertaining
10 to the use, sale, or taxation of auxiliary containers is superseded by
11 this bill. The provisions of this bill do not apply to the use of
12 auxiliary containers within the boundaries of state parks, coastal
13 tidelands, wetlands, or public beaches maintained by any county or
14 municipality.

15 The provisions of this bill do not apply to auxiliary container
16 regulations adopted before January 31, 2018, including regulations
17 with a delayed implementation date or that are conditioned on future
18 municipal action. A municipality located within a county that has
19 adopted an ordinance before January 31, 2018, may pass the same
20 or similar ordinance as the county within which it is located.

21 The Revenue and Fiscal Affairs Office contacted forty-six
22 counties and the Municipal Association of South Carolina (MASC)
23 regarding the expenditure impact of this bill. Charleston, Clarendon,
24 Fairfield, Florence, Greenville, Hampton, Horry, Lancaster, and
25 Pickens counties all indicated there will be no expenditure impact
26 since they do not have auxiliary container ban ordinances in their
27 localities. On the municipal level, the Isle of Palms banned
28 businesses from offering auxiliary containers in 2015 and Folly
29 Beach did the same in 2016. In each case, there was no expected
30 cost associated with enforcing the ban. Additionally, this bill would
31 not affect their auxiliary container bans because their ordinances
32 went into effect prior to January 31, 2018. The MASC indicated they
33 do not expect an expenditure impact from this bill for all other
34 municipalities.

35

36 Frank A. Rainwater, Executive Director

37 Revenue and Fiscal Affairs Office

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[3529-2]

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A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 77 TO TITLE 39 SO AS TO PROVIDE THAT ANY REGULATION REGARDING THE USE, DISPOSITION, SALE, OR ANY IMPOSITION OF ANY PROHIBITION, RESTRICTION, FEE IMPOSITION, OR TAXATION OF AUXILIARY CONTAINERS MUST BE DONE ONLY BY THE GENERAL ASSEMBLY, TO DEFINE AUXILIARY CONTAINER, TO PROVIDE FOR LEGISLATIVE FINDINGS, AND TO PROVIDE FOR EXCEPTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 39 of the 1976 Code is amended by adding:

“CHAPTER 77

Auxiliary Containers

- Section 39-77-10. The General Assembly finds that:
- (1) prudent regulation of auxiliary containers is crucial to the welfare of the state’s economy;
 - (2) retail and food establishments are sensitive to the costs and regulation of auxiliary containers; and
 - (3) if individual political subdivisions of the State regulate auxiliary containers, there exists the potential for varying regulations which could lead to unnecessary increased costs for retail and food establishments to comply with the regulations.

Section 39-77-20. As used in this chapter, ‘auxiliary container’ means a bag, cup, package, container, bottle, or other packaging that is:

- 1 (1) designed to be either reusable or single-use;
2 (2) made of cloth, paper, plastic, including foamed or expanded
3 plastic, cardboard, expanded polystyrene, corrugated material,
4 aluminum, glass, postconsumer recycled, or similar material or
5 substrates, including coated, laminated, or multilayer substrates; and
6 (3) designed for, but not limited to, consuming, transporting, or
7 protecting merchandise, food, or beverages from or at a food service
8 or retail facility.

9
10 Section 39-77-30. (A) Any regulation regarding the use,
11 disposition, sale, or any imposition of any prohibition, restriction,
12 fee imposition, or taxation of auxiliary containers must be done only
13 by the General Assembly. This chapter supersedes and preempts any
14 ordinance enacted by a political subdivision that purports to regulate
15 the use, disposition, sale, or any imposition of any prohibition,
16 restriction, fee imposition, or taxation of auxiliary containers at the
17 retail, manufacturer, or distributor level.

18 (B) Nothing in this chapter may be construed to prohibit or limit
19 any county or municipal ordinance regulating solid waste, any
20 agreement pertaining to the disposal of solid waste, curbside
21 recycling program, designated residential or commercial recycling
22 locations, or commercial recycling program.

23 (C) The provisions of this chapter do not apply to the use of
24 auxiliary containers within the boundaries of a State park, on a
25 property owned by a county or municipality including, but not
26 limited to, coastal tidelands and wetlands, or on a public beach,
27 river, or other body of water maintained by a county or municipality.

28 (D) The provisions of this chapter do not apply to auxiliary
29 container regulations adopted before January 31, 2018, including
30 regulations with a delayed implementation date or that are
31 conditioned on future municipal action. A municipality located
32 within a county that has adopted an ordinance before January 31,
33 2018, may pass the same or similar ordinance as the county within
34 which it is located.”

35
36 SECTION 2. This act takes effect upon approval by the Governor.

37 ----XX----

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Senate Bill No. 270

CHAPTER 850

An act to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste, and making an appropriation therefor.

[Approved by Governor September 30, 2014. Filed with
Secretary of State September 30, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 270, Padilla. Solid waste: single-use carryout bags.

(1) Existing law, until 2020, requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store.

This bill, as of July 1, 2015, would prohibit stores that have a specified amount of sales in dollars or retail floor space from providing a single-use carryout bag to a customer, with specified exceptions. The bill would also prohibit those stores from selling or distributing a recycled paper bag at the point of sale unless the store makes that bag available for purchase for not less than \$0.10. The bill would also allow those stores, on or after July 1, 2015, to distribute compostable bags at the point of sale only in jurisdictions that meet specified requirements and at a cost of not less than \$0.10. The bill would require these stores to meet other specified requirements on and after July 1, 2015, regarding providing reusable grocery bags to customers, including distributing those bags only at a cost of not less than \$0.10. The bill would require all moneys collected pursuant to these provisions to be retained by the store and be used only for specified purposes.

The bill, on and after July 1, 2016, would additionally impose these prohibitions and requirements on convenience food stores, foodmarts, and entities engaged in the sale of a limited line of goods, or goods intended to be consumed off premises, and that hold a specified license with regard to alcoholic beverages.

The bill would allow a retail establishment to voluntarily comply with these requirements, if the retail establishment provides the department with irrevocable written notice. The bill would require the department to post on its Internet Web site, organized by county, the name and physical location of each retail establishment that has elected to comply with these requirements.

The bill would require the operator of a store that has a specified amount of sales in dollars or retail floor space and a retail establishment that voluntarily complies with the requirements of this bill to comply with the existing at-store recycling program requirements.

The bill would require, on and after July 1, 2015, a reusable grocery bag sold by certain stores to a customer at the point of sale to be made by a certified reusable grocery bag producer and to meet specified requirements with regard to the bag's durability, material, labeling, heavy metal content, and, with regard to reusable grocery bags made from plastic film on and after January 1, 2016, recycled material content. The bill would impose these requirements as of July 1, 2016, on the stores that are otherwise subject to the bill's requirements.

The bill would prohibit a producer of reusable grocery bags made from plastic film from selling or distributing those bags on and after July 1, 2015, unless the producer is certified by a 3rd-party certification entity, as specified. The bill would require a reusable grocery bag producer to provide proof of certification to the department. The bill would require the department to provide a system to receive proofs of certification online.

The department would be required to publish on its Internet Web site a list of reusable grocery bag producers that have submitted the required certification and their reusable grocery bags. The bill would require the department to establish an administrative certification fee schedule, which would require a reusable grocery bag producer providing proof to the department of certification or recertification to pay a fee. The bill would require that all moneys submitted to the department pursuant to these fee provisions be deposited into the Reusable Grocery Bag Fund, which would be established by the bill, and continuously appropriated for purposes of implementing these proof of certification and Internet Web site provisions, thereby making an appropriation. The bill would also require a reusable grocery bag producer to submit applicable certified test results to the department. The bill would authorize a person to object to a certification of a reusable grocery bag producer by filing an action for review of that certification in the superior court of a county that has jurisdiction over the reusable grocery bag producer. The bill would require the court to determine if the reusable grocery bag producer is in compliance with the provisions of the bill and, based on the court's determination, would require the court to direct the department to either remove or retain the reusable grocery bag producer on its published Internet Web site list.

The bill would allow a city, county, or city and county, or the state to impose civil penalties on a person or entity that knows or reasonably should have known it is in violation of the bill's requirements. The bill would require these civil penalties to be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, and would allow the penalties collected by the Attorney General to be expended by the Attorney General, upon appropriation by the Legislature, to enforce the bill's provisions.

The bill would declare that it occupies the whole field of the regulation of reusable grocery bags, single-use carryout bags, and recycled paper bags provided by a store and would prohibit a local public agency from enforcing or implementing an ordinance, resolution, regulation, or rule, or any

amendment thereto, adopted on or after September 1, 2014, relating to those bags, against a store, except as provided.

(2) The California Integrated Waste Management Act of 1989 creates the Recycling Market Development Revolving Loan Subaccount in the Integrated Waste Management Account and continuously appropriates the funds deposited in the subaccount to the department for making loans for the purposes of the Recycling Market Development Revolving Loan Program. Existing law makes the provisions regarding the loan program, the creation of the subaccount, and expenditures from the subaccount inoperative on July 1, 2021, and repeals them as of January 1, 2022.

This bill would appropriate \$2,000,000 from the Recycling Market Development Revolving Loan Subaccount in the Integrated Waste Management Account to the department for the purposes of providing loans for the creation and retention of jobs and economic activity in California for the manufacture and recycling of plastic reusable grocery bags that use recycled content. The bill would require a recipient of a loan to agree, as a condition of receiving the loan, to take specified actions.

(3) The bill would require the department, no later than March 1, 2018, to provide a status report to the Legislature on the implementation of the bill's provisions.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 5.3 (commencing with Section 42280) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

Article 1. Definitions

42280. (a) "Department" means the Department of Resources Recycling and Recovery.

(b) "Postconsumer recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

(c) "Recycled paper bag" means a paper carryout bag provided by a store to a customer at the point of sale that meets all of the following requirements:

(1) (A) Except as provided in subparagraph (B), contains a minimum of 40 percent postconsumer recycled materials.

(B) An eight pound or smaller recycled paper bag shall contain a minimum of 20 percent postconsumer recycled material.

(2) Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the state.

(3) Has printed on the bag the name of the manufacturer, the country where the bag was manufactured, and the minimum percentage of postconsumer content.

(d) “Reusable grocery bag” means a bag that is provided by a store to a customer at the point of sale that meets the requirements of Section 42281.

(e) (1) “Reusable grocery bag producer” means a person or entity that does any of the following:

(A) Manufactures reusable grocery bags for sale or distribution to a store.

(B) Imports reusable grocery bags into this state, for sale or distribution to a store.

(C) Sells or distributes reusable bags to a store.

(2) “Reusable grocery bag producer” does not include a store, with regard to a reusable grocery bag for which there is a manufacturer or importer, as specified in subparagraph (A) or (B) of paragraph (1).

(f) (1) “Single-use carryout bag” means a bag made of plastic, paper, or other material that is provided by a store to a customer at the point of sale and that is not a recycled paper bag or a reusable grocery bag that meets the requirements of Section 42281.

(2) A single-use carryout bag does not include either of the following:

(A) A bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code to a customer purchasing a prescription medication.

(B) A nonhandled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag, a reusable grocery bag, or a compostable plastic bag.

(C) A bag provided to contain an unwrapped food item.

(D) A nonhandled bag that is designed to be placed over articles of clothing on a hanger.

(g) “Store” means a retail establishment that meets any of the following requirements:

(1) A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000) or more that sells a line of dry groceries, canned goods, or nonfood items, and some perishable items.

(2) Has at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

(3) Is a convenience food store, foodmart, or other entity that is engaged in the retail sale of a limited line of goods, generally including milk, bread, soda, and snack foods, and that holds a Type 20 or Type 21 license issued by the Department of Alcoholic Beverage Control.

(4) Is a convenience food store, foodmart, or other entity that is engaged in the retail sale of goods intended to be consumed off the premises, and that holds a Type 20 or Type 21 license issued by the Department of Alcoholic Beverage Control.

(5) Is not otherwise subject to paragraph (1), (2), (3), or (4), if the retail establishment voluntarily agrees to comply with the requirements imposed upon a store pursuant to this chapter, irrevocably notifies the department of its intent to comply with the requirements imposed upon a store pursuant to this chapter, and complies with the requirements established pursuant to Section 42284.

Article 2. Reusable Grocery Bags

42281. (a) On and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, may sell or distribute a reusable grocery bag to a customer at the point of sale only if the reusable bag is made by a producer certified pursuant to this article to meet all of the following requirements:

(1) Has a handle and is designed for at least 125 uses, as provided in this article.

(2) Has a volume capacity of at least 15 liters.

(3) Is machine washable or made from a material that can be cleaned and disinfected.

(4) Has printed on the bag, or on a tag attached to the bag that is not intended to be removed, and in a manner visible to the consumer, all of the following information:

(A) The name of the manufacturer.

(B) The country where the bag was manufactured.

(C) A statement that the bag is a reusable bag and designed for at least 125 uses.

(D) If the bag is eligible for recycling in the state, instructions to return the bag to the store for recycling or to another appropriate recycling location. If recyclable in the state, the bag shall include the chasing arrows recycling symbol or the term “recyclable,” consistent with the Federal Trade Commission guidelines use of that term, as updated.

(5) Does not contain lead, cadmium, or any other toxic material that may pose a threat to public health. A reusable bag manufacturer may demonstrate compliance with this requirement by obtaining a no objection letter from the federal Food and Drug Administration. This requirement shall not affect any authority of the Department of Toxic Substances Control pursuant to Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20 of the Health and Safety Code and, notwithstanding subdivision (c) of Section 25257.1 of the Health and Safety Code, the reusable grocery bag shall not be considered as a product category already regulated or subject to regulation.

(6) Complies with Section 260.12 of Part 260 of Title 16 of the Code of Federal Regulations related to recyclable claims if the reusable grocery bag producer makes a claim that the reusable grocery bag is recyclable.

(b) (1) In addition to the requirements in subdivision (a), a reusable grocery bag made from plastic film shall meet all of the following requirements:

(A) On and after January 1, 2016, it shall be made from a minimum of 20 percent postconsumer recycled material.

(B) On and after January 1, 2020, it shall be made from a minimum of 40 percent postconsumer recycled material.

(C) It shall be recyclable in this state, and accepted for return at stores subject to the at-store recycling program (Chapter 5.1 (commencing with Section 42250)) for recycling.

(D) It shall have, in addition to the information required to be printed on the bag or on a tag, pursuant to paragraph (4) of subdivision (a), a statement that the bag is made partly or wholly from postconsumer recycled material and stating the postconsumer recycled material content percentage, as applicable.

(E) It shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses and be at least 2.25 mils thick, measured according to the American Society of Testing and Materials (ASTM) Standard D6988-13.

(2) A reusable grocery bag made from plastic film that meets the specifications of the American Society of Testing and Materials (ASTM) International Standard Specification for Compostable Plastics D6400, as updated, is not required to meet the requirements of subparagraph (A) or (B) of paragraph (1), but shall be labeled in accordance with the applicable state law regarding compostable plastics.

(c) In addition to the requirements of subdivision (a), a reusable grocery bag that is not made of plastic film and that is made from any other natural or synthetic fabric, including, but not limited to, woven or nonwoven nylon, polypropylene, polyethylene-terephthalate, or Tyvek, shall satisfy all of the following:

(1) It shall be sewn.

(2) It shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses.

(3) It shall have a minimum fabric weight of at least 80 grams per square meter.

(d) On and after July 1, 2016, a store as defined in paragraph (3), (4), or (5) of subdivision (g) of Section 42280, shall comply with the requirements of this section.

42281.5. On and after July 1, 2015, a producer of reusable grocery bags made from plastic film shall not sell or distribute a reusable grocery bag in this state unless the producer is certified by a third-party certification entity pursuant to Section 42282. A producer shall provide proof of certification to the department demonstrating that the reusable grocery bags produced by the producer comply with the provisions of this article. The proof of certification shall include all of the following:

(a) Names, locations, and contact information of all sources of postconsumer recycled material and suppliers of postconsumer recycled material.

(b) Quantity and dates of postconsumer recycled material purchases by the reusable grocery bag producer.

(c) How the postconsumer recycled material is obtained.

(d) Information demonstrating that the postconsumer recycled material is cleaned using appropriate washing equipment.

42282. (a) Commencing on or before July 1, 2015, the department shall accept from a reusable grocery bag producer proof of certification conducted by a third-party certification entity, submitted under penalty of perjury, for each type of reusable grocery bag that is manufactured, imported, sold, or distributed in the state and provided to a store for sale or distribution, at the point of sale, that meets all the applicable requirements of this article. The proof of certification shall be accompanied by a certification fee, established pursuant to Section 42282.1.

(b) A reusable grocery bag producer shall resubmit to the department proof of certification as described in subdivision (a) on a biennial basis. A reusable grocery bag producer shall provide the department with an updated proof of certification conducted by a third-party certification entity if any modification that is not solely aesthetic is made to a previously certified reusable bag. Failure to comply with this subdivision shall result in removal of the relevant information posted on the department's Internet Web site pursuant to paragraphs (1) and (2) of subdivision (e) for each reusable bag that lacks an updated proof of certification conducted by a third-party certification entity.

(c) A third-party certification entity shall be an independent, accredited (ISO/IEC 17025) laboratory. A third-party certification entity shall certify that the producer's reusable grocery bags meet the requirements of Section 44281.

(d) The department shall provide a system to receive proofs of certification online.

(e) On and after July 1, 2015, the department shall publish a list on its Internet Web site that includes all of the following:

(1) The name, location, and appropriate contact information of certified reusable grocery bag producers.

(2) The reusable grocery bags of producers that have provided the required certification.

(f) A reusable grocery bag producer shall submit applicable certified test results to the department confirming that the reusable grocery bag meets the requirements of this article for each type of reusable grocery bag that is manufactured, imported, sold, or distributed in the state and provided to a store for sale or distribution.

(1) A person may object to the certification of a reusable grocery bag producer pursuant to this section by filing an action for review of that certification in the superior court of a county that has jurisdiction over the

reusable grocery bag producer. The court shall determine if the reusable grocery bag producer is in compliance with the requirements of this article.

(2) A reusable grocery bag producer whose certification is being objected to pursuant to paragraph (1) shall be deemed in compliance with this article pending a determination by the court.

(3) Based on its determination, the court shall direct the department to remove the reusable grocery bag producer from, or retain the reusable grocery bag producer on, its list published pursuant to subdivision (e).

(4) If the court directs the department to remove a reusable grocery bag producer from its published list, the reusable grocery bag producer shall remain off of the published list for a period of one year from the date of the court's determination.

42282.1. (a) A reusable grocery bag producer shall submit the fee established pursuant to subdivision (b) to the department when providing proof of certification or recertification pursuant to Sections 42281.5 and 42282.

(b) The department shall establish an administrative certification fee schedule that will generate fee revenues sufficient to cover, but not exceed, the department's reasonable costs to implement this article. The department shall deposit all moneys submitted pursuant to this section into the Reusable Grocery Bag Fund, which is hereby established in the State Treasury. Notwithstanding Section 11340 of the Government Code, moneys in the fund are continuously appropriated, without regard to fiscal year, to the department for the purpose of implementing this article.

Article 3. Single-Use Carryout Bags

42283. (a) Except as provided in subdivision (e), on and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, shall not provide a single-use carryout bag to a customer at the point of sale.

(b) (1) On and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, shall not sell or distribute a reusable grocery bag at the point of sale except as provided in this subdivision.

(2) On and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, may make available for purchase at the point of sale a reusable grocery bag that meets the requirements of Section 42281.

(3) On and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, that makes reusable grocery bags available for purchase pursuant to paragraph (2) shall not sell the reusable grocery bag for less than ten cents (\$0.10) in order to ensure that the cost of providing a reusable grocery bag is not subsidized by a customer who does not require that bag.

(c) (1) On and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, shall not sell or distribute a recycled paper bag except as provided in this subdivision.

(2) A store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, may make available for purchase a recycled paper bag. On and after July 1, 2015, the store shall not sell a recycled paper bag for less than ten cents (\$0.10) in order to ensure that the cost of providing a recycled paper bag is not subsidized by a consumer who does not require that bag.

(d) Notwithstanding any other law, on and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, that makes reusable grocery bags or recycled paper bags available for purchase at the point of sale shall provide a reusable grocery bag or a recycled paper bag at no cost at the point of sale to a customer using a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code or an electronic benefit transfer card issued pursuant to Section 10072 of the Welfare and Institutions Code.

(e) On and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, may distribute a compostable bag at the point of sale, if the compostable bag is provided to the consumer at the cost specified pursuant to paragraph (2), the compostable bag, at a minimum, meets the American Society for Testing and Materials (ASTM) International Standard Specification for Compostable Plastics D6400, as updated, and in the jurisdiction where the compostable bag is sold and in the jurisdiction where the store is located, both of the following requirements are met:

(1) A majority of the residential households in the jurisdiction have access to curbside collection of foodwaste for composting.

(2) The governing authority for the jurisdiction has voted to allow stores in the jurisdiction to sell to consumers at the point of sale a compostable bag at a cost not less than the actual cost of the bag, which the Legislature hereby finds to be not less than ten cents (\$0.10) per bag.

(f) A store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, shall not require a customer to use, purchase, or accept a single-use carryout bag, recycled paper bag, compostable bag, or reusable grocery bag as a condition of sale of any product.

42283.5. On and after July 1, 2016, a store, as defined in paragraph (3), (4), or (5) of subdivision (g) of Section 42280, shall comply with the same requirements of Section 42283 that are imposed upon a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280.

42283.6. (a) The operator of a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280 that makes recycled paper or reusable grocery bags available at the point of sale, shall be subject to the provisions of the at-store recycling program (Chapter 5.1 (commencing with Section 42250)).

(b) A store that voluntarily agrees to comply with the provisions of this article pursuant to subdivision (g) of Section 42280, shall also comply with

the provisions of the at-store recycling program (Chapter 5.1 (commencing with Section 42250)).

42283.7. All moneys collected pursuant to this article shall be retained by the store and may be used only for the following purposes:

- (a) Costs associated with complying with the requirements of this article.
- (b) Actual costs of providing recycled paper bags or reusable grocery bags.
- (c) Costs associated with a store's educational materials or educational campaign encouraging the use of reusable grocery bags.

42284. (a) A retail establishment not specifically required to comply with the requirements of this chapter is encouraged to reduce its distribution of single-use plastic carryout bags.

(b) Pursuant to the provisions of subdivision (g) of Section 42280, any retail establishment that is not a "store," that provides the department with the irrevocable written notice as specified in subdivision (c), shall be regulated as a "store" for the purposes of this chapter.

(c) The irrevocable written notice shall be dated and signed by an authorized representative of the retail establishment, and shall include the name and physical address of all retail locations covered by the notice. The department shall acknowledge receipt of the notice in writing and shall specify the date the retail establishment will be regulated as a "store," which shall not be less than 30 days after the date of the department's acknowledgment. The department shall post on its Internet Web site, organized by county, the name and physical location or locations of each retail establishment that has elected to be regulated as a "store."

Article 4. Enforcement

42285. (a) A city, a county, a city and county, or the state may impose civil liability on a person or entity that knowingly violated this chapter, or reasonably should have known that it violated this chapter, in the amount of one thousand dollars (\$1,000) per day for the first violation of this chapter, two thousand dollars (\$2,000) per day for the second violation, and five thousand dollars (\$5,000) per day for the third and subsequent violations.

(b) Any civil penalties collected pursuant to subdivision (a) shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action. The penalties collected pursuant to this section by the Attorney General may be expended by the Attorney General, upon appropriation by the Legislature, to enforce this chapter.

Article 5. Preemption

42287. (a) Except as provided in subdivision (c), this chapter is a matter of statewide interest and concern and is applicable uniformly throughout the state. Accordingly, this chapter occupies the whole field of regulation

of reusable grocery bags, single-use carryout bags, and recycled paper bags, as defined in this chapter, provided by a store, as defined in this chapter.

(b) On and after January 1, 2015, a city, county, or other local public agency shall not enforce, or otherwise implement, an ordinance, resolution, regulation, or rule, or any amendment thereto, adopted on or after September 1, 2014, relating to reusable grocery bags, single-use carryout bags, or recycled paper bags, against a store, as defined in this chapter, unless expressly authorized by this chapter.

(c) (1) A city, county, or other local public agency that has adopted, before September 1, 2014, an ordinance, resolution, regulation, or rule relating to reusable grocery bags, single-use carryout bags, or recycled paper bags may continue to enforce and implement that ordinance, resolution, regulation, or rule that was in effect before that date. Any amendments to that ordinance, resolution, regulation, or rule on or after January 1, 2015, shall be subject to subdivision (b), except the city, county, or other local public agency may adopt or amend an ordinance, resolution, regulation, or rule to increase the amount that a store shall charge with regard to a recycled paper bag, compostable bag, or reusable grocery bag to no less than the amount specified in Section 42283.

(2) A city, county, or other local public agency not covered by paragraph (1) that, before September 1, 2014, has passed a first reading of an ordinance or resolution expressing the intent to restrict single-use carryout bags and, before January 1, 2015, adopts an ordinance to restrict single-use carryout bags, may continue to enforce and implement the ordinance that was in effect before January 1, 2015.

Article 6. Financial Provisions

42288. (a) Notwithstanding Section 42023.2, the sum of two million dollars (\$2,000,000) is hereby appropriated from the Recycling Market Development Revolving Loan Subaccount in the Integrated Waste Management Account to the department for the purposes of providing loans for the creation and retention of jobs and economic activity in this state for the manufacture and recycling of plastic reusable grocery bags that use recycled content, including postconsumer recycled material.

(b) The department may expend, if there are applicants eligible for funding from the Recycling Market Development Revolving Loan Subaccount, the funds appropriated pursuant to this section to provide loans for both of the following:

(1) Development and conversion of machinery and facilities for the manufacture of single-use plastic bags into machinery and facilities for the manufacturer of durable reusable grocery bags that, at a minimum, meet the requirements of Section 42281.

(2) Development of equipment for the manufacture of reusable grocery bags, that, at a minimum, meet the requirements of Section 42281.

(c) A recipient of a loan authorized by this section shall agree, as a condition of receiving the loan, to retain and retrain existing employees for the manufacturing of reusable grocery bags that, at a minimum, meet the requirements of Section 42281.

(d) Any moneys appropriated pursuant to this section not expended by the end of the 2015–16 fiscal year shall revert to the Recycling Market Development Revolving Loan Subaccount for expenditure pursuant to Article 3 (commencing with Section 42010) of Chapter 1.

(e) Applicants for funding under this section may also apply for funding or benefits from other economic development programs for which they may be eligible, including, but not limited to, both of the following:

(1) An income tax credit, as described in Sections 17059.2 and 23689 of the Revenue and Taxation Code.

(2) A tax exemption pursuant to Section 6377.1 of the Revenue and Taxation Code.

SEC. 2. No later than March 1, 2018, the department, as a part of its reporting requirement pursuant to Section 40507 of the Public Resources Code, shall provide a status report on the implementation of Chapter 5.3 (commencing with Section 42280) of Part 3 of Division 30 of the Public Resources Code.

O

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-163
SENATE BILL 1018**

AN ACT TO REDUCE PLASTIC AND NONRECYCLED PAPER BAG USE ON NORTH CAROLINA'S OUTER BANKS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2G. Plastic Bag Management.

"§ 130A-309.120. Findings.

The General Assembly makes the following findings:

- (1) Distribution of plastic bags by retailers to consumers for use in carrying, transporting, or storing purchased goods has a detrimental effect on the environment of the State.
- (2) Discarded plastic bags contribute to overburdened landfills, threaten wildlife and marine life, degrade the beaches and other natural landscapes of North Carolina's coast, and, in many cases, require consumption of oil and natural gas during the manufacturing process.
- (3) It is in the best interest of the citizens of this State to gradually reduce the distribution and use of plastic bags.
- (4) Environmental degradation is especially burdensome in counties with barrier islands where soundside and ocean pollution are more significant, where removing refuse from such isolated places is more difficult and expensive, where such refuse deters tourism, and where the presence of a National Wildlife Refuge or National Seashore shows that the federal government places special value on protecting the natural environment in that vicinity.
- (5) The barrier islands are most relevant in that they are where sea turtles come to nest. North Carolina has some of the most important sea turtle nesting areas on the East Coast, due to the proximity of the islands to the Gulf Stream. Plastic bag debris can be harmful to sea turtles and other land and marine life. The waters adjacent to the barrier islands, because they serve as habitat for the turtles, are particularly sensitive to waterborne debris pollution.
- (6) Inhabited barrier islands are visited by a high volume of tourists and therefore experience a high consumption of bags relative to their permanent population due to large numbers of purchases from restaurants, groceries, beach shops, and other retailers by the itinerant tourist population.
- (7) Barrier islands are small and narrow, and therefore the comparative impact of plastic bags on the barrier islands is high.

"§ 130A-309.121. Definitions.

As used in this Part, the following definitions apply:

- (1) Plastic bag. – A carryout bag composed primarily of thermoplastic synthetic polymeric material, which is provided by a store to a customer at the point of sale and incidental to the purchase of other goods.
- (2) Prepared foods retailer. – A retailer primarily engaged in the business of selling prepared foods, as that term is defined in G.S. 105-164.3, to consumers.
- (3) Recycled paper bag. – A paper bag that meets all of the following requirements:



- a. The bag is manufactured from one hundred percent (100%) recycled content, including postconsumer content, postindustrial content, or a mix of postconsumer and postindustrial content.
 - b. The bag displays the words "made from recycled material" and "recyclable."
- (4) Retail chain. – Five or more stores located within the State that are engaged in the same general field of business and (i) conduct business under the same business name or (ii) operate under common ownership or management or pursuant to a franchise agreement with the same franchisor.
 - (5) Retailer. – A person who offers goods for sale in this State to consumers and who provides a single-use plastic bag to the consumer to carry or transport the goods and (i) has more than 5,000 square feet of retail or wholesale space or (ii) is one of a retail chain.
 - (6) Reusable bag. – A durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse or a bag made of cloth or other machine washable fabric with handles.

"§ 130A-309.122. Certain plastic bags banned.

No retailer shall provide customers with plastic bags unless the bag is a reusable bag, or the bag is used solely to hold sales to an individual customer of otherwise unpackaged portions of the following items:

- (1) Fresh fish or fresh fish products.
- (2) Fresh meat or fresh meat products.
- (3) Fresh poultry or fresh poultry products.
- (4) Fresh produce.

"§ 130A-309.123. Substitution of paper bags restricted.

(a) A retailer subject to G.S. 130A-309.122 may substitute paper bags for the plastic bags banned by that section, but only if all of the following conditions are met:

- (1) The paper bag is a recycled paper bag.
- (2) The retailer offers one of the following incentives to any customer who uses the customer's own reusable bags instead of the bags provided by the retailer: (i) a cash refund; (ii) a store coupon or credit for general store use; or (iii) a value or reward under the retailer's customer loyalty or rewards program for general store use. The amount of the incentive shall be equal to or greater than the cost to the retailer of providing a recycled paper bag, multiplied by the number of reusable bags filled with the goods purchased by the customer.

(b) Nothing in this Part shall prevent a retailer from providing customers with reused packaging materials originally used for goods received from the retailer's wholesalers or suppliers.

(c) Notwithstanding subsection (a) of this section, a prepared foods retailer may package prepared foods in a recycled paper bag, regardless of the availability of a reusable bag, in order to comply with food sanitation or handling standards or best practices.

"§ 130A-309.124. Required signage.

A retailer subject to G.S. 130A-309.122 other than a prepared foods retailer shall display a sign in a location viewable by customers containing the following notice: "[county name] County discourages the use of single-use plastic and paper bags to protect our environment from excess litter and greenhouse gases. We would appreciate our customers using reusable bags, but if you are not able to, a 100% recycled paper bag will be furnished for your use." The name of the county where the retailer displaying the sign is located should be substituted for "[county name]" in the language set forth in this section.

"§ 130A-309.125. Applicability.

(a) This Part applies only in a county which includes a barrier island or barrier peninsula, in which the barrier island or peninsula meets both of the following conditions:

- (1) It has permanent inhabitation of 200 or more residents and is separated from the North Carolina mainland by a sound.
- (2) It contains either a National Wildlife Refuge or a portion of a National Seashore.

(b) Within any county covered by subsection (a) of this section, this Part applies only to an island or peninsula that both:

(1) Is bounded on the east by the Atlantic Ocean.

(2) Is bounded on the west by a coastal sound."

SECTION 2. G.S. 130A-22 reads as rewritten:

"§ 130A-22. Administrative penalties.

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any term or condition of a permit or order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifteen thousand dollars (\$15,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed thirty-two thousand five hundred dollars (\$32,500) per day in the case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars (\$50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed thirty-two thousand five hundred dollars (\$32,500) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). The penalty shall not exceed one hundred dollars (\$100.00) for a first violation; two hundred dollars (\$200.00) for a second violation within any 12-month period; and five hundred dollars (\$500.00) for each additional violation within any 12-month period for any violation of Part 2G of Article 9 of this Chapter. If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

...."

SECTION 3. This act becomes effective September 1, 2009, and applies to retail sales made on or after that date.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:35 p.m. this 24th day of June, 2009

Plastic Bag Reduction Ordinances: New York City’s Proposed Charge on All Carryout Bags as a Model for U.S. Cities

Jennie R. Romer*
Leslie Mintz Tamminen†

I.	INTRODUCTION	239
II.	PLASTIC BAG ORDINANCE STRUCTURE: BAN VERSUS CHARGE	241
	A. <i>“Straight” Plastic Bag Bans</i>	241
	1. Lawsuits Based on Environmental Claims in California	242
	2. Threats of Similar Lawsuits Based on Environmental Claims in New York State	244
	B. <i>Hybrid Bans and Charges Including Second-Generation Plastic Bag Bans</i>	245
	C. <i>Charges, Fees, and Taxes</i>	246
	1. How To Avoid the “Unconstitutional Tax” Argument: Let the Retailer Keep the Money	247
	2. The Ability of Local Governments To Collect “Regulatory Fees” for Bags Has Yet To Be Determined	248
III.	SPECIFIC CLAUSES TO BE INCLUDED IN ORDINANCES.....	249
	A. <i>Decide What Types of Businesses Should Be Covered</i>	249
	1. A Note About Restaurants	249
	2. State Regulation of Certain Types of Businesses.....	250

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- B. *Require Paper Bags Be Made from Postconsumer Recycled Content*.....250
- C. *Amount of Charge*.....251
- D. *How To Define “Reusable Bag”*251
 - 1. *Thickness*251
 - 2. *Durability Requirements*.....252
- E. *Make the Charge Apply to All Carryout Bags (Including Reusable Bags)*253
- F. *Make the First Violation a Warning*.....254
- G. *Include Exemptions for Certain Types of Bags*254
- H. *Include an Exemption for Customers Using “Food Stamps”*.....254
- I. *Include a Clause That Requires Education and Outreach*255
- J. *Specify That Biodegradable (and Maybe Compostable) Bags Are Not Allowed*.....255
- IV. *BUILDING A STRONG ADMINISTRATIVE RECORD FOR AN ORDINANCE*256
 - A. *Get Specific Harms Caused by Plastic Bags on the Record*.....256
 - 1. *Specific Harm: Local Plastic Bag Pollution*257
 - a. *Plastic Bags Are a Major Component of Litter, Which Can Lead to Urban Blight*257
 - b. *Costs of Plastic Bag Litter: Local Municipal Litter Cleanup Costs and Other Costs to Municipalities*.....258
 - i. *Plastic Bags Increase the Expense of Sorting Recyclables and Degrade the Worth of Other Higher-Value Recyclables*.....259
 - ii. *Misleading Reports by an Industry-Funded Group Purport To Show That Cities Do Not Save Money with Bans*260
 - 2. *Specific Harm: Marine Plastic Pollution*261
 - B. *Show That Ordinances Have Been Effective Elsewhere*262
 - 1. *Efficacy of Plastic Bag Ordinances*.....262
 - 2. *Show That Adopting a Plastic Bag Ordinance Is Part of a National Movement Towards Sustainability*263
 - a. *U.S. Examples*.....263

2014]	<i>PLASTIC BAG REDUCTION ORDINANCES</i>	239
	b. International Examples	263
V.	PLASTICS INDUSTRY STANDARD ARGUMENTS AND ATTEMPTS TO PREEMPT ORDINANCES	264
	A. <i>Responses to Standard Arguments Used by Plastics Industry Groups</i>	264
	1. Plastic Bag Recycling	264
	2. Bacteria in Reusable Bags	265
	3. Industry Argues That There Will Be a Disproportionate Impact on Low-Income Customers	267
	4. Job Loss Due to Loss of Manufacturing Jobs.....	268
	5. Job Loss Due to Harm to Retail Businesses	268
	B. <i>Attempts by Plastic Industry Lobbyists To Preempt Local Ordinances at the State or National Level</i>	269
	1. Illinois	269
	2. Florida.....	269
VI.	BUILDING A LOCAL GRASSROOTS CAMPAIGN	270
	A. <i>Building a Coalition</i>	270
	B. <i>Finding a “Champion” on the City Council</i>	271
	C. <i>Creating a FAQ and Support Letter and Other Advocacy Tools</i>	272
	D. <i>(Social) Media</i>	273
VII.	CONCLUSION	274

I. INTRODUCTION

This Article focuses on New York City’s (NYC) proposed carryout bag ordinance as a model ordinance for cities in the United States.¹ Part II will discuss basic ordinance structures, focusing primarily on the merits of charges on use versus bans. Part III will discuss specific clauses that should be included in ordinances. Part IV will focus on helping cities develop strong administrative records that include (1) specific environmental and economic harms caused by plastic bags and (2) the efficacy of plastic bag ordinances currently in place elsewhere. Part V is a cautionary primer on how to rebut the plastics industry’s main arguments. Part VI focuses on how to build a successful local campaign.

1. See N.Y. City Council B. No. 1135 (N.Y.C. 2013).

Plastic bags² have become an icon of waste, a symbol of our throw-away society, in part because they are highly visible in daily life.³ Plastic bags are ubiquitous. Approximately 100 billion plastic bags are used in the United States every year, enough to circle 772 times around the globe.⁴ Plastic bags have become a focus for source reduction legislation because of the environmental and economic havoc they wreak and because the plastics industry has staunchly opposed any meaningful regulation. Plastic bags represent a “miniscule fraction of the plastics business—about \$1.2 billion of the \$374 billion American plastics market,” but the market for plastic bags is defended with disproportionate vigor by a number of industry groups and manufacturers.⁵ Often spending more than \$1 million on campaigns against individual bills, plastics industry groups employ two primary tactics: public relations campaigns opposing the adoption of bag ordinances and lawsuits against cities that adopt such ordinances.⁶ Given this background, cities and advocates should be prepared when pursuing these ordinances.

On August 22, 2013, Bill No. 1135-2013 was introduced in the New York City Council, which would place a minimum 10-cent charge on all carryout bags (plastic, paper, and reusable) from retailers in NYC, with the retailers retaining the entire amount of the charge.⁷ This legislation builds upon the lessons learned by other cities that have adopted similar legislation. This Article is meant as a resource for cities and states interested in adopting similar legislation. References to opposition groups will primarily focus on lawsuits that have been litigated by plastics industry groups in California, as well as refer to

2. All mentions of plastic bags refer to single-use plastic carryout bags unless otherwise noted.

3. Jennie R. Romer, *Single-Use Plastic Carryout Bags: An Icon of Waste*, 5 SUSTAINABILITY 341, 341 (2012).

4. Assuming that the average plastic bag is one foot long, if the U.S. population tied its annual consumption of plastic bags together in a giant chain, the chain could reach around the Earth's equator 772 times. (This calculation is based on the Earth's equatorial circumference of 25,000 miles (132,000,000 feet) and a 2008 U.S. plastic bag consumption of almost 102 billion bags.) See U.S. INT'L TRADE COMM'N, PUB. NO. 4080, POLYETHYLENE RETAIL CARRIER BAGS FROM INDONESIA, TAIWAN, AND VIETNAM 18 (2009).

5. SUSAN FREINKEL, PLASTIC: A TOXIC LOVE STORY 156 (2011). The plastics industry is also closely associated with the oil and gas industry because plastic is made from ethylene, a byproduct created in the processing of crude oil and natural gas. See *id.* at 7.

6. For example, after the Seattle City Council passed a 20-cent charge on plastic bags, the American Chemistry Council (ACC) spent over \$1.4 million on a successful ballot initiative to overturn the plastic bag charge. *Id.* at 164. As another example, the ACC “spent \$5.7 million in California during the 2007 to 2008 legislative sessions” and nearly \$1 million in 2010 when the California legislature was considering a statewide ban. *Id.* at 163.

7. N.Y. City Council B. No. 1135 (N.Y.C. 2013).

similar claims in a letter from a New York statewide grocery industry association to the Town of Mamaroneck all but threatening a lawsuit if the town were to adopt a plastic bag ban.⁸

II. PLASTIC BAG ORDINANCE STRUCTURE: BAN VERSUS CHARGE

The push to focus on source reduction of plastic bags by adopting plastic-bag-reduction ordinances started in Ireland in 2002, where a 15-Euro-cent levy (later raised to 22 Euro cents) on every plastic bag provided at checkout resulted in an over 90% reduction in plastic bag consumption and a considerable reduction in litter within the first year.⁹

A. “Straight” Plastic Bag Bans

Following Ireland’s lead, San Francisco’s Commission on the Environment recommended that San Francisco charge a 17-cent fee for each single-use plastic or paper grocery bag used, but before the ordinance had a chance to be introduced, opposition groups were successful in passing a plastic bag recycling bill (AB 2449), which included language that specifically preempted all local plastic bag fees in California.¹⁰ Not to be deterred, San Francisco decided to circumvent AB 2449’s fee prohibition by simply banning plastic bags.¹¹ Several other California cities followed San Francisco’s lead.

Plastic bag bans generally refer to banning plastic carryout bags of a certain thickness—usually those under 2.25 mils thick in the United States—from being distributed.¹² “Straight” plastic bag bans, meaning bans that do not address any other type of carryout bags, often seem to be more popular than charges among American legislators because (1) most plastic bag ordinances adopted to date in the United States were in California where bans are more prevalent due to the advent of AB 2449,

8. Letter from P. Daniel Hollis, III, Shamberg Marwell & Hollis, P.C., Att’ys for the Food Indus. Alliance of N.Y. State, Inc., to Honorable Nancy Seligson, Town Supervisor and Members of the Town Bd., Town of Mamaroneck (Apr. 3, 2013) (on file with author).

9. See Frank Convery et al., *The Most Popular Tax in Europe? Lessons from the Irish Plastic Bags Levy*, 38 ENVTL. & RESOURCE ECON. 1, 2, 7 (2007).

10. See Assemb. B. No. 2449, 2005-2006 Leg., Reg. Sess. (Cal. 2006). Although this bill was codified into California state law (and subsequently repealed), it will be referred to as AB 2449 throughout this Article. See CAL. PUB. RES. CODE §§ 42250-42257 (Deering 2009).

11. For more information on the background of the California plastic bag recycling law and the events leading up its adoption as well as San Francisco’s ban, see generally Jennie Reilly Romer, Comment, *The Evolution of San Francisco’s Plastic Bag Ban*, 1 GOLDEN GATE ENVTL. L.J. 439, 450-59 (2007).

12. See, e.g., L.A., CAL., MUN. CODE §§ 195.01-08 (2013). This thickness is derived from the definition of “reusable bag” in the plastic bag recycling law. See *id.* § 195.01(J). For a discussion of concerns regarding plastic bag thickness, see *infra* Part III.D.1 of this Article.

(2) the concept of a ban is more straightforward than an ordinance with charges, and (3) many people are concerned with the myriad of impacts associated specifically with plastic bags.¹³ However, compared to charges, straight bans present challenges from practical as well as legal perspectives.

From a practical perspective, because customers will continue to require something with which to carry their purchases, a straight plastic bag ban (that does not address other types of carryout bags and does not successfully encourage reusable bag use) will arguably result in customers switching from one bag type to another (e.g., plastic to paper or plastic to thicker plastic), rather than requiring the customer to make a conscious choice about whether they require a bag in the first place. Also, many people are accustomed to reusing plastic carryout bags in a variety of ways, including picking up after dogs or lining small trash cans. Doing away with these bags completely may lead people to purchase bags for these purposes or use other materials, but as discussed below, allowing these bags to be available for a small charge at checkout is a more sophisticated option for actually changing consumer behavior.

As mentioned above, California cities began to adopt plastic bag bans (as opposed to charges) mainly because AB 2449 preemption precluded the option to charge a fee for plastic bags. Interestingly, AB 2449's preemption of fees on plastic bags expired in January 2013, so the charge option is now available in California.¹⁴ As of yet, no California municipality has opted to charge for plastic bags rather than ban them.

1. Lawsuits Based on Environmental Claims in California

From a legal perspective, plastics industry groups have filed numerous lawsuits claiming that a municipality is required to complete a full environmental impact report (EIR) under the California Environmental Quality Act (CEQA) before a plastic bag ban can be adopted. CEQA was created by the California legislature on the premise that the government must “take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.”¹⁵ To prevent such thresholds from being reached, CEQA requires that every “project” with “potentially significant effects” on the

13. See *infra* Part IV.A.

14. Please note, however, that the same “unconstitutional tax” arguments regarding paper bags would apply to plastic bag charges as well.

15. CAL. PUB. RES. CODE § 21000(d).

environment that does not fall within an “exemption” or qualify for a “negative declaration” must have an EIR prepared.¹⁶

With regard to plastic bag ordinances, Save the Plastic Bag Coalition (SPBC)—self-identified as a consumer protection watchdog and claiming to be “formed to counter myths, misinformation and exaggerations about plastic bags by various groups purporting to promote environmental quality”¹⁷—has filed numerous petitions for writs of mandate in California courts, asserting that a municipality must prepare an EIR before adopting a plastic bag ban. One of these petitions was heard by the California Supreme Court in *Save the Plastic Bag Coalition v. City of Manhattan Beach*, where the substantive question was whether the city was “required to prepare an EIR on the effects of an ordinance banning the use of plastic bags by local businesses.”¹⁸

In *City of Manhattan Beach*, a straight plastic bag ban had been adopted pursuant to a negative declaration, an intermediate level of environmental review defined as “a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report.”¹⁹ The crux of the issue in *City of Manhattan Beach* was whether SPBC presented substantial evidence to support a fair argument that a plastic bag ban might significantly affect the environment, primarily due to environmental impacts from an increase in paper bag consumption.²⁰ The California Supreme Court found that while some increase in the use of paper bags was foreseeable, “no evidence suggests that paper bag use by Manhattan Beach consumers in the wake of a plastic bag ban would contribute to [negative environmental] impacts in any significant way.”²¹ However, the ruling in *City of Manhattan Beach* was specifically limited to the facts in that case (including the relatively small size of Manhattan Beach), so in the wake

16. *Id.* § 21080(c)-(d); *see also id.* § 21082.2(a) (“The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record.”); CEQA Guidelines, CAL. CODE REGS. tit. 14, §§ 15307-15308 (2009).

17. *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 105 Cal. Rptr. 3d 41, 46 (Ct. App. 2010), *rev’d*, 254 P.3d 1005 (Cal. 2011).

18. *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1008 (Cal. 2011).

19. CAL. PUB. RES. CODE § 21064. *See generally* Jennie R. Romer & Shanna Foley, *A Wolf in Sheep’s Clothing: The Plastics Industry’s “Public Interest” Role in Legislation and Litigation of Plastic Bag Laws in California*, 5 GOLDEN GATE ENVTL. L.J. 377, 395-96 (2012) (explaining alternatives to environmental impact reports).

20. *See City of Manhattan Beach*, 254 P.3d at 1018.

21. *Id.*

of this ruling, cities developed a way around environmental allegations associated with a straight plastic bag ban by creating a “second generation” plastic bag ban model that incorporates a charge for paper bags.

2. Threats of Similar Lawsuits Based on Environmental Claims in New York State

Several NYC-area communities have adopted straight plastic bag bans, including the City of Rye and Village of Mamaroneck in Westchester County, New York, just north of NYC.²² Several other nearby cities and towns were on track to adopt similar bans until the Food Industry Alliance (FIA), a New York statewide grocery industry association, followed in SPBC’s footsteps and threatened to sue if these municipalities adopted bans. In April 2013, the FIA sent a letter to the Town of Mamaroneck effectively threatening to take legal action if the town went forward with the plastic bag ban that was under discussion at the time.²³ In the letter, the FIA claimed that the proposed plastic bag ban would (1) be preempted by the state plastic bag recycling law in New York, (2) be arbitrary and unconstitutional, and (3) require a full Environmental Impact Statement (EIS) under New York’s State Environmental Quality Review Act (SEQRA).²⁴

Advocates suspect that, like other retailer opponents, FIA’s main concern is that the cost of paper bags is much higher than the cost of plastic bags, so a plastic bag ban that does not address paper bags might ostensibly hurt retailers’ profits. Similarly, in California, the California Grocers Association (CGA) opposed plastic bag bans until a paper bag charge started being included in ordinances. At that point, CGA began sending letters of support for cities considering adopting plastic bag bans that included the charges, stating, “Ordinances that do not regulate all single-use bag types . . . do not maximize environmental gain and can cost each store well over \$50,000 a year in increased costs.”²⁵ Regardless, the FIA’s letter included a variety of additional legal claims,

22. For more information on carryout bag reduction ordinances adopted in New York State, see *Disposable Bag Reduction*, CITIZENS CAMPAIGN FOR ENV’T, <http://www.citizenscampaign.org/campaigns/plastic-bags.asp> (last updated Jan. 15, 2014).

23. See Letter from P. Daniel Hollis to Honorable Nancy Seligson, *supra* note 8. The Town of Mamaroneck includes within its borders part of the Village of Mamaroneck, mentioned previously.

24. *Id.*

25. Letter from Timothy M. James, Manager, Local Gov’t Relations, Cal. Grocers Ass’n, to Honorable David Chiu, President, Bd. of Supervisors, City & Cnty. of S.F. (Feb. 6, 2012) (on file with author).

using the opposition's playbook that has been successful in delaying the adoption of some legislation in California.

Currently, the Town of Mamaroneck²⁶ as well as various other New York State municipalities that had been poised to adopt straight plastic bag bans have put those plans on hold in order to research FIA's claims and study various options, likely including keeping tabs on NYC's proposed bill.²⁷ It follows that studying the strategies from California, with a close eye for differences in the operative state laws, is the best way for advocates to help craft the best laws all over the country.

B. Hybrid Bans and Charges Including Second-Generation Plastic Bag Bans

In part due to the litigation surrounding plastic bag ordinances in California, a very specific form of legislation has taken root there, known as "second-generation" plastic bag bans. Second-generation plastic bag bans address paper bags by imposing a minimum 10-cent charge on all paper bags in part to avoid the "paper could be worse than plastic" environmental claims and still stay within the framework of AB 2449's restriction on fees for plastic bags. For example, San Francisco refined and expanded its original plastic bag ban law to cover all retailers and restaurants and added a minimum 10-cent charge on all other carryout bags provided at the register (mostly paper bags, but also including all reusable bags).²⁸ Significantly, San Francisco adopted its expanded ordinance pursuant to a "categorical exemption," which may be invoked when a project is not subject to the provisions of CEQA at all and when no further environmental review (namely an EIR) is required.²⁹

Categorical exemptions are available for projects that are intended to protect natural resources or the environment and have no reasonable likelihood of significant adverse impacts.³⁰ But an activity that would

26. The Village of Mamaroneck has already adopted a plastic bag ban and the Town of Mamaroneck considered a similar ban.

27. See, e.g., Ted Duboise, *Mamaroneck Split on Plastic Bag Ban*, PLASTIC BAG BAN REP. (Apr. 27, 2013), <http://plasticbagbanreport.com/mamaroneck-split-on-plastic-bag-ban/>.

28. See Romer & Foley, *supra* note 19, at 424-25.

29. See CAL. CODE REGS. tit. 14, § 15300 (2009).

30. *Id.* tit. 14, § 15307 ("Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption."); *id.* tit. 14, § 15308 ("Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.

otherwise be categorically exempt is not exempt if there are “unusual circumstances” that “create a ‘reasonable possibility’ that the activity will have a significant effect on the environment.”³¹ SPBC has argued that an increase in paper bag use would be an unusual circumstance resulting from second-generation bans. However, because second-generation bans focus on an overall reduction of carryout bags, and there are numerous reports that show that this structure has succeeded in an overall reduction, courts have found that the unusual circumstances exception does not apply.³²

SPBC continues to sue cities adopting second-generation bans, but has ultimately lost on the substantive claims in every case.³³ However, the threat of these lawsuits effectively had a “chilling effect” on many local plastic bag bans by delaying adoption of ordinances as cities waited to see the outcome of litigation or opted to complete expensive (and apparently unnecessary)³⁴ EIRs to avoid potential litigation.³⁵

C. Charges, Fees, and Taxes

Charging for all types of carryout bags has proven to lead to large reductions in single-use bag consumption while still providing customers with options, and this is the type of structure that has been introduced in NYC. Charges have a greater impact on overall reduction in carryout bag use because charges effectively incentivize changes in consumer behavior, because customers are required to make a conscious decision to purchase a bag. “The truth is there are a lot of times that we don’t really need a plastic bag,” said Council Member Brad Lander, one of the

Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.”).

31. Davidon Homes v. City of San Jose, 62 Cal. Rptr. 2d 612, 617 (Ct. App. 1997).

32. See, e.g., Save the Plastic Bag Coal. v. City & County of San Francisco, 166 Cal. Rptr. 3d 253, 266-68 (Ct. App. 2013). Also, the other exception that SPBC has argued was applicable is the “cumulative impacts” exception, which the court found did not apply because there would be no negative impacts. See *id.* at 262-63.

33. See, e.g., Save the Plastic Bag Coal. v. County of Marin, 159 Cal. Rptr. 3d 763 (Ct. App. 2013).

34. Please note that the court of appeal decision upholding San Francisco’s categorical exemption is binding precedent within that jurisdiction and might serve as persuasive precedent in other California jurisdictions. The scathing language used by the court of appeal includes characterizing SPBC’s “strained interpretation” of a sentence as “*stretch[ing] the bounds of reasonable advocacy.*” *City & County of San Francisco*, 166 Cal. Rptr. 3d at 263 (emphasis added).

35. For example, the official cost of the City of San Jose’s EIR was \$140,000, and it took fifteen months to complete. E-mail from Emy Mendoza, San Jose Env’tl. Servs. Dep’t, to Jennie Romer (July 13, 2011, 9:37 PM) (on file with author).

cosponsors of NYC’s bill.³⁶ And a bag charge leaves the option available for a variety of bags for those times when a bag is needed, for a modest price. Also, plastic bag charges have a well-proven track record in the United States and abroad.³⁷

The terms “fees” and “charges” and “tax” are often used interchangeably, but advocates should be clear about what these terms mean. Taxes go in whole or in part to the government. Generally, the power to tax at the local level is limited to the state government, and municipalities cannot collect taxes. The main example of a bag tax in the United States is in Washington, D.C, where this limitation does not apply because D.C. is not constrained by a state law. Under D.C.’s law, all retailers that sell food or alcohol are required to charge 5 cents for each paper or plastic carryout bag provided at the register.³⁸ Under the law, 1 to 2 cents from each bag stays with the retailer and the remainder is collected by the government and put into the Anacostia River Fund, which is used to fund environmental programs including educational programs and giveaways of reusable bags.³⁹ This law led to a 50% to 70% reduction of carryout bag consumption, and bag litter in the Anacostia River was also reduced.⁴⁰

1. How To Avoid the “Unconstitutional Tax” Argument: Let the Retailer Keep the Money

The term “charge” is a broader term than “tax” or “fee” and may include any instance where the customer is required to pay for an item independent of where the money goes.

In 2010, as Los Angeles (L.A.) County’s plastic bag ban was in the final stages of being drafted, several industry groups were successful in convincing California voters to pass Proposition 26 (Prop 26), a constitutional amendment requiring voter approval for any “levy, charge, or exaction” imposed by a local government.⁴¹ Due to concerns over whether Prop 26 would apply to money collected for the paper bags charge under L.A. County’s second-generation ban, L.A.’s bag ordinance

36. Paula Katinas, *Plastic Bags in Grocery Stores Will Cost You, If New Bill Passes*, BROOKLYN DAILY EAGLE (Aug. 20, 2013), <http://www.brooklyneagle.com/articles/plastic-bags-grocery-stores-will-cost-you-if-new-bill-passes-2013-08-20-173000>.

37. See *infra* Part IV.B.1 for more information on the efficacy of plastic bag charges.

38. Jeffrey Seltzer, Assoc. Dir., Stormwater Mgmt. Div., D.C. Dep’t of Env’t, D.C. Bag Law Presentation (Dec. 11, 2012) (presentation on file with author).

39. See *id.*

40. *Id.*

41. CAL. CONST. art. XIII C, §§ 1(e), 2(b).

was amended so that all of the money stayed with the retailers and therefore would not be considered a tax.

In late 2011, Hilex Poly, a large plastics manufacturer, and four individual named plaintiffs who claimed to have been “harmed” by paying the 10-cent store charge for paper bags in unincorporated L.A. County filed a complaint against L.A. County.⁴² This was a case of first impression under Prop 26, claiming that L.A. County’s bag ordinance—specifically the 10-cent-per-paper-bag fee provision—fell under Prop 26’s requirement for voter approval.⁴³ Plaintiffs argued that the ordinance lacked voter approval and was therefore an unconstitutional tax—in violation of Prop 26. Though the lawsuit only purports to concern part of the ordinance (the 10-cent fee levied on paper bags), in reality this case was an attempt by a major plastic bag manufacturer to use Prop 26 as a mechanism to invalidate the entire plastic bag ordinance.

L.A. County successfully argued that the ordinance was not an unconstitutional tax. The county said the 10-cent paper bag charge is not a “levy, charge, or exaction,” under the meaning of Prop 26, because the 10-cent charge remains with the retailer and does not go back to the government. The California Second District Court of Appeal affirmed the superior court’s decision that the paper bag fee was not a revenue generation measure for the government within the meaning of Prop 26, thus requiring no voter approval, and that a fee that goes to a private entity can never be a “tax” under Prop 26—even if the charge is compelled by the government.⁴⁴

2. The Ability of Local Governments To Collect “Regulatory Fees” for Bags Has Yet To Be Determined

The term “fee” is sometimes used to refer to charges where the money collected goes in whole or in part to the government. In *Schmeer v. County of Los Angeles*, the superior court also discussed, as dicta, that even if the 10-cent fee were a tax, Prop 26’s exemption for “a specific benefit” conferred on the “payor” would apply because a customer receives a bag in exchange for paying the 10 cents and the price is supported by “substantial evidence.”⁴⁵ However, this is purely dicta because the money in L.A. County’s ordinance stays with the retailer. Also, the allowance for an exception like the one discussed in *Schmeer*

42. See 153 Cal. Rptr. 3d 352, 354-55 (Ct. App. 2013).

43. See *id.* at 355.

44. See *id.* at 364-66.

45. Tentative Decision on Petition for Writ of Mandate: Denied at 9, *Schmeer*, 153 Cal. Rptr. 3d 352 (No. BC470705).

depends on the language of each state's constitution. Most environmental advocates would prefer that some of the money collected go to a fund like the Anacostia River Fund in Washington, D.C., so it is worth exploring whether a municipality in another state could allow an ordinance to be structured to have some portion of the charge go back to the local government.

III. SPECIFIC CLAUSES TO BE INCLUDED IN ORDINANCES

After deciding whether to use a ban or a charge, there are several other specific clauses that should be included in most ordinances.

A. *Decide What Types of Businesses Should Be Covered*

The breadth of what types of businesses are covered by a plastic bag ordinance is primarily a function of the political will of a city. Options include covering (1) only city vendors, (2) only supermarkets,⁴⁶ (3) supermarkets and large pharmacy chains, (4) all stores that sell food, (5) all retail, or (6) all retail and restaurants. Most ordinances are focused on plastic carryout “t-shirt” type bags common at grocery stores or stores that sell food. Some ordinances phase in implementation in two parts, starting with larger stores then expanding to smaller stores.

1. A Note About Restaurants

Most plastic bag bans do not include restaurants. This is due in large part to the political will of communities as well as practical concerns regarding food delivery. In California, most cities refrained from drafting ordinances that covered restaurants because of fears about lawsuits by SPBC. SPBC alleged that regulating plastic bag use at restaurants was preempted by the California Health and Safety Code.⁴⁷ SPBC argued that the field occupied by the Retail Food Code, which generally “establish[es] health and sanitation standards for retail food establishments,” also preempted anyone but the legislature from regulating single-use bags.⁴⁸ The city and county of San Francisco was the first to fully litigate this Health and Safety Code preemption claim.

46. Supermarkets are generally defined as grocery stores that gross annual sales of at least \$2 million per year or have at least 10,000 square feet of retail space. *See, e.g.,* L.A., CAL., MUN. CODE § 195.01(K) (2013). However, the term “supermarket” might be specifically defined by statute in some states.

47. *Save the Plastic Bag Coal. v. City & County of San Francisco*, 166 Cal. Rptr. 3d 253, 269 (Ct. App. 2013); *see* CAL. HEALTH & SAFETY CODE § 113705 (Deering 2012).

48. *City & County of San Francisco*, 166 Cal. Rptr. at 270 (quoting *Cal. Grocers Ass'n v. City of Los Angeles*, 254 P.3d 1019, 1026 (Cal. 2011)).

In December 2013, the California First District Court of Appeal found that preemption by the Code did not apply.⁴⁹ As a result, several California cities have recently included restaurants in ordinances.

2. State Regulation of Certain Types of Businesses

Some states *specifically* preempt regulation of certain types of businesses, and those businesses should be exempt from plastic bag ordinances.

B. Require Paper Bags Be Made from Postconsumer Recycled Content

Most bag ordinances require that paper bags provided at the register be recyclable and made from recycled content. Ordinances typically require paper bags to contain a minimum of 40% postconsumer recycled content.⁵⁰ Recycled content can include manufacturing scraps, whereas postconsumer recycled content is “a finished product that would normally be disposed of as solid waste, having completed its intended end-use and product life cycle.”⁵¹

Requiring minimum postconsumer content is most important in a straight plastic bag ban context, where the environmental impacts of paper versus plastic bags are more carefully weighed. Several reports funded by groups associated with the plastic industry conclude that, in some respects, paper is worse for the environment than plastic, but those reports focus on paper bags made with less recycled content or from virgin materials and do not adequately assess the full spectrum of end-of-life impacts of plastic.⁵² Requiring minimum postconsumer content for paper bags helps rebut those studies. Most ordinances, including NYC’s proposed bill, require that paper bags contain a minimum of 40% postconsumer recycled content.⁵³

49. *See id.* at 269-71.

50. Further research into the availability and cost of paper carryout bags with postconsumer recycled content over 40% is advisable.

51. *See* CAL. PUB. RES. CODE § 42290(c) (Deering 2009).

52. *See, e.g.*, Chet Chaffee & Bernard R. Yaros, Boustead Consulting & Assocs. Ltd., Life Cycle Assessment for Three Types of Grocery Bags—Recyclable Plastic; Compostable, Biodegradable Plastic; and Recycled, Recyclable Paper (2007) (unpublished report), <http://www.savetheplasticbag.com/UploadedFiles/2007%20Boustead%20report.pdf>.

53. *See, e.g.*, N.Y. City Council B. No. 1135 (N.Y.C. 2013).

C. Amount of Charge

Generally, bag ordinances that include charges have a single charge apply to all bag types. Charges range from 5 cents (Washington, D.C.) to \$1 (Brownsville, Texas), but most charges are set at a minimum of 10 cents (as with most California ordinances that include a charge on paper bags, including San Francisco). The amount of the bag charge depends on the political will of the community. As discussed below, reports issued by various cities show that even charges of 5 to 10 cents cause a significant reduction in bag consumption.⁵⁴ NYC’s proposed bill requires a minimum charge of 10 cents on all carryout bags.⁵⁵

D. How To Define “Reusable Bag”

The most basic definition of “reusable bag” is the definition from California’s plastic bag recycling law, which defines “reusable bags” in the following ways: “(1) A bag made of cloth or other machine washable fabric that has handles. (2) A durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse.”⁵⁶

1. Thickness

In essence, the standard AB 2449 definition of 2.25 mils thickness for any reusable bag essentially just requires that plastic bags be thicker to qualify as reusable and thus available either for free or for a charge (depending on the jurisdiction). Banning bags under this thickness, but charging for paper or reusables (including thick plastic bags), addresses the “worst offender”—thin bags that break easily and tend to get caught in the wind—yet still gives customers the option to pay for a plastic bag. However, a standard requiring 2.25-mils-thick bags takes more resources, namely fossil fuels, to manufacture. Another option that has not been explored in the United States is banning “ultrathin” (also known as “lightweight”) plastic bags and putting a charge on all other carryout bags. This structure has been adopted in China with a ban on plastic bags less than 0.025 millimeters (0.98 mils)⁵⁷ thick and a charge on all

54. See *infra* Part IV.B.1.

55. N.Y. City Council B. No. 1135 (“Covered stores shall charge a fee of not less than ten cents for each carryout bag provided to any person.”).

56. CAL. PUB. RES. CODE § 42250.

57. Mil is a unit of measurement equal to one thousandth of an inch and is typically used in manufacturing and engineering in the United States.

other carryout bags.⁵⁸ The European Commission has also recognized the importance of restricting lightweight plastic carryout bags, which it defines as plastic bags with a thickness of less than 50 microns (1.97 mils).⁵⁹

As of yet, 2.25 mils seems to remain the main standard in the United States because no standard for ultrathin has been proposed.⁶⁰ As information about ultrathin plastic bag ban effectiveness becomes available from other countries that have enacted ultrathin plastic bag bans coupled with bag charges, a definition of the ideal ultrathin thickness should become clearer.

2. Durability Requirements

In some jurisdictions, durability clauses were added to the definition of reusable bag to increase the quality of bags given away at the register, in order to avoid the outcome where bags made to comply with the minimum 2.25 mils standard would simply be given away for free (2.25 mils plastic bags are relatively inexpensive, around the same price as a paper bag). In practice, these durability standards have in most instances made the reusable bags more expensive and thus discouraged indiscriminate free distribution of bags. Increasing the required thickness of reusable bags to be greater than the current 2.25 mils standard may have a similar effect in practice as well but, as discussed above, would require more fossil fuels.

An example of a standard durability requirement is contained in L.A. County's ordinance, in the relevant portion of the definitions section for "reusable bag," which reads:

Reusable Bag means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) has a minimum lifetime of 125 uses, which for purposes of this Article means the capability of carrying a minimum of 22 pounds, 125 times over a distance of at least 175 feet; (2) has a minimum volume of 15 liters; (3) is machine washable or is made of a material that can be cleaned or disinfected; (4) does not contain lead in an amount greater than

58. Ben Block, *China Reports 66-Percent Drop in Plastic Bag Use*, WORLDWATCH INST., <http://www.worldwatch.org/node/6167> (last visited Mar. 25, 2014).

59. European Comm'n, *Environment: Commission Proposes To Reduce the Use of Plastic Bags*, EUROPEAN UNION (Nov. 4, 2013), http://europa.eu/rapid/press-release_IP-13-1017_en.htm.

60. In another approach, the City of Austin's bag ordinance requires traditional bags to be replaced by reusable bags and the reusable bags made of plastic must be 4 mils thick. See Jeff Stensland, *Council Votes To Beef Up 'Bag Ban'*, TIME WARNER CABLE NEWS (Nov. 9, 2012), <http://austin.twcnews.com/content/news/289156/council-votes-to-beef-up—bag-ban->

89 [parts per million (ppm)], nor contain total heavy metals (lead, hexavalent chromium, cadmium, and mercury) in an amount greater than 99 ppm, unless lower heavy metal limits are imposed by applicable state or federal law, in which case such standards shall apply; (5) has printed on the bag, or on a tag that is permanently affixed to the bag, (i) the name of the manufacturer, (ii) the country where the bag was manufactured, (iii) a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, (iv) the percentage of Postconsumer Recycled Material used, if any, and (v) bag care and washing instructions; and (6) if made of plastic, is a minimum of at least 2.25 mils thick.⁶¹

E. Make the Charge Apply to All Carryout Bags (Including Reusable Bags)

Another way to get around thicker plastic bags being given away for free is to require that a minimum charge also apply to reusable bags. The idea of charging for a reusable bag may seem counterintuitive because bag ordinances are meant to promote the use of reusable bags. However, a minimum charge for all bags avoids the loophole seen in some jurisdictions where paper and plastic were subject to bans or charges and cheap reusable bags were being given away for free indiscriminately. The first California municipality to begin exploring the option of charging a minimum for all types of bags (including reusable) was San Francisco, and several other California cities have followed.

Generally, reusable bag charges are for the same amount as paper bag charges (typically 10 cents), but the charge is a minimum charge—a “floor,” not a “ceiling”—so that retailers are not forced to provide cheap reusable bags for 10 cents and may instead opt to provide higher quality reusable bags at a higher price point.

Bag ordinances that require a minimum charge for reusable bags sometimes allow for limited promotional giveaways of reusable bags. This allows stores to promote reusable bag use as well as promote their brand, while at the same time ensuring that reusable bags are not being given away indiscriminately, thereby addressing the concern that free reusable bags would simply replace conventional plastic bags as a “thicker” plastic bag. For example, San Francisco’s expanded ordinances state: “A Store shall not charge the Checkout Bag Charge required under subsection (a) for a Reusable Bag which meets the requirements of this Chapter and which is distributed to a customer without charge during a limited duration promotional event, not to exceed 12 days per year.”⁶²

61. L.A., CAL., MUN. CODE § 195.01(J) (2013).

62. S.F., CAL., ENV’T CODE § 1703.5(d)(2) (2012).

F. Make the First Violation a Warning

Officially making the first violation a warning in the language of the ordinance can help appease the fears of retailers. For example, NYC's proposed bill specifically states that any covered store that violates the provision "shall receive a warning notice for the first such violation."⁶³

G. Include Exemptions for Certain Types of Bags

Plastic bag ordinances are only meant to apply to carryout bags, so most ordinances include a section exempting any other specific types of plastic bags. Most ordinances, at a minimum, exempt bags without handles used within the store to carry unpackaged food (due to health concerns) and bags provided by a pharmacy to carry prescription drugs (due to Health Insurance Portability and Accountability Act's privacy rules).⁶⁴ Depending on the jurisdiction, more specific exemptions are often added (e.g., newspaper bags and dry cleaning bags), and the municipal department in charge of enforcement is often given some discretion in determining additional exemptions. For example, NYC's proposed bill defines an exempt bag as:

- (i) a bag without handles used to carry produce, meats, dry goods or other non-prepackaged food items to the point of sale within a store or market or to prevent such food items from coming into direct contact with other purchased items; (ii) a bag provided by a pharmacy to carry prescription drugs; or (iii) any other bag to be exempted from the provisions of this chapter as determined by rule of the commissioner.⁶⁵

H. Include an Exemption for Customers Using "Food Stamps"

Most ordinances include an exception for customers using state supplemental nutrition assistance programs, commonly known as "food stamps," or other similar programs. Most ordinances specify that this exception only applies to transactions where assistance is being used to pay for all or part of the purchase and some ordinances specify that stores "may" provide an exemption rather than "shall."⁶⁶

63. N.Y. City Council B. No. 1135 (N.Y.C. 2013).

64. See Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936 (codified in scattered sections of 18, 26, 29, and 42 U.S.C.).

65. N.Y. City Council B. No. 1135.

66. Compare SAN JOSE, CAL., MUN. CODE § 9.10.2020(D) (2013) ("A Retail Establishment may provide a [qualifying customer] with one or more Recycled Paper Bags at no cost . . ."), with L.A., CAL., MUN. CODE § 12.85.060 (2010) ("All stores must provide at the point

I. Include a Clause That Requires Education and Outreach

Education and outreach campaigns help ensure the success of bag ordinances by increasing retailers' and the community members' knowledge about the program and focusing on transitioning customers to bring their own bags. It can be useful to include a clause outlining the outreach and education to be undertaken by the relevant city department. For example, NYC's proposed bill includes a clause that requires the Commissioner of the Department of Sanitation to establish outreach and education for residents and covered stores about how to reduce the consumption of single-use bags and increase the use of reusable bags: "To the extent practicable, the commissioner shall seek the assistance of private entities and local not-for-profit organizations to provide and distribute reusable carryout bags to residents and [informational] signs . . . to covered stores."⁶⁷

J. Specify That Biodegradable (and Maybe Compostable) Bags Are Not Allowed

Much confusion exists surrounding bioplastics, so much so that the Federal Trade Commission (FTC) has provided detailed guidelines (commonly referred to as "Green Guides") regarding what claims may be made about biodegradable and compostable plastics.⁶⁸ Also, the California legislature adopted legislation that made it illegal to refer to plastic bags as "biodegradable," "degradable," or "decomposable" and required that any plastic bag labeled with the term "compostable" or "marine degradable" meet the applicable ASTM International standard specification.⁶⁹ The concern is that "biodegradable" is an inherently misleading and misunderstood term with regard to plastics.⁷⁰ Bioplastics have different technical definitions and lack standardization testing. While there is an established testing criteria for compostable plastics, namely the ASTM International 6400 standard, experts cannot agree on a testing criteria for biodegradable plastics.⁷¹

of sale, free of charge, either reusable bags or recyclable paper carryout bags . . . to any [qualifying customer]").

67. N.Y. City Council B. No. 1135.

68. See Degradable Claims, FTC Guides for the Use of Environmental Marketing Claims, 16 C.F.R. § 260.8 (2013).

69. See CAL. PUB. RES. CODE § 42357 (Deering 2009).

70. See *Confused by the Terms Biodegradable & Biobased*, BIODEGRADABLE PRODS. INST. 1-3, <http://www.bpiworld.org/resources/Documents/PROIaIB%5B1%5D.pdf> (last visited Mar. 25, 2014).

71. See *Compostable Plastics*, CALIFORNIANS AGAINST WASTE, http://www.cawrecycles.org/issues/compostable_plastics (last visited Mar. 25, 2014).

With regard to plastic bag ordinances, biodegradable plastic bags should be specifically disallowed and compostable plastic bags should be allowed only (1) if they meet the ASTM International 6400 standard for compostable claims, (2) in jurisdictions where residential curbside composting is well-established and accepts compostable plastic bags, and (3) when they are not given away for free (the carryout bag minimum charge should apply). The reason to only allow compostable bags where there is residential curbside composting is that compostable bags are only better for the environment when they are actually composted in an industrial composting facility (rather than going to a landfill).⁷² The prohibition on compostable bags (where a jurisdiction does not actually compost) protects consumers from being misled into paying more for something that they believe is better for the environment, even though the product may not actually be better for the environment, an issue commonly referred to as “greenwashing.”

Due to all of the difficulties inherent in responsible disposal of compostable plastic bags, very few ordinances have incorporated such provisions. One of the only examples of an ordinance that allows for compostable plastic bags in the United States is San Francisco’s expanded plastic bag ordinance.⁷³ San Francisco’s ordinance meets all of the criteria mentioned above because bags must meet the ASTM International standard, because San Francisco is one of the few cities with well-established residential curbside compost pickup that accepts compostable plastic bags (so bags are much more likely to actually get composted), and because the bag charge applies to compostable plastic bags as well as paper and reusable bags.⁷⁴

IV. BUILDING A STRONG ADMINISTRATIVE RECORD FOR AN ORDINANCE

A. *Get Specific Harms Caused by Plastic Bags on the Record*

It is important that cities build their case on the public record that (1) single-use plastic bags cause harm to the environment and that (2) plastic bag ordinances have been shown to reduce single-use bag consumption effectively and are beneficial to the environment and economy. As discussed above, this comes into play primarily in the context of lawsuits alleging that plastic bag ordinances may harm the

72. See Compostable Claims, FTC Guides for the Use of Environmental Marketing Claims, 16 C.F.R. § 260.7.

73. S.F., CAL., ENV’T CODE § 1703.5(a)(2) (2012).

74. See *id.* §§ 1702(b), 1703.5(a)(2).

environment. This section is meant as a primer for cities unsure of what information is available as well as for advocates desiring well-vetted speaking points on the issue. However, it should be noted that this information must be constantly updated because the science and the data collection is continuously evolving.

1. Specific Harm: Local Plastic Bag Pollution
 - a. Plastic Bags Are a Major Component of Litter, Which Can Lead to Urban Blight

Plastic bags are costly, environmentally damaging, and easily preventable sources of litter and pollution. Light and aerodynamic, plastic bags can become airborne even when properly disposed of; bags photodegrade and disintegrate into particles, littering our urban landscape and posing a serious threat to the riparian and marine environments and wildlife. Even when they are no longer obvious to the naked eye, plastic degrades into tiny particles that adsorb toxins and contaminate our food chain as well as water and soil.⁷⁵

Ideally, cities should have specific information on the record regarding the amount of plastic bags in the waste stream, what proportion of litter is made of plastic bags, and the specific problems caused by that litter. For example, the California Integrated Waste Management Board estimates that plastic bags comprise 0.4% of California's total waste stream by weight,⁷⁶ but contribute significantly to litter, especially within catch basins (openings in street curbs into which stormwater flows).⁷⁷ As another example, L.A. County found that plastic bags constituted 25% of the weight and 19% of the volume of trash collected during the June 10, 2004, "City of Los Angeles Catch Basin Cleaning."⁷⁸

75. See Matthew Cole et al., *Microplastics as Contaminants in the Marine Environment: A Review*, 62 MARINE POLLUTION BULL. 2588, 2589 (2011); Richard C. Thompson et al., *Lost at Sea: Where Is All the Plastic?*, 304 SCIENCE 838, 838 (2004).

76. Cascadia Consulting Grp., Inc., *Statewide Waste Characterization Study*, CAL. RECYCLE 6 tbl.ES-3 (Dec. 2004), <http://www.calrecycle.ca.gov/Publications/Documents/LocalAsst/34004005.pdf>.

77. MIRIAM GORDON, CAL. COASTAL COMM'N, ELIMINATING LAND BASED DISCHARGES OF MARINE DEBRIS IN CALIFORNIA: A PLAN OF ACTION FROM THE PLASTIC DEBRIS PROJECT 18 (2006) (finding plastic film and bags constitute 43% of trash found in catch basins).

78. L.A. Cnty. Bd. of Supervisors, *An Overview of Carryout Bags in Los Angeles County*, L.A. DEP'T OF PUB. WORKS 24-25 (Aug. 2007), <http://ladpw.org/epd/pdf/PlasticBagReport.pdf>.

b. Costs of Plastic Bag Litter: Local Municipal Litter Cleanup Costs and Other Costs to Municipalities

Plastic pollution remains an immense environmental *and economic* problem. Cities are overwhelmed by the enormous costs of cleaning up litter.⁷⁹ Some cities, held to federal pollution limits under the Clean Water Act, face steep fines unless trash is decreased.⁸⁰ Typical end-of-pipe management solutions have not been sufficient to keep pace with the enormous amount of plastic trash, and cities are scrambling to protect the environment, save costs, and clean up their communities. Ultimately, cities have sought ways to reduce pollution *at its source*, and increasingly turn to plastic bag ordinances.

Single-use plastic bags are costly to us as both consumers and as taxpayers—the costs of these one-time use products are passed on in the form of higher prices and increased taxes. For example, New Yorkers use 5.2 billion carryout bags per year, the vast majority of which are not recycled.⁸¹ As of 2008, plastic bags accounted for more than 1.7 million tons of residential garbage per week in the United States, and New York City pays an estimated \$10 million annually to transport 100,000 tons of plastic bags to landfills in other states.⁸²

As revealed in a report produced on behalf of the Natural Resources Defense Council by Kier Associates, 95 California cities, towns, and taxpayers (communities ranging in size from just over 700 residents to over 4 million) are shouldering nearly \$500 million per year in costs to

79. See Kier Assocs., *The Cost to West Coast Communities of Dealing with Trash, Reducing Marine Debris*, EPA (Sept. 2012), <http://www.epa.gov/region9/marine-debris/pdf/WestCoastCommsCost-MngMarineDebris.pdf> (finding that ninety West Coast communities are spending more than \$520,000,000—over half a billion dollars—each year to combat litter and curtail marine debris); *Facts at a Glance, DON'T TRASH CALIFORNIA*, CAL. DEP'T OF TRANSP., <http://www.donttrashcalifornia.info/pdf/Statistics.pdf> (last visited Feb. 20, 2014) (finding that state and local governments in California spend over \$375 million per year on litter prevention, cleanup, and disposal, \$72 million of which is spent on cleaning up cups and bags).

80. For example, the total maximum daily load (TMDL) for trash in the Los Angeles River and Ballona Creek—both of which discharge untreated stormwater directly onto local beaches and into the Pacific Ocean—requires a 10% annual reduction in trash entering the waterways, down to a target of zero trash by 2014. Cal. Reg'l Water Quality Control Bd., L.A. Region, *Trash Total Maximum Daily Loads for the Los Angeles River Watershed*, EPA 27-29 (July 27, 2007), <http://www.epa.gov/waters/tmdl/docs/34863-RevisedStaffReport2v2.pdf>. Significant federal penalties could accrue for noncompliance.

81. See Office of Mgmt. & Budget, N.Y.C., *January 2009 Financial Plan: Fiscal Years 2009-2013*, NEW YORK CITY 43 (Jan. 30, 2009), http://www.nyc.gov/html/omb/downloads/pdf/tech1_09.pdf.

82. Elisabeth Rosenthal, *Is It Time To Bag the Plastic?*, N.Y. TIMES, May 19, 2013, at SR4.

stop litter from becoming pollution.⁸³ That is money down the drain that could otherwise be invested in public services like schools, firefighters, police, or improving public parks and other open spaces.⁸⁴

Clearly, cities understand the need to move forward and that plastic bag ordinances are good for economic development and saving money. As mentioned earlier, the county and city of L.A. have already adopted bans on plastic bags. L.A. County's EIR estimated that implementation of its bag ordinance could meet the objective of "[r]educ[ing] the County's, Cities', and Flood Control District's costs for prevention, clean-up, and enforcement efforts to reduce litter in the County by \$4 million."⁸⁵

i. Plastic Bags Increase the Expense of Sorting Recyclables and Degrade the Worth of Other Higher-Value Recyclables

Plastic carryout bags often *hinder* municipal recycling by becoming caught in recycling processing equipment, causing recycling sort lines to go offline while waiting for plastic bags to be removed from mechanical gears.⁸⁶ Plastic bags require extra energy and costs in the recycling process, which is why Sims Municipal Recycling in NYC supports the proposed NYC bag legislation. According to Sims, in addition to the large plastic garbage bags used to transport commingled material, people

83. Kier Assocs., *Waste in Our Water: The Annual Cost to California Communities of Reducing Litter that Pollutes Our Waterways*, NATURAL RES. DEF. COUNCIL 1-2, app. B tbl.14 (Aug. 2013), http://docs.nrdc.org/oceans/files/oce_13082701a.pdf (finding that the top communities are L.A. at \$36.4 million, San Diego at \$14.1 million, Long Beach at \$13.0 million, San Jose at \$8.9 million, Oakland at \$8.4 million, and Sacramento at \$2.9 million). For this study, information about litter capable of becoming aquatic debris "was solicited from 221 communities randomly selected from a list of all California communities. . . . Cost data came from a variety of sources including MS4 [Municipal Separate Storm Sewer] permits; annual budgets and reports; and phone interviews and e-mail correspondence with city hall staff, public works field managers, and knowledgeable nongovernmental organizations." *Id.* Of the 250-plus cities, towns, and municipal agencies contacted, "95 (representing about 20 percent of all California communities and one-third of the state's total population) responded with data relating to some, if not all, of the six cost categories." *Id.*

84. See TEDxTALKS, *TEDxGreatPacificGarbagePatch—Vice Mayor Suja Lowenthal—Growing Costs of Plastic Collection*, YOUTUBE (Dec. 16, 2010), <http://youtu.be/ElvXUt0BHWQ>.

85. Sapphos Envtl. Inc., *SCH No. 2009111104, Ordinances To Ban Plastic Carryout Bags in Los Angeles County: Final Environmental Impact Report*, L.A. DEP'T OF PUB. WORKS, § 2.4.2, at 2-18 (Oct. 28, 2010), <http://ladpw.org/epd/aboutthebag/pdf/FinalEIR.pdf>.

86. See Romer, *supra* note 11, at 445-46 (citing Office of Supervisor Ross Mirkarimi, City & Cnty. of S.F., *Costs Associated with Paper and Plastic Bags* (2007) (on file with author) ("San Francisco's curbside recycling contractor, Norcal Recycling, spends \$494,000 annually on 'classifier' employees given the task of removing non-recyclable materials, including plastic bags, from the recycling streams and \$100,000 annually on clearing machinery jams caused by plastic bags.")).

also try to recycle used plastic bags curbside, even though plastic bags are not recycled (and end up being transported to a landfill) because there is currently no market for dirty plastic bags.⁸⁷ According to Maite Quinn at Sims: “We don’t want to see excess plastic bags coming into our stream. It costs us money to handle it and it costs us money to bring it to a landfill.”⁸⁸ Local recyclers should be surveyed about plastic carryout bag-related costs, and those costs should be included in the administrative record for a proposed bill.

ii. Misleading Reports by an Industry-Funded Group
Purport To Show That Cities Do Not Save Money with
Bans

The National Center for Policy Analysis’ (NCPA) latest report calls into question whether plastic bag bans save cities money.⁸⁹ The December 2013 report makes unsupported assumptions with budget figures. For example, the report identifies the percentage of the litter stream that is plastic bags and then creates a budget statistic manufactured from that number without accounting for the disproportionate impact of plastic bag litter (e.g., costly municipal recycling facility downtime to remove bags from clogging screens, labor for bag removal in trees and storm drains, etc.). The report also cites increases in city budgets for all solid waste without specifying what components, if any, these increased budget figures are related to plastic bag cleanup. Similarly, the report cites increases in spending when the budget figures relied upon involve variables related to all solid waste, not just plastic bags. Thus, the report does not cite any coherent evidence about bag ban cost savings for cities.

87. See *New York City Students Hold Conference To Discuss Plastic Bag Bans*, PLASTICBAGLAWS.ORG (Mar. 4, 2013), <http://plasticbaglaws.org/new-york-city-students-hold-conference-to-discuss-plastic-bag-bans-council-member-pledges-to-introduce-legislation/>; Citizen, Vimeo, *We Use 4 of These a Day, and They’re Kind of the Worst*, UPWORTHY (2013), <http://www.upworthy.com/we-use-4-of-these-a-day-and-theyre-kind-of-the-worst-3>; see also SAMANTHA MACBRIDE, RECYCLING RECONSIDERED: THE PRESENT FAILURE AND FUTURE PROMISE OF ENVIRONMENTAL ACTION IN THE UNITED STATES 179 (2012) (stating that plastic bags only have a domestic recycling market in the United States if the plastic bags are “kept clean, dry, and separate from rigid plastics,” which is nearly impossible in municipal recycling collection programs).

88. *New York City Students Hold Conference To Discuss Plastic Bag Bans*, *supra* note 87.

89. See H. Sterling Burnett, *Policy Rep. No. 353, Do Bans on Plastic Grocery Bags Save Cities Money?*, NAT’L CTR. FOR POLICY ANALYSIS 13 (Dec. 2013), <http://www.ncpa.org/pdfs/st353.pdf>. See *infra* Part V.A.5 for a summary of another NCPA report on purported harm to retailers.

2. Specific Harm: Marine Plastic Pollution

Most of the trash in the ocean comes from the land, and most of it is plastic. Eighty percent of marine debris comes from land-based sources.⁹⁰ Roughly 60% to 80% of all marine debris is plastic.⁹¹ Plastic can take hundreds of years or more to break down, and some types never truly biodegrade at sea.⁹²

In the environment, plastic eventually breaks down into smaller and smaller particles that attract toxic chemicals.⁹³ Plastic bags tend to photodegrade relatively quickly because they are made from thin film and tend to float in the ocean and be exposed to the sun, unless they are weighed down by sediment. These particles are ingested by wildlife on land and in the ocean and can contaminate our food chain.⁹⁴ Some parts of the ocean are like a plastic soup, where there are six pounds of plastic for every pound of plankton.⁹⁵ Plastic has reportedly harmed over 663 marine species, most through ingestion and entanglement.⁹⁶

Plastic bags especially hurt turtles because bags floating in water look like jellyfish, a primary food for turtles, and researchers have commonly found plastic bags in the digestive tracts of dead sea turtles.⁹⁷

90. MICHELLE ALLSOPP ET AL., GREENPEACE INT'L, PLASTIC DEBRIS IN THE WORLD'S OCEANS 6 (2006), available at http://www.unep.org/regionalseas/marinelitter/publications/docs/plastic_ocean_report.pdf.

91. *Id.* at 9.

92. GORDON, *supra* note 77, at 2.

93. Cole et al., *supra* note 75, at 2589, 2595; Thompson, *supra* note 75, at 838.

94. EPA-909-R-11-006, *Marine Debris in the North Pacific: A Summary of Existing Information and Identification of Data Gaps*, EPA 8 (Nov. 2011), <http://www.epa.gov/region9/marine-debris/pdf/MarineDebris-NPacFinalAprvd.pdf>; see also Yukie Mato et al., *Plastic Resin Pellets as a Transport Medium for Toxic Chemicals in the Marine Environment*, 35 ENVTL. SCI. & TECH. 318, 318 (2001); Lorena M. Rios et al., *Quantification of Persistent Organic Pollutants Adsorbed on Plastic Debris from the Northern Pacific Gyre's "Eastern Garbage Patch,"* 12 J. ENVTL. MONITORING 2226, 2232-33 (2010); Emma L. Teuten et al., *Potential for Plastics to Transport Hydrophobic Contaminants*, 41 ENVTL. SCI. & TECH. 7759, 7762-63 (2007); Emma L. Teuten et al., *Transport and Release of Chemicals from Plastics to the Environment and to Wildlife*, 364 PHIL. TRANSACTIONS ROYAL SOC'Y B. 2027, 2040-42 (2009); Charlotte Stevenson, *Plastic Debris in the California Marine Ecosystem: A Summary of Current Research, Solution Efforts and Data Gaps*, UNIV. S. CAL. SEA GRANT 22-24 (Sept. 2011), <http://www.usc.edu/org/seagrant/research/PlasticReport/PlasticReport.pdf>.

95. C.J. Moore et al., *A Comparison of Neustonic Plastic and Zooplankton Abundance in Southern California's Coastal Waters*, 44 MARINE POLLUTION BULL. 1035, 1038 tbl.3 (2002).

96. *CBD Technical Series No. 67, Impacts of Marine Debris on Biodiversity: Current Status and Potential Solutions*, SECRETARIAT OF THE CONVENTION ON BIOLOGICAL DIVERSITY 9 (2012), <http://www.cbd.int/doc/publications/cbd-ts-67-en.pdf>.

97. See N. Mrosovsky et al., *Leatherback Turtles: The Menace of Plastic*, 58 MARINE POLLUTION BULL. 287, 287-88 (2009) (noting that 37.2% of Leatherback turtle necropsies from 1968 to 2009 showed plastic in their stomachs, and plastic bags were the most commonly found item).

According to the Ocean Conservancy's 2013 International Coastal Cleanup Day data, the fourth most numerous item found was plastic bags.⁹⁸ Reports from local beach and/or park cleanup groups should be surveyed about how many plastic bags are collected during cleanups and that information should be included in the administrative record for a proposed bill.

B. Show That Ordinances Have Been Effective Elsewhere

1. Efficacy of Plastic Bag Ordinances

As mentioned previously, Ireland imposed one of the first taxes on plastic bags, and it was incredibly effective. The levy there applies to every plastic bag provided at checkout.⁹⁹ Ireland has demonstrated a greater than 90% reduction in plastic bag consumption and considerable reduction in litter since the charge went into effect.¹⁰⁰ Moreover, Ireland generated an estimated €12 million in revenue in the levy's first year.¹⁰¹

Several plastic bag ordinances have been in effect for at least a couple of years, and reports showing significant decreases in plastic bag consumption as well as litter are now available. For example, the Washington, D.C., 2009 bag tax reduced usage by approximately 50% to 70%, and part of the revenue helps clean up the Anacostia River.¹⁰² Large stores covered by L.A. County's 2010 10-cent single-use bag charge reduced single-use bag usage by 95% and paper bag usage by 30%.¹⁰³ Generally, higher bag charge amounts lead to greater reductions in bag consumption.¹⁰⁴

Since 2012, the city of San Jose has reduced plastic bag litter by 89% in the storm drain system, 60% in the creeks and rivers, and 59% in

98. INT'L COASTAL CLEANUP, OCEAN CONSERVANCY, WORKING FOR CLEAN BEACHES AND CLEAN WATER: 2013 REPORT, at 14 (2013), available at <http://www.oceanconservancy.org/our-work/international-coastal-cleanup/2013-trash-free-seas-report.pdf>; see also INT'L COASTAL CLEANUP, OCEAN CONSERVANCY, TRACKING TRASH 25 YEARS OF ACTION FOR THE OCEAN: 2011 REPORT, at 5 (2011), available at http://act.oceanconservancy.org/pdf/Marine_Debris_2011_Report_OC.pdf (indicating that nearly eight million bags were collected during Coastal Cleanup Days from 1986 to 2011).

99. See *Plastic Bags*, IR. DEP'T OF THE ENV'T, CMTY. & LOCAL GOV'T, <http://www.environment.ie/en/Environment/Waste> (last visited Mar. 20, 2014).

100. *Id.*

101. Convery et al., *supra* note 9, at 6.

102. See Seltzer, *supra* note 38.

103. *About the Bag: Announcements*, L.A. CNTY. DEP'T OF PUB. WORKS, <http://dpw.lacounty.gov/epd/aboutthebag> (last visited Jan. 14, 2014).

104. See *Checkout Bag Charge: Economic Impact Report*, S.F. CITY & CNTY. OFFICE OF THE CONTROLLER 6 (Nov. 30, 2011), <http://www.sfcontroller.org/Modules/ShowDocument.aspx?documentid=2721> (comparing bag charge amounts and reduction percentages).

city streets and neighborhoods with a 10-cent-per-bag charge (in addition, the average number of single-use bags used per customer decreased from 3 bags to 0.3 bags per visit).¹⁰⁵

2. Show That Adopting a Plastic Bag Ordinance Is Part of a National Movement Towards Sustainability

a. U.S. Examples

In California, plastic bag ordinances that cover ninety municipalities have been adopted at the local level.¹⁰⁶ Local source-reduction laws like plastic bag bans have been highly successful because cities and citizens realize they are saving money and protecting the environment with bans on items that can easily be replaced with sustainable alternatives.

Several cities outside of California have adopted ordinances as well, ranging across the United States from Homer, Alaska, to Boulder, Colorado, from Honolulu, Maui, Kauai, and Hawaii Counties to Santa Fe, New Mexico, from Austin, Texas, to Portland, Oregon, and from Seattle, Washington, to Montgomery County, Maryland.¹⁰⁷ NYC introduced an ordinance on August 22, 2013.¹⁰⁸

At the federal level, Representative Jim Moran (D-VA8) introduced the Trash Reduction Act of 2013, which would amend the Internal Revenue Code to require retailers to pay a 5-cent excise tax on each disposable carryout bag provided to a consumer.¹⁰⁹

b. International Examples

More than thirty-seven countries or cities outside the United States have enacted bag ban legislation, including China, Italy, Mexico City, and Delhi, as well as some of the world's least-developed nations like

105. Memorandum from Kerrie Romanow, Dir. Env'tl. Serv., City of San Jose, to the San Jose Transp. and Env't Comm. (Nov. 21, 2012), *available at* http://www.cawrecycles.org/files/SanJose_updatememo_Nov2012.pdf.

106. *Plastic Bags: Local Ordinances*, CALIFORNIANS AGAINST WASTE, http://www.cawrecycles.org/issues/plastic_campaign/plastic_bags/local (last visited Mar. 20, 2014) (noting that sixty-nine ordinances cover ninety California cities and counties).

107. *See National List of Local Bag Ban Ordinances*, CALIFORNIANS AGAINST WASTE, http://www.cawrecycles.org/issues/plastic_campaign/plastic_bags/national (last visited Mar. 25, 2014).

108. N.Y. City Council B. No. 1135 (N.Y.C. 2013).

109. Trash Reduction Act of 2013, H.R. 1686, 113th Cong. (2013). The bill had seven cosponsors as of February 22, 2014. *H.R. 1686: Trash Reduction Act of 2013*, GOVTRACK.US, <http://www.govtrack.us/congress/bills/113/hr1686> (last visited Feb. 22, 2014).

Bangladesh and Ethiopia.¹¹⁰ Commentators report that China's government estimates it has reduced overall plastic bag use by 66% (an estimated forty billion bags) in the first year of implementation alone.¹¹¹

In November 2013,

[T]he European Commission adopted a proposal that requires Member States to reduce their use of lightweight plastic carrier bags. Member States can choose the measures they find most appropriate, including charges, national reduction targets or a ban under certain conditions.

....

Technically, the proposal amends the Packaging and Packaging Waste Directive with two main elements. First, Member States are required to adopt measures to reduce the consumption of plastic carrier bags with a thickness below 50 microns Second, these measures may include the use of economic instruments, such as charges, national reduction targets, and marketing restrictions¹¹²

V. PLASTICS INDUSTRY STANDARD ARGUMENTS AND ATTEMPTS TO PREEMPT ORDINANCES

A. *Responses to Standard Arguments Used by Plastics Industry Groups*

1. Plastic Bag Recycling

The plastics industry's biggest argument to discourage banning or otherwise restricting plastic bags is that they can be recycled, either voluntarily or through a legislative mandate. The "reduce-reuse-recycle" mantra, however, makes it clear that recycling is not the best choice. Plastic bag recycling is used by the plastics industry as a distraction from other issues and as a method of forestalling plastic bag source reduction regulation. People typically see recycling as something positive and "green," but the truth is that plastic bag recycling rates are low (under or around 5%). The exact number is hard to determine because most plastic bag recycling statistics are commingled with the recycling rates for other types of plastic films, which are generally recycled at a much higher rate. Of the total plastic films collected for recycling in the United States in 2008, 57% were exported to unspecified nations other than Canada, 29% went to make composite lumber, and a measly 4% went on to make film

110. See *Retail Bags Report*, FLA. DEP'T OF ENVTL. PROT. (Sept. 9, 2013), <http://www.dep.state.fl.us/waste/retailbags/pages/mapsandlist.htm>; *Track the Movement*, CHICOBAG, <http://www.chicobag.com/track-movement> (last visited on Mar. 25, 2014).

111. Block, *supra* note 58.

112. European Comm'n, *supra* note 59.

and bags.¹¹³ Also, plastic bag collection is difficult and not cost effective, and there is a limited market for plastic recycled bags, especially if they are contaminated with food or other substances.¹¹⁴ In comparison, paper bags are recycled at much higher rates (65%), are generally accepted in curbside municipal recycling programs, and can be recycled back into paper bags.¹¹⁵

Consequently, plastic bag recycling programs have failed: for example, voluntary recycling by L.A. County, the city of San Francisco, and Santa Clara County all had lackluster results that took years, wasted municipal funds, and ultimately ended in bans.¹¹⁶ Even AB 2449, California's attempt at mandating a voluntary recycling program, ended in failure, with the state being unable to say whether the law had even worked.¹¹⁷ Consequently, industry attempts to substitute voluntary recycling programs or educational efforts should not deter cities from moving directly to source reduction ordinances.¹¹⁸

2. Bacteria in Reusable Bags

In 2011, the American Chemistry Council (ACC) funded a study authored in part by University of Arizona Professor Charles P. Gerba that looked at the dangers of bacteria in reusable bags. The study found that

113. MACBRIDE, *supra* note 87, at 200.

114. *Id.* at 179.

115. *Increase Paper Recovery for Recycling*, AM. FOREST & PAPER ASS'N, <http://www.afandpa.org/sustainability/increase-paper-recovery> (last visited Mar. 25, 2014) ("In 2012, 65.1 percent of all paper consumed in the U.S. was recovered for recycling, nearly doubling our rate of paper recovery since 1990.").

116. In 2008, L.A. County launched its voluntary plastic bag recycling program, and in November 2010, the County Department of Public Works reported that the voluntary recycling program "was not successful in achieving its goals" because "[o]ver a two-year period and despite State law requirements under AB 2449 . . . not more than eight (8) stores at any given time had met the minimum participation levels." Letter from Gail Farber, Dir., L.A. Cnty. Dep't of Pub. Works, to the L.A. Cnty. Bd. of Supervisors, L.A. DEP'T OF PUB. WORKS (Nov. 16, 2010), http://ladpw.org/epd/aboutthebag/PDF/BoardLetters/BoardLetter_nov2010.pdf. Similarly, San Francisco's voluntary program was declared a failure. See Romer, *supra* note 11, at 445-46. Santa Clara County scrapped its voluntary bag reduction program in favor of an ordinance after administrators saw only a 2% increase in reusable bag use. Memorandum from Kevin O'Day, Acting Dir., Dep't Agric. & Envtl. Mgmt., Cnty. of Santa Clara, to Bd. of Supervisors, Cnty. of Santa Clara (Apr. 13, 2010) (on file with author); SANTA CLARA, CAL., ORDINANCE CODE § B11-508 (2011); see also CITY OF SAN JOSE, FILE NO. PP09-193, SINGLE-USE CARRYOUT BAG ORDINANCE: DRAFT ENVIRONMENTAL IMPACT REPORT 35 (2010), available at <http://www.sanjoseca.gov/index.aspx?NID=2435> ("The City's experience with recycling plastic bags has been that processing costs greatly exceed their value.").

117. See *The Failure of Plastic Bag Recycling*, CALIFORNIANS AGAINST WASTE (Feb. 6, 2012, 2:24 PM), <http://www.cawrecycles.org/node/5232>.

118. See *id.*; see also *infra* Part IV.A.1.b.i (discussing how plastic bags hinder the municipal recycling process).

consumers who were interviewed rarely washed their reusable bags and that some bags contained bacteria but that “[h]and or machine washing reduced the number of bacteria in reusable bags by > 99.9%.”¹¹⁹ *Consumer Reports* issued a rebuttal pointing out that the bacteria found was minimal and that the sample size of eighty-four bags was too small to be meaningful.¹²⁰ A scientist interviewed by *Consumer Reports* noted, “A person eating an average bag of salad greens gets more exposure to these bacteria than if they had licked the insides of the dirtiest bag from this study”¹²¹ Also, it should be noted that plastic bag ordinances apply only to carryout bags; bags used within stores (e.g., for meat, poultry, fish, etc.) would still be available. Studies such as Gerba’s were simply attempts to distract public attention and delay the adoption of plastic bag legislation, and advocates were able to point out the flaws in the studies as well as the funding sources to quell the concerns of many cities.¹²²

In 2012, University of Pennsylvania Institute for Law and Economics issued a research paper that looked at hospital admissions in San Francisco after San Francisco’s bag ban went into effect, concluding that an increase in emergency room visits meant that reusable bags were causing an increase in foodborne illness.¹²³ The study received a lot of media attention but was flawed because the study focused on a time period where there was no verified increase in reusable bag use in the San Francisco area and no gastrointestinal bacterial infections were linked to reusable bag users.¹²⁴ The San Francisco Department of Public Health issued a detailed official response pointing out several other flaws related to the types of bacteria observed.¹²⁵ The San Francisco Department of Public Health concluded:

119. David L. Williams et al., *Assessment of the Potential for Cross-Contamination of Food Products by Reusable Shopping Bags*, 31 FOOD PROTECTION TRENDS 508, 513 (2011).

120. See *Can Reusable Grocery Bags Make You Sick, or Is that Just Baloney?*, CONSUMER REPORTS (July 22, 2010, 1:32 PM), <http://www.consumerreports.org/cro/news/2010/07/can-reusable-grocery-bags-make-you-sick-or-is-that-just-baloney/index.htm>.

121. *Id.*

122. See, e.g., Aaron Sankin, *Plastic Bag Ban Responsible for Spike in E. Coli Infections, Study Says*, HUFFINGTON POST (Feb. 7, 2013, 8:22 PM), http://www.huffingtonpost.com/2013/02/07/plastic-bag-ban_n_2641430.html.

123. See Jonathan Klick & Joshua D. Wright, *Grocery Bag Bans and Foodborne Illness* (Univ. of Pa. Inst. for Law & Econ., Research Paper No. 13-2, 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2196481.

124. See Sankin, *supra* note 122.

125. Letter from Thomás J. Aragón, Health Officer, Dep’t of Pub. Health, City & Cnty. of S.F., to Eileen Shields, Pub. Health Info. Officer, Dep’t of Pub. Health, City & Cnty. of S.F. (Feb. 10, 2013), available at http://blogs.berkeley.edu/wp-content/uploads/2013/02/SF-Health-Officer-MEMO-re-Reusable-Bag-Study_V8-FIN1.pdf.

[T]he hypothesis that there is a significant increase in gastrointestinal foodborne illnesses and deaths due to reusable bags has not been tested, much less demonstrated in this study. It would be a disservice to San Francisco residents and visitors to alarm them by claiming that it has been. It could be useful, however, to remind people to use safe food-handling practices, including maintaining the cleanliness of everything they use to transport, handle, and prepare food.¹²⁶

3. Industry Argues That There Will Be a Disproportionate Impact on Low-Income Customers

A favorite argument of the plastics industry is that a bag ban and any accompanying charge on paper bags, or a bag charge, is a regressive tax and will hurt low-income people more than others. Not only is this type of argument a form of prejudice (implying that people with less money are not concerned about the environment and cannot be environmentally protective due to their economic status), but actually, the reverse is true: poorer people get hit harder by both the cost of bags currently embedded in the price of food and by taxes in the form of costs to clean up litter.¹²⁷

Grocery stores currently embed 2 to 5 cents per plastic bag and 5 to 23 cents per paper bag into food prices.¹²⁸ Thus, by eliminating the cost to retailers of providing bags free of charge, L.A. County found its ordinance potentially saves approximately \$18 to \$30 per consumer per year.¹²⁹ Against these clear savings to taxpayers, the county estimated that the combined costs of the ordinance to each unincorporated county resident is less than \$4 per year, including the cost of purchasing replacement plastic bags for trash liners and their associated taxes.¹³⁰ Even more importantly, bag ordinances focus on encouraging customers to *bring their own bag*, not purchase bags; reusable bag giveaway and educational programs that help to provide bags to low-income residents should thus be part of any successful ordinance.

126. *Id.*

127. *See, e.g.,* BenZolno, *Latinos Ask You To Ban the Bag in California*, YOUTUBE (Aug. 28, 2012), <http://youtu.be/Hc9zLBl6ctk>.

128. *See* L.A. CNTY. BD. OF SUPERVISORS, *supra* note 78, at 15-16 tbl.1.

129. *See id.* at 36 tbl.9 (noting that the annual cost of providing plastic bags and paper bags is \$18 and \$30 respectively per consumer, assuming such costs were passed along to consumers).

130. *Implementation of the County of Los Angeles Plastic and Paper Carryout Bag Ordinance*, L.A. CNTY. DEP'T OF PUB. WORKS 1, <http://ladpw.org/epd/aboutthebag/PDF/Bag%20Ban%20Status%20Nov%202012.pdf> (last visited Feb. 22, 2014).

4. Job Loss Due to Loss of Manufacturing Jobs

As political currency goes, “jobs” are sacred, thus it is imperative to understand plastic bag manufacturing in any specific district seeking to enact an ordinance. In L.A. City and County, claims of job loss were overcome by research into the variety of companies making and distributing plastic bags: it was found that only three companies actually manufactured bags in L.A. County, and none in the city proper. Also, most single-use bags were sold to markets outside of California, and all of these companies manufactured items other than plastic bags, including thicker, reusable plastic bags.¹³¹ Consequently, despite its hyperbole, the industry failed to identify empirical and clear evidence that manufacturing jobs would be hurt by bans on single-use plastic bags.¹³² Advocates were also assisted by information establishing that California (and L.A.) was home to many reusable bag companies (over twenty companies throughout the state).

5. Job Loss Due to Harm to Retail Businesses

In addition to their December 2013 report,¹³³ the NCPA also published an August 2012 report that attempted to portray bag reduction ordinances as bad for retail businesses.¹³⁴ The report essentially extrapolates conjecture rather than actually completing a comprehensive survey. The report was based on a survey conducted by NCPA in December 2011 that looked at large and small stores in the unincorporated areas of L.A. County covered by the county’s ordinance versus nearby similar stores within city jurisdictions, which were not

131. For example, Command Packaging is listed on L.A. County’s “About The Bag” Web site as a reusable bag maker and extensively advertises its reusable bags. *See True Reusable Bags Meet Bag Ban Ordinances*, COMMAND PACKAGING, <http://www.commandpackaging.com/true-reusablebags.asp> (last visited Mar. 25, 2014). The company is also listed as a certified purveyor of reusable bags for San Francisco. *See Suppliers of Reusable Checkout Bags—Ordinance Effective October 1st 2012*, S.F. DEP’T OF ENV’T (Aug. 1, 2013), http://www.sfenvironment.org/sites/default/files/fliers/files/sfe_zw_vendors_reusableplastic.pdf.

132. For example, the Board of Public Works Commission learned, based on October 12, 2011, testimony of Cathy Browne, Crown Poly General Manager, before the L.A. City Board of Public Works, that plastic bags were only 65% of Crown Poly’s gross revenues; of that 65%, 90% of plastic bags were sold to entities outside of L.A. County, thus a ban would only impact jobs related to around 5% of Crown Poly’s overall bag production. *Recording of Bd. of Pub. Works Meeting*, L.A. CNTY. BD. OF PUB. WORKS (Oct. 12, 2011), <https://ia601006.us.archive.org/29/items/BPW2011/20111012.mp3>. Accordingly, it was not clear that any of their workers were at risk of losing their jobs.

133. *See infra* Part IV.A.1.b.ii (questioning report’s conclusion that plastic bag bans do not save cities money).

134. PAMELA VILLARREAL & BARUCH FEIGENBAUM, NAT’L CTR. FOR POLICY ANALYSIS, A SURVEY ON THE ECONOMIC EFFECTS OF LOS ANGELES COUNTY’S PLASTIC BAG BAN (2012).

covered by the ordinance.¹³⁵ The survey sought to determine the effects of the county ban, focusing on impacts to sales and employment at affected stores and shopping behaviors of customers. The study claimed to have identified a negative financial impact on stores in the unincorporated areas; however, the study's conclusions were based on survey responses from only 3% of stores. In contrast, an L.A. County staff report looked at the effect on local businesses and found that the ordinance "appears to have a minimal financial impact on local businesses."¹³⁶

B. Attempts by Plastic Industry Lobbyists To Preempt Local Ordinances at the State or National Level

As discussed above, California's AB 2449 was a good example of state law preempting a certain type of plastic bag law.¹³⁷ AB 2449 specifically preempted fees on plastic bags, and plastics industry groups unsuccessfully argued that field preemption was implied.

1. Illinois

Illinois SB 3442, a bill that masqueraded as an innocent recycling initiative but specifically preempted municipal bag bans, was successfully vetoed in 2012.¹³⁸ Even assuming SB 3442's recycling incentives were meritorious, SB 3442's targets were low and expanded the definition of plastic bag recycling to include film, which virtually guaranteed the bill would have little or no impact on pollution or consumer education and/or behavior, but would instead set a preemption precedent.¹³⁹

2. Florida

Under Florida's Energy, Climate Change, and Economic Security Act of 2008, no local or state government may enact any regulation or tax on the use of such retail bags until the state legislature takes action on

135. *See id.* at 3.

136. *Implementation of the County of Los Angeles Plastic and Paper Carryout Bag Ordinance*, *supra* note 130, at 2.

137. *See infra* Part II.A.

138. Plastic Bag and Film Recycling Act, S. 3442, 97th Gen. Assemb., Reg. Sess. (Ill. 2012); *see* Veto Message, Gov. Pat Quinn to the Honorable Members of the Illinois Senate (Aug. 26, 2012).

139. *Bill Would Prohibit Local Bag Bans*, CAMPAIGN FOR RECYCLING (May 2, 2012), http://www.campaignforrecycling.org/whats_new/recycling_news/may2_sb3442.

the issue.¹⁴⁰ The Act requires the Department of Environmental Protection to perform an analysis and submit a report to the legislature regarding the necessity and efficacy of both statewide and local regulation of bags used by consumers to carry products from retail establishments.¹⁴¹ As of December 2013, the legislature has not taken any action on the issue, so local ordinances may not be adopted.

VI. BUILDING A LOCAL GRASSROOTS CAMPAIGN

Along with structuring an ordinance properly and getting the pertinent information on the public record, building a local grassroots campaign in support of the ordinance is often a very important part of getting a plastic bag ordinance adopted.

A. *Building a Coalition*

Building a coordinated coalition of groups interested in supporting a plastic bag ordinance is a critical first step in the process. Advocates interested in starting a campaign should reach out to local environmental groups to see if there is already a campaign underway or if others are interested in starting a campaign. The environmental groups most interested in plastic bag reduction tend to be groups concerned specifically with waste reduction, water and ocean issues, and conservation. Once a coalition has begun to form, members should reach out to a variety of other groups to broaden the coalition, for example, neighborhood associations, business improvement districts, retail associations, political parties, recycling companies, social justice organizations, faith-based organizations, and local student groups. If no local groups are currently working on the issue, advocates should try to coordinate an event that brings together local groups for a film screening and/or panel discussion on the issue to see if groups would like to get involved. The film *Bag It* is often shown at such events, and a “tool kit” for activism is available on the film Web site.¹⁴² Other toolkits are also available on the Web sites of other advocates.¹⁴³

140. FLA. STAT. ANN. § 403.7033 (West 2014).

141. See *id.*; see also *Retail Bags Report for the Legislature*, FLA. DEP’T OF ENVTL. PROT. (Feb. 1, 2010), http://www.dep.state.fl.us/waste/quick_topics/publications/shw/recycling/retail_bags/Retail-Bag-Report_01Feb10.pdf.

142. *Bag It Town Tool Kit*, BAG IT, http://www.bagitmovie.com/downloads/bagittown_toolkit.pdf (last visited Feb. 22, 2014).

143. See, e.g., *Bag Ban Tool Kit*, CALIFORNIANS AGAINST WASTE, <http://www.cawrecycles.org/issues/plasticbagcampaign/toolkit> (last visited Mar. 25, 2014); *Activist’s Toolkit: Ban the Bag in Your City! Keep Plastic Out of the Pacific*, ENV’T CAL., <http://www.environmentcalifornia.org/resources/cae/activists-toolkit-ban-bag-your-city> (last visited Mar. 25, 2014).

When groups decide to work together to promote a plastic bag ordinance, they should meet periodically to discuss what types of policies they support and develop a mission statement in order to grow the coalition. For example, in NYC, the bag coalition is called the “Bag It NYC Coalition.”¹⁴⁴ And in Chicago, the coalition is called “Bring Your Bag Chicago.”¹⁴⁵

B. Finding a “Champion” on the City Council

After an initial coalition has been established, the coalition should meet with local council members to discuss their mission statement and to see if any council members have an interest in pursuing a plastic bag ordinance. If a council member is interested in pursuing an ordinance, the coalition should present the council member with information that the coalition has gathered on ordinance options (including this Article). The council member can then work with staff to develop the exact language of the ordinance, and the coalition members can work on further developing the coalition and encouraging other council members to sign on to the bill as cosponsors.

Council members can also be helpful in identifying local government personnel that can assist with information about relevant local government costs for litter cleanup. It is extremely helpful to have as much information as you can about the quantity and composition of litter and the costs of litter in the specific area in which an ordinance is being considered. Often, this information is disclosed only after local government personnel are directed to begin working on an ordinance, but ideally, this type of information would be solicited early in the advocacy process.

144. The Bag It NYC Coalition’s name was inspired by the film *Bag It*, but is only loosely affiliated with the film. As of January 3, 2014, coalition members included *Bag It* (the film), BK Greens, Brooklyn Food Coalition, Citizens Campaign for the Environment, Citizens Committee for New York City, Clean Seas Coalition, Einstein Environment Sustainability & Conservation Club at Albert Einstein College of Medicine, Environmental Committee of the Park Slope Food Coop, Green Schools Alliance, Human Impacts Institute, LES Ecology Center, National Resources Defense Council, No Impact Project, NY League of Conservation Voters, PlasticBagLaws.org, Sane Energy Project, Sims Municipal Recycling, Surfrider Foundation NYC, Sustainable Flatbush, The 5 Gyres Institute, The Hewitt School Earth Committee, and The Plastic Bag Mandala/What Moves You. See BAGITNYC, <http://bagitnyc.org/> (last visited Mar. 25, 2014).

145. *Bring Your Own Bag Chicago*, FACEBOOK, <https://www.facebook.com/bringyourbagchicago> (last visited Mar. 25, 2014).

C. *Creating a FAQ and Support Letter and Other Advocacy Tools*

A key part to successful adoption of a plastic bag ordinance is coalition-building and preparation of materials before an ordinance is introduced. For example, in NYC, the bill's cosponsors collaborated with the Bag It NYC Coalition to compose a document that laid out the premise of the bill as well as answers to Frequently Asked Questions (FAQs), and the document was made available to other council members and journalists before the bill was introduced.¹⁴⁶ Also, Bag It NYC Coalition members drafted a sign-on letter expressing their support of the ordinance and invited other groups to sign on.¹⁴⁷

Sign-on letters in support of legislation generally work best when they are drafted and circulated approximately two weeks prior to a legislative event (the introduction of a bill or a committee or council vote), allowing one week for coalition members to review the letter and suggest edits. If coalition members want to sign on to the letter, they should be asked to send the name, title, logo, and e-signature of the authorizing person to the designated coalition member coordinating the letter. Some coalition members may choose to submit their own letters as well to address specific concerns, but a sign-on letter is an effective means of allowing groups to work together and show their collaboration while minimizing duplicative effort. Sign-on letters should be provided to journalists at the legislative event to underscore the bill's widespread grassroots community support.

Generally, support (either in the form of sign-on letters or direct outreach to council members) should include businesses as well as individual advocates. Often, communities have businesses that already support a bag ban policy or are willing to participate in a pilot bag give-away (for example, a "Day Without a Bag" educational day where a local market or store gives away some free reusable bags in conjunction with some press and educational material).¹⁴⁸ Events that bring businesses, local government, and the community together and start educating the public about reusable bags are helpful to building support and momentum for an ordinance.

146. See *Why Reduce Plastic Bag Waste?*, N.Y.C. COUNCIL MEMBER BRAD LANDER, <http://bradlander.com/sites/default/files/images/Plastic%20%20Bags%20bill%20outline.pdf> (last visited Mar. 25, 2014).

147. Letter from Eric Goldstein et al. to New York City Council Members (Aug. 19, 2013), available at http://plasticbaglaws.org/wordpress/wp-context/uploads/2011/09/ltr_NYC_Coalition-Bug-Bill-2013-08-19.pdf.

148. See, e.g., *A Day with a Bag*, HEAL THE BAY, <http://www.healthebay.org/get-involved/events/day-without-bag> (last visited Mar. 25, 2014).

With all of the specific types of advocacy tools mentioned above, it is critical to make sure these tools are prepared and disseminated timely, before any vote. Likewise, it is imperative to have educational events occur in advance of any legislative hearing or decision. Advocates should be encouraged to meet early with city council members and plan to invite members to events in their respective districts. When arguments and/or questions arise, advocates can then refine letters or FAQ materials to include any necessary rebuttals. Often, objections to an ordinance are untrue and without merit, but the success of the ordinance ultimately rests upon how well the advocates “put out the fire” with outreach, materials, and the other techniques and tools specified in this Article.

D. (Social) Media

Social media is important for any legislative campaign, but is especially effective because it can leverage grassroots involvement. Social media should involve a variety of things like a Facebook site, ideally a stand-alone Web site, an online petition, photo and video content, and press releases to help generate news stories and editorials. The coalition should have a media committee that coordinates media and messaging amongst the coalition. Ideally, one or more of the coalition member groups could host a Web site with up-to-date information on the legislation events and a petition or registration. One or two people should be designated the administrator of the Facebook page and/or Web site and be in charge of keeping the site up to date, which may include posting interesting articles relevant to plastic bags to maintain an online presence even when there is not a lot of movement with the legislation.

Groups and individuals should use caution when creating online petitions about local bag campaigns. Online petitions work best when they are in support of specific legislation and are released jointly by coalition members at a time when something is happening with the legislation, like a committee vote. Groups and individuals can tend to jump the gun and create their own petitions without a pragmatic goal in mind, which can lead to “petition fatigue,” where people sign one petition and are then less likely to sign another petition that is more focused on actual legislation. Another issue with online petitions is that petitions work best when they are signed by people that live in the legislative district where the legislation is pending. Council members care about what their own constituents think, and most online petitions do not allow for petition signers to be sorted by city council district. So, although general online petitions may seem effective at first glance, they are unlikely to sway council member votes effectively unless they are aimed

at specific legislation and there is a mechanism to discern whether the signers are constituents.

Engaging media professionals can help develop a larger following for the proposed legislation. Press releases should be prepared for significant events, ideally coordinated by one coalition group and incorporating quotes from several members of the coalition. Coalition members should also submit editorials to local newspapers and reach out to media contacts to help develop feature stories about the legislation. Web and film professionals should also be approached.¹⁴⁹ The best media strategy is to promote the bag campaign from various angles with a coordinated message amongst all of the grassroots advocates working on the campaign.

VII. CONCLUSION

In the face of fierce opposition from the plastics industry and lawsuits, more and more cities are exploring plastic bag reduction ordinances, including NYC, the most populous city in the United States. To date, almost 140 local jurisdictions in the United States have adopted plastic bag ordinances.¹⁵⁰ Cities increasingly understand that where there are sustainable alternatives to a product that has the propensity to become litter, a bag ordinance—particularly a charge on all carryout bags or a ban on plastic and charge on all other carryout bags—is an effective policy approach. Advocates must learn from the lessons of other cities and move forward with plastic bag ordinances in a cohesive manner in order to win the fight against well-funded and sophisticated opponents.

Single-use plastic carryout bags have emerged as an icon of waste, but plastic bag reduction laws can be equally iconic “gateway” sustainability bills that result in a burgeoning environmental awareness for consumers.¹⁵¹ Plastic bag reduction regulation can be the tipping point for a cultural shift towards more sustainable (and less “throw-away”) behavior; once people start paying attention to convenience packaging like shopping bags, they often begin paying attention to other single-use items as well. Mandating charges on carryout bags has proven to be an incredibly effective mechanism to reduce single-use bag

149. For example, local filmmakers created *The Immortal Plastic Bag*, a short six-minute film about the New York City Council’s proposed bill to charge for bags, with the help of various coalition members. Citizen, *supra* note 87. The film was released through blogs and through social media.

150. See *Plastic Bags: Local Ordinances*, *supra* note 106; *National List of Local Bag Ban Ordinances*, *supra* note 107.

151. See Romer, *supra* note 3, at 343.

consumption by requiring customers to pay attention to the simple habitual act of taking a bag. The strategies outlined in this Article will be helpful in encouraging a thoughtful and educated approach for advocates to continue to grow this sustainability movement.

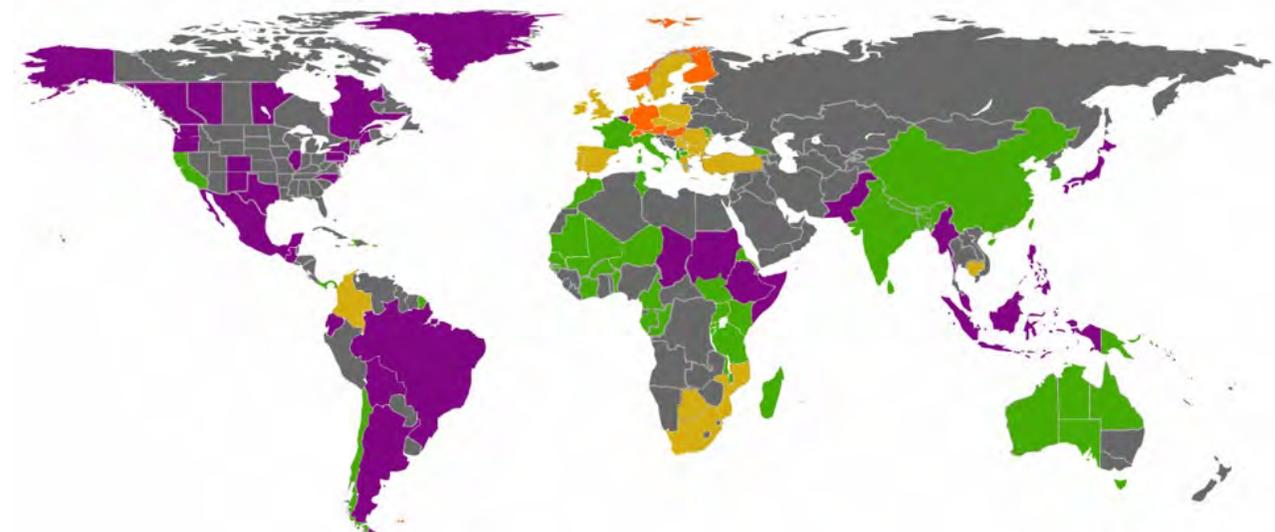
Cities around the United States that have banned plastic bags.

There is a popular and growing movement to ban or heavily tax single-use plastic bags across the United States and globally. Here, we've collected the 349 known cities, counties, and states to have, in some way, banned or taxed plastic bag use.

Reuse This Bag estimates that a plastic bag has a 12-minute lifespan from when it's initially filled with groceries at the grocery store to when it is discarded. Compare this with estimates that those same plastic bags take anywhere from 10 to 1,000 years to decompose depending on what environmental conditions the bag is disposed of in. Quickly, the picture becomes clear that for a few minutes of use, plastic bags weigh heavily on long-term environmental impact.

These bags eventually make their way to landfills and into our oceans, adding to the 8 million metric tons of plastic entering the ocean every year. This impact every scale of marine ecosystems, from bottom feeders and microorganisms to whales.

Currently, only Hawaii and California have statewide plastic bag bans, with several other cities having either mandatory recycling programs, taxes on plastic bag use, etc.



Plastic bag bans across the United States WikiCommons

When you zoom out on a global scale, we find dozens of countries that have banned single-use plastic bags. While many countries around the world have taken the steps to ban plastic bags country-wide, the United States has taken a piecemeal approach.

When looking through the list of cities that have partially or wholly banned plastic bags, it's important to note this is an active area of legislation. Local governments across the United States have plans to vote on a ban in the coming years. If you'd like to use a great interactive map of each state, visit [Bag The Ban](#).

City / County	State	Ban
DEL MAR	CA	City-wide ban on plastics bags and a 10-cent fee on paper and reusable bags
ALAMEDA COUNTY	CA	County-wide ban on plastic bags with a 10-cent fee on paper and reusable bags in all stores, and in all restaurants
ST. HELENA	CA	City-wide ban on plastic bags and a 10-cent fee on paper bags
OCEANSIDE	CA	City-wide ban on plastic bags and ten-cent fee on paper bags
SAN DIEGO	CA	City-wide ban on single-use plastic bags and ten-cent fee on paper bags
DANVILLE	CA	Town-wide ban on plastic bags
SACRAMENTO COUNTY	CA	County-wide ban on plastic bags and 10-cent fee on paper bags
YOUNTVILLE	CA	Town-wide ban on plastic bags and 10-cent fee on paper bags
SANTA BARBARA COUNTY	CA	County-wide ban on plastic bags and 10-cent fee on paper bags
CATHEDRAL CITY	CA	City-wide ban on plastic bags and 10-cent fee on paper bags
HERMOSA BEACH	CA	City-wide ban on plastic and 10-cent fee on paper
AMERICAN CANYON	CA	City-wide ban on plastic bags
MILPITAS	CA	City-wide ban on plastic bags and 10-cent fee on paper bags
SEASIDE	CA	City-wide ban on plastic bags and 10-cent fee on paper and reusable bags
LAFAYETTE	CA	City-wide ban on plastic bags and 10-cent fee on paper bags
MANHATTAN BEACH	CA	Ban on plastic bags
FAIRFAX	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
PACIFICA	CA	Ban on plastic bags and 10-cent paper bag fee
SACRAMENTO	CA	City-wide ban on plastic bags and 10-cent fee for paper bags
MARINA	CA	City-wide ban on plastic bags and 10-cent fee on paper bags

ENCINITAS	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
HERCULES	CA	Ban on plastic and ten cent fee on recycled and reusable paper bags
PACIFIC GROVE	CA	City-wide ban on plastic bags and 10-cent fee for allowable carryout bags
PLEASANT HILL	CA	Ban on plastic bags and 10-cent paper bag fee
NEVADA CITY	CA	Ban on plastic bags and 10-cent paper bag fee
MOUNTAIN VIEW	CA	Ban on plastic bags and 10-cent paper bag fee
MONROVIA	CA	Ban on plastic bags
KING CITY	CA	City-wide ban on plastic bags and 10-cent fee on paper and reusable bags
MARTINEZ	CA	Ban on plastic bags
CHICO	CA	City-wide ban on plastic bags and 10-cent fee for paper bags
GRASS VALLEY	CA	City-wide ban on plastic bags
CALISTOGA	CA	City-wide ban on plastic bags
INDIO	CA	City-wide ban on plastic bags
WALNUT CREEK	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
BELVEDERE	CA	City-wide ban on plastic bags with a 10-cent fee on reusable bags
SOUTH PASADENA	CA	City-wide ban on plastic bags
ARCATA	CA	City-wide ban on plastic bags with a 10-cent tax on paper bags
PALM SPRINGS	CA	Ban on plastic bags and 10-cent tax on paper bags
LOS ALAMOS	CA	Ban on plastic bags
SANTA BARBARA	CA	City-wide ban on plastic bags with a 10-cent tax on paper bags
SOUTH LAKE TAHOE	CA	City-wide ban on plastic bags with a 5-cent fee on paper bags
MONTEREY (COUNTY)	CA	County-wide ban on plastic bags and 10-cent fee on paper and reusable bags
SAN RAFAEL	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags

NOVATO	CA	Ban on plastic bags and 10-cent paper bag fee
PETALUMA	CA	Ban on plastic bags and 10-cent tax on paper bags
SANTA ROSA	CA	City-wide ban on plastic bags
SALINAS	CA	Ban on plastic bags and 10-cent paper bag fee
ROHNERT PARK	CA	Ban on plastic bags and 10-cent tax on paper bags
COTATI	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
CLOVERDALE	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
HEALDSBURGH	CA	Ban on plastic and ten cent fee on paper
SAUSALITO	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
SEBASTOPOL	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
SONOMA CITY	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
SONOMA COUNTY	CA	City-wide ban on plastic bags
WINDSOR	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
DAVIS CITY	CA	City-wide ban on plastic bags
LOS ANGELES CITY	CA	Ban on plastic bags and ten-cent fee on paper bags
TRUCKEE	CA	City-wide ban on plastic bags
ORCUTT	CA	Ban on plastic bags and paper bag tax
LOS GATOS	CA	Plastic bag ban
CAMPBELL	CA	City-wide ban on plastic bags with a small fee on paper and reusable bags
PITTSBURG	CA	Ban on plastic bags and tax on paper bags
RICHMOND	CA	Ban on plastic bags and 5-cent paper bag tax
EL CERRITO	CA	City-wide ban on plastic bags
SAN PABLO	CA	City-wide ban on plastic bags with a 5-cent tax on plastic or reusable bags
CULVER CITY	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags

SAN JOSE	CA	City-wide ban on plastic with a 10-cent fee on paper bags
MILL VALLEY	CA	Ban on plastic bags
EAST PALO ALTO	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
REDWOOD CITY (IN SAN MATEO COUNTY)	CA	Ban on plastic bags
CUPERTINO	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
LOS ALTOS	CA	Plastic bag ban and 25 cent fee on paper bags
PALO ALTO	CA	Ban on plastic bags and 10-cent tax on paper bags
SAN CARLOS	CA	City-wide ban on plastic bags with a 5-cent fee on paper bags
HALF MOON BAY	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
SAN BRUNO	CA	Ban on plastic bags and 10-cent tax on paper bags
PORTOLA VALLEY	CA	Ban on plastic bags and 10-cent paper bag fee
PACIFICA	CA	Ban on plastic bags and 25-cent tax on paper bags
MORGAN HILL CITY	CA	Ban on plastic bags and 10-cent paper bag fee
MENLO PARK	CA	Ban on plastic bags
BELMONT	CA	City-wide ban on plastic bags with a 25-cent fee on paper bags
FOSTER CITY	CA	City-wide ban on plastic bags with a 10-cent tax on paper bags
DALY CITY	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
COLMA	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
SAN MATEO CITY	CA	City-wide ban on plastic bags with a 10-cent tax on paper bags
SAN MATEO COUNTY	CA	County-wide ban on plastic bags
SOUTH SAN FRANCISCO	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
WOODSIDE	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
CARPINTERIA	CA	City-wide ban on plastic and paper bags

SANTA CRUZ	CA	City-wide ban on plastic bags with a 10-cent tax on paper bags
DANA POINT	CA	City-wide ban on plastic bags
CAPITOLA	CA	City-wide ban on plastic bags with a 25-cent tax on paper bags
BURLINGAME	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
BRISBANE	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
SUNNYVALE	CA	City-wide ban on plastic bags with a 10-cent fee on paper and reusable bags
WEST HOLLYWOOD	CA	City-wide ban on plastic bags with a 10-cent tax on paper bags
CARMEL BY THE SEA	CA	City-wide ban on plastic bags
MENDOCINO COUNTY	CA	Ban on plastic bags and 10-cent tax on paper bags
UKIAH COUNTY	CA	City-wide ban on plastic bags and 10-cent tax on paper bags
PLEASANTON	CA	Ban on plastic bags and 10-cent tax on paper and reusable bags
PIEDMONT	CA	Ban on plastic bags and 10-cent fee on paper bags
OAKLAND	CA	Ban on plastic bags and 10-cent fee on paper and reusable bags
NEWARK	CA	Ban on plastic bags and 10-cent tax on paper and reusable bags
MONTEREY	CA	City-wide ban on plastic bags and 25-cent paper bag fee
ALBANY	CA	City-wide ban on plastic bags and 10-cent fee on paper and reusable bags
LIVERMORE	CA	Ban on plastic bags and 10-cent tax on paper and reusable bags
BERKLEY COUNTY	CA	City-wide ban on plastic bags
HAYWARD	CA	City-wide ban on plastic bags with a 10-cent tax on paper bags
GLENDALE	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags

FREMONT	CA	City-wide ban on plastic bags with a 10-cent tax on reusable and paper bags
EMERYVILLE	CA	City-wide ban on plastic bags with a 10-cent tax on reusable and paper bags
DUBLIN	CA	City-wide ban on plastic bags with a 10-cent tax on reusable and paper bags
CORVALLIS	CA	City-wide ban on plastic bags with a 5-cent fee on paper bags
LAGUNA BEACH	CA	Ban on plastic bags and a ten cent fee on paper bags
SAN LEANDRO	CA	City-wide ban on plastic bags with a 10-cent tax on paper and reusable bags
UNION CITY	CA	City-wide ban on plastic bags with a 10-cent tax on paper and reusable
FORT BRAGG	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
ARROYO GRANDE	CA	City-wide ban on plastic bags and 10-cent fee on paper
PISMO BEACH	CA	Ban on plastic bags and 10-cent tax on paper bags
PASO ROBLES	CA	Ban on plastic bags and 10-cent paper bag fee
MORRO BAY	CA	Ban on plastic bags and 10-cent tax on paper bags
ATASCADERO	CA	City-wide ban on plastic bags and 10-cent fee on paper bags
SAN LUIS OBISPO COUNTY	CA	County-wide ban on plastic bags with a 10-cent tax on paper bags
GROVER BEACH	CA	City-wide ban on plastic bags with a 10-cent tax on paper bags
WATSONVILLE	CA	City-wide ban on plastic bags with a 10-25 cent fee on paper bags
MILLBRAE	CA	Ban on plastic bags and 10-cent tax on paper bags
SOLANA BEACH	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
PASADENA	CA	Ban on plastic bags and 10-cent tax on paper bags
OJAI	CA	Ban on plastic bags and 10-cent paper bag fee
SAN LUIS OBISPO	CA	City-wide ban with a 10-cent fee on paper bags
SAN FRANCISCO	CA	City-wide ban on plastic bags
MARIN COUNTY	CA	Ban on plastic bags

LOS ANGELES COUNTY	CA	Ban on plastic bags and ten cent fee for paper bags
SANTA CLARA COUNTY	CA	County-wide ban on plastic bags with a 15 cent fee on paper bags
SANTA MONICA	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
LONG BEACH	CA	Ban on plastic bags and ten cent fee on paper bags
CALABASAS	CA	City-wide ban on plastic bags with a 10-cent fee on paper bags
MALIBU	CA	Ban on plastic bags
CALIFORNIA (STATEWIDE)	CA	Statewide ban on single-use plastic bags and 10-cent fee on paper and reusable bags
BISBEE	AZ	City-wide ban on plastic bags with a 5-cent tax on paper bags
ANCHORAGE	AK	City-wide ban on plastic bags, 10-50-cent tax for paper bags
UNALASKA	AK	City-wide ban on plastic bags
PALMER	AK	City-wide ban on plastic bags
WASILLA	AK	City-wide ban on plastic bags
CORDOVA	AK	City-wide ban on plastic bags
HOOPER BAY	AK	City-wide ban on plastic bags
BETHEL	AK	City-wide ban on plastic bags
CRESTED BUTTE	CO	City-wide ban on plastic bags
AVON	CO	Town-wide ban on plastic bags, 10-cent tax on paper bags
NEDERLAND	CO	City-wide 10-cent fee on paper and plastic bags
BRECKENRIDGE	CO	City-wide 10-percent tax on plastic bags
BOULDER	CO	10-cent fee on plastic bags
ASPEN	CO	City-wide ban on plastic bags with a 20-cent fee on paper bags
CARBONDALE	CO	City-wide ban on plastic bags with a 20-cent tax on paper bags
TELLURIDE	CO	City-wide ban on plastic bags with a 10-cent tax on paper bags
GREENWICH	CT	City-wide ban on plastic bags (3 year sunset)

WESTPORT	CT	Westport, CT implemented a ban on plastic bags for all retailers in the city
WASHINGTON	DC	City-wide 5-cent tax on plastic and paper bags
CORAL GABLES	FL	City-wide ban on plastic bags
OAHU	HI	County-wide ban on plastic bags, 15-cent tax on reusable plastic bags, and ban on all plastic bags by 2020
OAHU	HI	Ban on plastic bags
HAWAII COUNTY	HI	County-wide ban on plastic bags
HONOLULU	HI	City-wide ban on plastic bags
MAUI COUNTY	HI	County-wide ban on plastic bags
KAUAI COUNTY	HI	County-wide ban on plastic bags
MARSHALL COUNTY	IA	County-wide ban on plastic bags
OAK PARK	IL	City-wide 10-cent tax for retailers over 5,000 square feet
CHICAGO	IL	City-wide 7-cent tax on plastic and paper bags
EVANSTON	IL	City-wide ban on plastic bags less than 225ml thick
DARTMOUTH	MA	Town-wide ban on plastic bags
WILMINGTON	MA	Town-wide ban on plastic bags
HAVERHILL	MA	City-wide ban on plastic bags for businesses with 8,000 square feet or more
ANDOVER	MA	Town-wide ban on plastic bags
LOWELL	MA	City-wide ban on plastic bags (retail establishments 3,000 sq ft or greater)
DANVERS	MA	Town-wide ban on plastic bags
WESTFORD	MA	Town-wide ban on plastic bags
GLOUCESTER	MA	City-wide ban on plastic bags
HOPKINTON	MA	Town-wide plastic bag ban
BELMONT	MA	Town-wide ban on plastic bags
BOSTON	MA	City-wide ban on plastic bags, Five-cent tax on paper, reusable and compostable bags
COHASSET	MA	Town-wide ban on plastic bags
WINCHESTER	MA	Town-wide ban on plastic bags

MARSHFIELD	MA	Town-wide plastic bag ban
WESTBOROUGH	MA	Town-wide ban on plastic bags
SWAMPSCOTT	MA	Town-wide ban on plastic bags
TOPSFIELD	MA	Town-wide ban on plastic bags
WAYLAND	MA	Town-wide ban on plastic bags
WAKEFIELD	MA	City-wide ban on plastic bags
MELROSE	MA	City-wide ban on plastic bags (businesses over 8,000 sq ft)
SOUTH HADLEY	MA	City-wide ban on plastic bags
SUDBURY	MA	City-wide ban on plastic bags
DALTON	MA	City-wide ban on plastic bags less than 40 mils
YARMOUTH	MA	City-wide ban on plastic bags
ARLINGTON	MA	City-wide ban on plastic bags
STOCKBRIDGE	MA	City-wide ban on plastic bags
BOURNE	MA	Town-wide ban on plastic bags
OAK BLUFFS	MA	Town-wide ban on plastic bags
FRAMINGHAM	MA	Town-wide ban on plastic bags
EDGARTOWN	MA	Town-wide ban on plastic bags and fee on paper and reusable bags
ATHOL	MA	City-wide ban on plastic bags
SANDWICH	MA	Town-wide ban on plastic bags
IPSWICH	MA	Town-wide ban on plastic bags and fee on paper bags
DENNIS	MA	Town-wide ban on plastic bags
BEDFORD	MA	Town-wide ban on plastic bags
PLYMOUTH	MA	Town-wide ban on plastic bags
NATICK	MA	Town-wide ban on plastic bags
WATERTOWN	MA	Town-wide ban on plastic bags
SHREWSBURY	MA	City-wide ban on plastic bags less than 40 mils thick
LENOX	MA	Town-wide ban on plastic bags
LEE	MA	Town-wide ban on plastic bags and tax on paper bags

ADAMS	MA	Town-wide ban on plastic bags
AMHERST	MA	Town-wide ban on plastic bags
CHILMARK	MA	Town-wide ban on plastic bags and fee on paper and reusable bags
AQUINNAH	MA	Town-wide ban on plastic bags
WEST TISBURY	MA	Town-wide ban on plastic bags and fee on paper and reusable bags
TISBURY	MA	Town-wide ban on plastic bags and fee on paper and reusable bags
SALEM	MA	City-wide ban on plastic bags
WELLESLEY	MA	City-wide ban on plastic bags
BARNSTABLE	MA	City-wide ban on plastic bags less than 3 mils thick
SOMERVILLE	MA	City-wide ban on plastic bags
FALMOUTH	MA	City-wide ban on plastic bags and 10-cent fee on paper bags
HAMILTON	MA	Town-wide ban on plastic bags
HARWICH	MA	City-wide ban on plastic bags
CAMBRIDGE	MA	City-wide ban on single-use plastic bags and 10-cent fee on paper and composed plastic bags
TRURO	MA	Town-wide ban on plastic bags
BRIDGEWATER	MA	Town-wide ban on plastic bags
NORTHAMPTON	MA	City-wide ban on plastic bags
CONCORD	MA	City-wide ban on plastic bags
CHATHAM	MA	City-wide ban on single-use plastic bags
WELLFLEET	MA	Town-wide ban on plastic bags
WILLIAMSTOWN	MA	Town-wide ban on plastic bags
NEWTON	MA	City-wide ban on plastic bags
MARBLEHEAD	MA	City-wide ban on plastic bags
PROVINCETOWN	MA	City-wide ban on plastic bags
NEWBURYPORT	MA	City-wide ban on plastic bags
GREAT BARRINGTON	MA	City-wide ban on plastic bags

MANCHESTER	MA	City-wide ban on plastic bags
BROOKLINE	MA	City-wide ban on plastic bags
HARFORD	MD	County-wide ban on plastic yard waste bags
ABERDEEN	MD	City-wide ban on plastic yard waste bags
TAKOMA PARK	MD	City-wide ban on plastic bags
MONTGOMERY COUNTY	MD	Five-cent charge on each paper or plastic carryout bag provided by retail establishments
CHESTERTOWN	MD	Chestertown, MD implemented a ban on plastic bags for all retailers
ROCKLAND	ME	City-wide ban on plastic bags
MANCHESTER	ME	Town-wide ban on plastic bags
BLUE HILL	ME	Town-wide plastic bag ban
BATH	ME	City-wide ban on plastic bags, and a five-cent tax on paper bags (increasing to 10-cents and 15-cents in 2019 and 2020)
BELFAST	ME	City-wide ban on plastic bags
CAPE ELIZABETH	ME	Town-wide five-cent tax on plastic bags
BRUNSWICK	ME	Town-wide ban on plastic bags
TOPSHAM	ME	Town-wide 5-cent fee on plastic bags
SACO	ME	City-wide ban on plastic bags
FREEPORT	ME	Town-wide ban on plastic bags and five-cent fee on paper bags
KENNEBUNK	ME	Town-wide ban on plastic bags
FALMOUTH	ME	City-wide 5-cent fee on plastic and paper bags
YORK	ME	Town-wide ban on plastic bags
SOUTH PORTLAND	ME	City-wide 5-cent fee on plastic and paper bags
PORTLAND	ME	City-wide 5-cent fee on plastic and paper bags
WASHTENAW COUNTY	MI	County-wide ban on plastic bags and 10-cent fee on reusable bags
HYDE COUNTY	NC	County-wide ban on plastic bags
DARE COUNTY	NC	County-wide ban on plastic bags
CURRITUCK COUNTY	NC	County-wide ban on plastic bags

JERSEY CITY	NJ	City-wide ban on plastic bags
BELMAR	NJ	Borough-wide ban on plastic bags
BRIGANTINE BEACH	NJ	City-wide ban on plastic bags
HOBOKEN	NJ	City-wide ban on plastic bags, fee on paper and reusable bags (up to 25-cents); low-income customers exempt
BRADLEY BEACH	NJ	Borough-wide ban on plastic bags
STAFFORD TOWNSHIP	NJ	Town-wide ban on plastic bags
ATLANTIC COUNTY	NJ	County-wide ban on plastic bags and straws within parks
TEANECK	NJ	5-cent tax on plastic bags
MONMOUTH BEACH	NJ	Borough-wide ban on plastic bags
LONG BEACH	NJ	Town-wide ban on plastic bags
POINT PLEASANT BEACH	NJ	Borough-wide ban on plastic bags
LONGPORT	NJ	10-cent fee on paper and plastic bags
SILVER CITY	NM	City-wide ban on plastic bags
SANTA FE	NM	City-wide ban on plastic bags and 10-cent tax on paper bags
BEDFORD	NY	Town-wide 10-cent fee on plastic and paper bags
LEWISBORO	NY	Town-wide ban on plastic bags, 15-cent fee on paper bags
SEA CLIFF	NY	Village-wide minimum 5-cent tax on plastic bags
SUFFOLK COUNTY	NY	County-wide five-cent fee on paper and plastic bags
LONG BEACH	NY	City-wide five-cent fee on plastic bags
NEW CASTLE	NY	City-wide ban on plastic bags and 10-cent fee on paper bags
NEW YORK CITY	NY	City-wide 5-cent fee on plastic bags
PATCHOGUE VILLAGE	NY	City-wide ban on plastic bags
SAG HARBOR	NY	Village-wide ban on plastic bags
SOUTHAMPTON	NY	City-wide ban on plastic bags
NEW PALTZ VILLAGE	NY	Village-wide ban on plastic bags
HASTINGS ON HUDSON	NY	City-wide ban on plastic bags
LARCHMONT	NY	City-wide ban on plastic bags
MAMARONECK	NY	Village-wide ban on plastic bags

RYE	NY	City-wide ban on plastic bags
EAST HAMPTON	NY	City-wide ban on plastic bags
NEW YORK (STATEWIDE)	NY	Proposal for State-wide ban on plastic bags w/Amendments
MILWAUKIE	OR	City-wide ban on plastic bags
MANZANITA	OR	City-wide ban on plastic bags
MCMINNVILLE	OR	City-wide ban on plastic bags
HOOD RIVER	OR	City-wide ban on plastic bags
FOREST GROVE	OR	City-wide ban on plastic bags
ASHLAND	OR	City-wide ban on plastic bags and 10-cent fee on paper bags
EUGENE	OR	City-wide ban on plastic bags and 5-cent fee on paper bags
CORVALLIS	OR	City-wide ban on plastic bags and 5-cent fee on paper bags
PORTLAND	OR	City-wide ban on plastic bags
PROVIDENCE	RI	City-wide ban on plastic bags and 10-cent tax on paper and reusable bags
NORTH KINGSTOWN	RI	Town-wide ban on plastic bags
JAMESTOWN	RI	City-wide ban on plastic bags
NEW SHOREHAM	RI	Town-wide ban on plastic bags
NEWPORT	RI	City-wide ban on plastic bags
MIDDLETOWN	RI	City-wide ban on plastic bags
BARRINGTON	RI	City-wide ban on plastic bags
MOUNT PLEASANT	SC	City-wide ban on plastic bags
BEAUFORT COUNTY	SC	County-wide ban on plastic bags
SURFSIDE BEACH	SC	City-wide ban on plastic bags
FOLLY BEACH	SC	City-wide ban on plastic bags
ISLE OF PALMS	SC	City-wide ban on plastic bags
BROWNSVILLE	TX	City-wide ban of plastic bags
EAGLE PASS	TX	City-wide ban on plastic bags
PORT ARANSAS	TX	City-wide ban on plastic bags suspended
LAREDO	TX	City-wide plastic bag ban

KERMIT	TX	Plastic bag ban and 10-cent tax on paper bags
SUNSET VALLEY	TX	City-wide plastic bag ban
FREER	TX	City-wide plastic bag ban
AUSTIN	TX	The ordinance include specific carryout bag standards, exemptions and signage requirements
LAGUNA VISTA	TX	Plastic bag ban at all retailers
SOUTH PADRE ISLAND	TX	City-wide plastic bag ban
FORT STOCKTON	TX	A bag ban ordinance with an exception for plastic bags that are labeled 100% recyclable
MOAB	UT	City-wide ban on plastic bags
PARK CITY	UT	City-wide ban on plastic bags in stores larger than 12,000 sq ft
PARK CITY	UT	City-wide ban on plastic bags in stores larger than 12,000 sq ft
BRATTLEBORO	VT	Town-wide ban on plastic bags
KENMORE	WA	City-wide ban on plastic bags, 5-cent fee on paper bags
LA CONNER	WA	Town-wide ban on plastic bags
PORT ANGELES	WA	City-wide ban on plastic bags less than 225 mm, 5-cent tax on all bags
TACOMA	WA	City-wide ban on plastic bags less than 225 mils thick
FRIDAY HARBOR	WA	Town-wide ban on plastic bags
SAN JUAN COUNTY	WA	County-wide ban on plastic bags
TUMWATER	WA	City-wide ban on plastic bags and 5-cent fee on paper bags
THURSTON COUNTY	WA	County-wide ban on plastic bags and 5-cent fee on paper bags
OLYMPIA	WA	City-wide ban on plastic bags and 5-cent fee on paper bags
LACEY	WA	City-wide ban on plastic bags and 5-cent fee on paper bags
MERCER ISLAND	WA	City-wide ban on plastic bags
SHORELINE	WA	City-wide ban on plastic bags and 5-cent fee on paper bags
ISSAQUAH	WA	City-wide ban on plastic bags and 5-cent fee on paper bags
MUKILTEO	WA	City-wide ban on plastic bags

PORT TOWNSEND	WA	City-wide ban on plastic bags and 5-cent fee on paper bags
BAINBRIDGE ISLAND	WA	City-wide ban on plastic bags and 5-cent fee on paper bags
BELLINGHAM	WA	City-wide ban on plastic bags and 5-cent fee on paper bags
SEATTLE	WA	City-wide ban on plastic bags and 5-cent fee on paper bags
EDMONDS	WA	City-wide ban on plastic bags

What you'll notice is that there are quite a few states that are missing from the list above. Since plastic bag bans have been pushed by local governments, they may not be a top priority for certain regions. However, one thing is clear, the list will continue to grow.

Model Ordinance Banning Single-use Carryout Bags and Requiring a \$0.10 Charge on Disposable Carryout Bags¹

**AN ORDINANCE of the [insert name of jurisdiction]
AMENDING [if ordinance is amended prior legislation, insert reference]**

Section 1. Findings and Purpose

The [insert relevant legislative body] finds and determines that:

- a) The use of single-use carryout bags by consumers at retail establishments is detrimental to the environment, public health, and welfare.
- b) The manufacture and distribution of single-use carryout bags requires utilization of natural resources and results in the generation of greenhouse gas emissions.
- c) Single-use carryout bags contribute to environmental problems, including litter in storm drains, rivers and streams, and the ocean.
- d) Single-use carryout bags impose unseen costs on consumers, local governments, the state, and taxpayers, and constitute a public nuisance.

The [insert relevant legislative body] does therefore find and declare that it should restrict the use of single-use carryout bags.

Section 2. Definitions

For the purposes of this ordinance, the following words shall have the following meanings:

- a) “Department” means [relevant department].
- b) “Director” means the Director of [relevant city department].
- c) “Person” means an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.
- d) “Postconsumer recycled material” means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
- e) “Recycled paper bag” means a paper carryout bag provided by a store to a customer at the point of sale that meets all of the following requirements:
 - 1) Contains only post-consumer recycled fiber, and fiber from sources accredited by the Forest Stewardship Council or other independent certification organization, as approved by the Director.

¹ Based the State of California law regulating single-use carryout bags, and on ordinances in San Francisco and San Mateo County, CA, and Seattle, WA. In this ordinance, stores keep all moneys from the \$0.10 per bag charge. PSI developed this potential model based on actual legislation. **The specific language used may not necessarily reflect the views of PSI, and no official endorsement should be inferred.**

- 2) Contains a minimum of 40% post-consumer recycled content. The Department may modify the requirements for recycled content by regulation adopted after a public hearing and at least 60 days' notice, based upon environmental benefit, cost, and market availability.
- 3) Displays the word "Recyclable" in a highly visible manner on the outside of the bag, and is labeled with the name of the manufacturer, the location (country) where the bag was manufactured, and the percentage of post-consumer recycled content in an easy-to-read size font.
- 4) Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the [jurisdiction].
- f) "Reusable bag" means a bag that is provided by a store to a customer at the point of sale that is specifically designed and manufactured for multiple reuse and meets all of the requirements of Section 3.
- g) 1) "Reusable bag producer" means a person or entity that does any of the following:
- A) Manufactures reusable bags for sale or distribution to a store.
 - B) Imports reusable bags into this state, for sale or distribution to a store.
 - C) Sells or distributes reusable bags to a store.
- 2) "Reusable bag producer" does not include a store, with regard to a reusable bag for which there is a manufacturer or importer, as specified in subparagraph (A) or (B) of paragraph (1).
- h) 1) "Single-use carryout bag" means a bag made of plastic, paper, or other material that is provided by a store to a customer at the point of sale and that is not a recycled paper bag or a reusable bag that meets the requirements of Section 3.
- 2) A single-use carryout bag does not include either of the following:
- A) A bag to hold prescription medication dispensed from a pharmacy
 - B) A nonhandled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag or a reusable bag.
 - C) A bag provided to contain an unwrapped food item.
 - D) A nonhandled bag that is designed to be placed over articles of clothing on a hanger.
- i) "Food establishment" means [food service establishment, as defined in relevant law].
- j) "Store" means a retail establishment or food establishment located within the geographical limits of [jurisdiction]. A "retail establishment" includes any public commercial establishment engaged in the sale of personal consumer or household items to the customers who will use or consume such items.

Section 3. Reusable Bags

a) On and after [Month date, year]², a store, as defined in Section 2, may sell or distribute a reusable bag to a customer at the point of sale only if the reusable bag is made by a producer certified pursuant to this section to meet all of the following requirements:

- 1) Has a stitched handle and is designed for at least 125 uses, as provided in this section.
- 2) Has a volume capacity of at least 15 liters.
- 3) Is machine washable or made from a material capable of being washed so as to be cleaned and disinfected at least 100 times.
- 4) Has printed on the bag, or on a tag attached to the bag that is not intended to be removed, and in a manner visible to the consumer, all of the following information:
 - A) The name of the manufacturer.
 - B) The country where the bag was manufactured.
 - C) A statement that the bag is a reusable bag and designed for at least 125 uses.
 - D) If the bag is eligible for recycling in the [jurisdiction], instructions to return the bag to the store for recycling or to another appropriate recycling location. If recyclable in the [jurisdiction], the bag shall include the chasing arrows recycling symbol or the term “recyclable,” consistent with the Federal Trade Commission guidelines use of that term, as updated.
- 5) Does not contain lead, cadmium, or any other toxic material that may pose a threat to public health.
- 6) Complies with Section 260.12 of Part 260 of Title 16 of the Code of Federal Regulations related to recyclable claims if the reusable bag producer makes a claim that the reusable bag is recyclable.

b) In addition to the requirements in subdivision (a), a reusable bag made from plastic film shall meet all of the following requirements:

- 1) On and after [Month date, year], it shall be made from a minimum of 20 percent postconsumer recycled material.
- 2) On and after [Month date, year], it shall be made from a minimum of 40 percent postconsumer recycled material.
- 3) Meets any further standards for minimum recycled content established by regulation adopted by the Department after a public hearing and at least 60 days’ notice, based upon environmental benefit and market availability.
- 4) It shall be recyclable in this [jurisdiction], and accepted for return to at-store recycling programs.

² Operative dates for different types of stores may be staggered so that the program is phased-in over the necessary transition period, typically the first year of operation.

5) It shall have, in addition to the information required to be printed on the bag or on a tag, pursuant to paragraph (4) of subdivision (a), a statement that the bag is made partly or wholly from postconsumer recycled material and stating the postconsumer recycled material content percentage, as applicable.

6) It shall be capable of carrying 25 pounds over a distance of 300 feet for a minimum of 125 uses and be at least 4 mils thick, measured according to the American Society of Testing and Materials (ASTM) Standard D6988-13.

7) It shall be made of plastic other than polyethylene (HDPE, LDPE, PETE, etc.) or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material.

c) In addition to the requirements of subdivision (a), a reusable bag that is not made of plastic film and that is made from any other natural or synthetic fabric, including, but not limited to, woven or nonwoven nylon, polypropylene, polyethylene-terephthalate, or Tyvek, shall satisfy all of the following:

1) It shall be sewn.

2) It shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses.

3) It shall have a minimum fabric weight of at least 80 grams per square meter.

Section 4. Single-Use Carryout Bags

a) On and after [Month date, year], a store, as defined in Section 2, shall not provide a single-use carryout bag to a customer at the point of sale.

b) 1) On and after [Month date, year], a store, as defined in Section 2, shall not sell or distribute a reusable bag at the point of sale except as provided in this subdivision.

2) On and after [Month date, year], a store, as defined in Section 2, may make available for purchase at the point of sale a reusable bag that meets the requirements of Section 3.

3) On and after [Month date, year], a store, as defined in Section 2, that makes reusable bags available for purchase pursuant to paragraph (2) shall not sell the reusable bag for less than ten cents (\$0.10) in order to ensure that the cost of providing a reusable bag is not subsidized by a customer who does not require that bag.

c) 1) On and after [Month date, year], a store, as defined in Section 2, shall not sell or distribute a recycled paper bag at the point of sale except as provided in this subdivision.

2) A store, as defined in Section 2, may make available for purchase a recycled paper bag. On and after [Month date, year], the store shall not sell a recycled paper bag for less than ten cents (\$0.10) in order to ensure that the cost of providing a recycled paper bag is not subsidized by a consumer who does not require that bag.

d) Exemption

1) Notwithstanding any other law, on and after [Month date, year], a store, as defined in Section 2, that makes reusable bags or recycled paper bags available for purchase at the point of sale shall provide a reusable bag or a recycled paper bag at no cost at the point of sale to a customer receiving [supplemental food assistance, WIC and other public assistance programs, as applicable in relevant state/jurisdiction].

- 2) A store shall not charge for a reusable bag that is distributed to a customer without charge during a limited duration promotional event, not to exceed 12 days per year.
- e) A store, as defined in Section 2, shall not require a customer to use, purchase, or accept a single-use carryout bag, recycled paper bag, or reusable bag as a condition of sale of any product.
- f) Any owner or operator of a Store may petition the Director of the [relevant department] for a full or partial waiver of the requirements of this Section, for a period of up to one year, if the owner or operator can:
- 1) Demonstrate that application of this Section would create undue hardship or practical difficulty for the store not generally applicable to other stores in similar circumstances, or
 - 2) Establish that the business as a whole cannot, under the terms of this Section, generate a return that is commensurate with returns on investments in other enterprises having corresponding risks and is sufficient to attract capital.
- g) All moneys collected pursuant to this section shall be retained by the store³ and may be used only for the following purposes:
- 1) Costs associated with complying with the requirements of this ordinance.
 - 2) Actual costs of providing recycled paper bags or reusable bags.
 - 3) Costs associated with a store’s educational materials or educational campaign encouraging the use of reusable bags
- h) Covered stores shall separately itemize the fee charged pursuant to this Section on the standard receipt provided to customers.

SECTION 5. Outreach and Implementation

Covered stores that provide reusable or recycled paper bags at the point of sale shall display a sign in a location outside or inside of the business, viewable by customers, alerting customers of the charge per bag.

The Department’s responsibilities for implementing this ordinance include conducting outreach to stores, providing multi-lingual information to educate store employees and customers, and making available lists of vendors who sell recycled paper, or reusable bags. The Director, after a public hearing, may adopt and may amend guidelines, rules, regulations and forms to implement this ordinance.

To further promote the use of reusable shopping bags and reduce the quantity of single-use carryout bags entering the [jurisdiction]'s waste stream, the [relevant department] is authorized to make reusable carryout bags available to the public at low cost or free-of-charge, targeting such programs to reach low-income households to the greatest degree possible.

³ In some states, local governments are not permitted to collect moneys from charges on single-use carryout bags. Others choose not to collect the moneys to avoid complaints that the fee is a tax. To cover such situations for the purposes of this model, we have used language that allows stores to retain the full amount. In other states, governments collect all or a portion of the moneys generated by the charge. In these cases, the moneys are used to mitigate the impacts of disposable bags, or for other environmental programs. See “Model Fee on Disposable Bags – 10 cents” for sample language.

SECTION 6. Enforcement and Penalties

[Relevant city government department and division (ex. Police officers and Health Agents)] shall have the authority to enforce this ordinance.

[Jurisdiction name] may impose civil liability on a person or entity that knowingly violated this ordinance, or reasonably should have known that it violated this ordinance, in the amount of one thousand dollars (\$1,000) per day for the first violation of this ordinance, two thousand dollars (\$2,000) per day for the second violation, and five thousand dollars (\$5,000) per day for the third and subsequent violations.

SECTION 7. Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance. Such decision shall not affect the validity of the remaining portions of this ordinance, which shall remain in full force and effect.

Model Ordinance Banning Plastic Straws and Utensils¹

AN ORDINANCE of the [insert name of jurisdiction]

AMENDING [if ordinance is amended prior legislation, insert reference]

Section 1. Findings and Purpose

The [insert relevant legislative body] finds and determines that:

- A. Littered plastic products have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs.
- B. Plastics synthesized from petroleum and natural gas do not biodegrade. Even with the emergence of bioplastics, which are derived from renewable biomass sources, such as plants and microorganisms, there is no certified type of bioplastic that biodegrades in a marine environment.
- C. [Name of jurisdiction] confronts littered plastic, namely plastic straws, stirrers, and cutlery. Plastic straws, stirrers, and cutlery are generally made from polystyrene or polypropylene.

[Name of jurisdiction] intends to make clear, through the adoption of this ordinance, that commercial use of all plastic straws, stirrers, and cutlery is banned within this jurisdiction. A ban on plastic straws, stirrers, and cutlery will further serve the [jurisdiction]'s goal of reducing plastic litter. Non-plastic, compostable alternatives are available.

Section 2. Definitions

For the purposes of this ordinance, the following words shall have the following meanings:

“Beverage Provider” means any business, organization, entity, group, or individual located in the [name of jurisdiction] that offers liquid, slurry, frozen, semi-frozen, or other forms of beverages to the public for consumption.

“[Jurisdiction]-Sponsored Event” means any event organized or sponsored by the [name of jurisdiction] or any department of the [name of jurisdiction].

“Plastic Cutlery” means any utensil, such as a fork, spoon, spork, or knife, made predominantly of plastic derived from either petroleum or a biologically based polymer intended for only one-time use. “Plastic cutlery” includes compostable and biodegradable petroleum or biologically based polymer forms of cutlery, but does not include forms of cutlery that are made from non-plastic materials, such as wood, bamboo, etc.

“Plastic Beverage Straw” means a tube made predominantly of plastic derived from either petroleum or a biologically based polymer for transferring a beverage from its container to the mouth of the drinker. “Plastic Beverage Straw” includes compostable and biodegradable petroleum or biologically based polymer straws, but does not include straws that are made from non-plastic materials, such as paper, grain stalks, bamboo, etc.

¹ Based on ordinance in Malibu, CA regulating plastic straws, stirrers, and cutlery and proposed ordinance in Albuquerque, NM regulating plastic straws. PSI developed this potential model based on actual legislation. **The specific language used may not necessarily reflect the views of PSI, and no official endorsement should be inferred.**

“Plastic Stirrer” means a device that is used to mix beverages, intended for only one-time use, and made predominantly of plastic derived from either petroleum or a biologically based polymer. “Plastic stirrer” includes compostable and biodegradable petroleum or a biologically based polymer stirrers, but does not include stirrers that are made from non-plastic materials, such as wood, bamboo, etc.

“Food service ware” means all containers, bowls, plates, trays, cups, lids, napkins, and other like items that are designed for one-time use for prepared foods, including, without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by food vendors. The term “food service ware” does not include items composed of aluminum.

Section 3. Regulated Conduct

The sale and commercial distribution of plastic beverage straws, stirrers, and cutlery is prohibited.

- A. No restaurant, including fast food restaurants, beverage provider, or vendor shall use, provide, distribute, or sell plastic beverage straws, plastic stirrers, or plastic cutlery.
- B. No person shall distribute plastic beverage straws, plastic stirrers, or plastic cutlery at any [jurisdiction] facility or any [jurisdiction]-sponsored event.
- C. Nothing in this section precludes restaurants, including fast food restaurants, beverage providers, vendors, or persons from using or making non-plastic alternatives, such as those made from paper, grain stalks, sugar cane, or bamboo, available to beverage consumers. Non-plastic alternative straws, stirrers, or cutlery shall only be provided upon request by the beverage consumer.
- D. In order to provide accessibility options for persons with disabilities and medical requirements, any restaurant, including fast food restaurants, beverage provider, vendor, or person which provides non-plastic beverage straws consistent with this ordinance shall also make plastic beverage straws available to any person by request.
 - a. No restaurant, including fast food restaurants, beverage provider, vendor, or person shall require proof of disability or need to receive a plastic beverage straw.
 - b. Notice shall be provided at the point of sale that plastic beverage straws are available by request to persons with physical or medical needs.

Section 4. Enforcement

[Relevant government department and division (ex. Police officers and Health Agents)] shall have the authority to enforce this ordinance. This ordinance may be enforced through any lawful means in law or in equity, including but not limited to, noncriminal disposition pursuant to [reference to pertinent code].

Each day of violation, after written notice, is a separate violation. If non-criminal disposition is elected, then any person that violates any provision of this ordinance shall be subject to the following penalties:

- First Offense: written warning
- Second Offense: \$25 penalty
- Third and subsequent offense: \$50 penalty

Section 5. Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance. Such decision shall not affect the validity of the remaining portions of this ordinance, which shall remain in full force and effect.

The [relevant legislative body] hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

Section 5. Effective Date

This ordinance shall take effect on [Month date, year].

Model Ordinance to Require Recyclable and Compostable Foodware¹

AN ORDINANCE of the [insert name of jurisdiction]

AMENDING [if ordinance is amended prior legislation, insert reference]

Section 1. Findings and Purpose

The [insert relevant legislative body] finds that discarded packaging from foods and beverages prepared for immediate consumption constitutes a significant portion of the waste in [name of jurisdiction]'s waste stream. Regulation of food and beverage packaging, therefore, is a necessary part of any effort to encourage a recyclable and compostable waste stream, thereby reducing the disposal of solid waste and the economic and environmental costs of waste management for the citizens of [jurisdiction] and others working or doing business in [name of jurisdiction].

The [relevant legislative body] further finds that plastic packaging is rapidly replacing other packaging material, and that some plastic packaging used for foods and beverages is nonreusable, nonrecyclable, and noncompostable.

The [relevant legislative body] also finds that the two (2) main processes used to dispose of discarded nonreusable, and nonrecyclable and noncompostable plastic food and beverage packaging, are land filling and incineration, both of which should be minimized for environmental reasons.

The [relevant legislative body] therefore finds that the minimization of nonreusable, nonrecyclable, and noncompostable food and beverage packaging originating at retail food establishments and at events providing food and/or beverages within the [name of jurisdiction] is necessary and desirable in order to minimize the [jurisdiction's] waste stream, so as to reduce the volume of landfilled waste, to minimize toxic by-products of incineration, and to make our [jurisdiction] a more environmentally sound place to live.

Section 2. Definitions

For the purposes of this ordinance, the following words shall have the following meanings:

- a) "Food service ware" means containers, plates, hinged containers or "clamshells," serving trays, meat and vegetable trays, hot and cold beverage cups, wrappers, straws, stirrers, and utensils.
- b) "Disposable" means food service ware that is intended only for one-time use, including so called biodegradable products where any portion is not compostable.
- c) "Reusable" means food service ware that will be used more than once in its same form by a food establishment. This definition includes, but is not limited to, cleanable durable containers, packages, or trays used on-premises or returnable containers brought back to the food establishment. This definition also includes, but is not limited to, water and soft drink bottles, growlers, milk containers and bulk product packaging that are designed to be refilled at a retail location or returned the distributor for reuse at least once as a container for the same food or beverage.
- d) "Recyclable" means food service ware made solely of materials that are capable of being sorted, cleansed, and reconstituted using the [name of jurisdiction] curbside municipal collection programs for the purpose of reuse or remanufacture into the same or other products.

¹ Based on ordinances in Minneapolis, MN; Seattle, WA; and San Francisco, CA. PSI developed this potential model based on actual legislation. **The specific language used may not necessarily reflect the views of PSI, and no official endorsement should be inferred.**

“Recycling” does not include burning, incinerating, converting, or otherwise thermally destroying solid waste. Recyclable food service ware must have robust recycling markets. For the purposes of this ordinance, recyclable plastic food service ware includes the following plastic types:

- i) Polyethylene Terephthalate (#1 PET or PETE);
- ii) High Density Polyethylene (#2 HDPE); and
- iii) Polypropylene (#5 PP).

e) “Compostable”² means food service ware made solely of organic substances that break down into a stable product due to the action of bacteria in a controlled, aerobic commercial process that results in a material safe and desirable as a soil amendment. Compostable food service ware must be found to degrade satisfactorily at the composting facility receiving the material. Compostable food service ware must be separable from solid waste by the generator or during collection for the purpose of composting in [name of jurisdiction].³

f) “Food establishment” means full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks or carts, business or institutional cafeterias, and other businesses, selling or providing food within the [name of jurisdiction] for consumption on or off the premises.

g) “Consumed on premises” means consumption of food or beverages in the public areas of a food establishment, common areas of a food court, outside seating areas and parking lots exclusively for customers of the food establishment, rather than taken out for consumption elsewhere.

h) “Food court” means an area of a retail mall, office building, sports facility or other premises where one or more food establishments are located and customer seating for dining and consumption of beverages is provided in a common area.

i) “Person” means an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.

Section 3. Regulated Conduct

a) No food establishment shall sell or provide food or beverages, for consumption on or off the premises, in or with disposable food service ware. Acceptable alternatives for prohibited disposable food service ware shall be reusable, compostable, or recyclable.

² If you want to allow compostable plastics, you must specify that these plastics “be certified compostable plastics that meet ASTM D6400 or ASTM D6868 for compostability, as adopted or subsequently amended by the American Society for Testing and Materials (ASTM)”.

³ The cities this ordinance is based on benefit from robust municipal compost collection programs. In much of the U.S., compost collection is not widely available. The stipulation “compostable food service ware must be separable from solid waste by the generator or during collection for the purpose of composting in [name of jurisdiction]” aims to address this situation. If a given product is not able to be separated and composted in your jurisdiction, the definition of compostable is not met. That product, therefore, would not meet the requirements of the ordinance. If compost collection is not widely available in your jurisdiction, you may also remove the sections of this model related to compostability and require instead that food service ware be made of non-plastic plant material that will biodegrade in the environment (including bagasse/sugarcane pulp, palm leaf, wheat straw fiber, bamboo, wood, rye wheat, silver grass (miscanthus fiber), or paper that is either unlined or lined with a non-plastic material such as wax or clay).

b) No person or organization providing free food or beverage products within the [insert name of jurisdiction] pursuant to a permit or license, or in a manner which would require a permit or license, shall sell or provide food or beverages, for consumption on or off the premises, in or with disposable food service ware. Acceptable alternatives for prohibited disposable food service ware shall be reusable, compostable, or recyclable.

c) Food establishments providing food for consumption on premises using compostable or recyclable food service ware must provide conveniently located and clearly marked containers where customers may discard compostable and recyclable food service ware and must provide for the collection and delivery of these materials to appropriate processing facilities.

d) On such commercially reasonable terms as determined by the landlord, landlords of food establishments subject to the requirements of this section shall make adequate space and/or services available to such food establishments for the collection and pick up of the compostable and recyclable materials generated by such food establishments.

e) Landlords operating food courts or similar settings that include food establishments and common areas set aside and maintained for the consumption of food and beverages shall provide in such common areas the services required in subsection b) of this section.

f) The [relevant department] is authorized to promulgate rules, in accordance with the provisions of the [insert reference to pertinent code], for purposes of interpreting and clarifying the requirements of this section. Such rules may provide temporary waivers or other relief that apply to use of certain food service ware products for an initial period of up to one year, with the option for an up to one year extension. Such waivers or relief shall be granted only for circumstances where commonly used recycling and composting technology cannot process the food service ware, or where suitable alternative products that meet performance and food health and safety standards are unavailable. In promulgating such rules, the [relevant department] shall consider the legislative purpose provided in section 1 of this ordinance, and shall consult with the operators of affected food service establishments.

Section 4. Enforcement

The [relevant department] shall have the duty and the authority to enforce the provisions of this ordinance. The license official shall also have authority to enforce the provisions of this ordinance.

The [relevant department] will issue a written warning notice to the food establishment for the initial violation. If an additional violation of this by-law has occurred within six (6) months after a warning notice has been issued for an initial violation, the [relevant department] shall issue a notice of violation and shall impose a penalty against the food establishment.

Any violation of this ordinance shall be punishable by a civil fine of \$500 for each offense. Payment of such fines may be enforced through civil action as provided in [insert reference to pertinent code]. No more than one (1) penalty shall be imposed upon a food establishment within a seven (7) calendar day period.

SECTION 5. Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance. Such decision shall not affect the validity of the remaining portions of this ordinance, which shall remain in full force and effect.

SECTION 5. Effective Date

This ordinance shall take effect on [Month date, year].

Model Ordinance Requiring Reusable Foodware for Restaurants Serving Food and Beverages for On-Site Dining¹

**AN ORDINANCE of the [insert name of jurisdiction]
AMENDING [if ordinance is amended prior legislation, insert reference]**

Section 1. Findings and Purpose

WHEREAS, according to the U.S. Environmental Protection Agency, the quantity of solid waste generated per capita in the U. S. increased from 2.68 pounds per day in 1960 to 4.38 pounds per day in 2012; and

WHEREAS, according to the U.S. Environmental Protection Agency, packaging comprised 30% by weight of municipal solid waste in 2012 the United States; and

WHEREAS, numerous studies demonstrate that reusable food service ware offers important environmental advantages over single use disposable products and that those benefits multiply with each use.

WHEREAS, it has been demonstrated that switching to reusables saves food service businesses significant costs, even with dishwashing, energy and labor costs factored in.

NOW THEREFORE, the [name of jurisdiction] ordains as follows:

Section 2. Definitions

For the purposes of this ordinance, the following words shall have the following meanings:

“Restaurant” means a retail use eating place which serves prepared, ready to eat, cooked foods and/or drinks to customers for on-site immediate consumption on or off the premises and which has seating. It may be a limited restaurant, such as coffee store, juice bar, or bakery, or a full service restaurant. For the purposes of this ordinance, this includes fast food outlets, grocery stores with food service areas, bar/taverns with food preparation and service, and restaurants. It is not required to operate within an enclosed building so long as it is also a mobile food facility with outdoor seating/and or dining area.

“Dine-in” means food or beverages are served for consumption on the premises of a food service establishment.

“To go” means food or beverages which are served for consumption outside the premises of a food service establishment.

“Reusable food service ware” shall mean plates, bowls, cups, glasses, and utensils that are designed to be used more than once and are generally considered to be non-disposable.

“Disposable food service ware fee” shall mean an annual fee levied by the Department of Environmental Health that is deposited into a Reusable Food Service Ware Transition Account.

“Reusable food service ware transition account” collects fees levied on the use of disposable food service ware for dine-in at a restaurant. Funds from the account are specifically designated to provide

¹ This ordinance was originally drafted in 2015 by California Clean Water Fund, with input from the Product Stewardship and the California Product Stewardship Council. **The specific language used may not necessarily reflect the views of PSI, and no official endorsement should be inferred.**

direct funding to restaurants for the transition from disposable to reusable. Funds shall be available to cover costs associated with plumbing, electrical, and other construction necessary to install dishwashing capacity, as well as the costs associated with purchase of reusable food service ware.

Section 3. Regulated Conduct

A. Restaurants shall be prohibited from selling or providing food and beverages for dine-in consumption using single use disposable plates, bowls, cups, containers, or utensils, except as provided by section C. Customers must be asked whether they want the food or beverage they have ordered to be eaten on the premises (i.e. “dine in”) or “to go.” If the purchased food or beverage is intended for dine-in, the food service establishment must serve the food and or beverage on reusable food service ware.

B. The restaurant shall certify to the [insert name of solid waste/recycling program] that it provides reusable food service ware to serve dine-in meals.

C. Restaurants that do not have on-site or off-site dishwashing capacity to sanitize reusable food service ware in compliance with the California Health Code section may claim an exemption from section A. but will be required to pay a disposable food service ware fee of XXX\$ on an annual basis to the [name of solid waste/recycling program].

D. Funds collected by the [solid waste/recycling program] shall be deposited into the Reusable Food Service Ware Transition Account. The [solid waste/recycling program] shall make these funds available to restaurants to cover the costs of installation of dishwashing equipment, reusable food service ware, or the costs associated with the first year of participation in an off-site dishwashing service. The [solid waste/recycling program] shall determine how to distribute funds through this program, but the express purpose of the distribution of funds shall be to assist restaurants in transitioning from using disposable food service ware for dine-in food service to using reusable food service ware.

Section 4. Enforcement

The [relevant department] shall have the duty and the authority to enforce the provisions of this ordinance. The license official shall also have authority to enforce the provisions of this ordinance. The [relevant department] will issue a written warning notice to the food establishment for the initial violation. If an additional violation of this by-law has occurred within six (6) months after a warning notice has been issued for an initial violation, the [relevant department] shall issue a notice of violation and shall impose a penalty against the food establishment.

Any violation of this ordinance shall be punishable by a civil fine of \$500 for each offense. Payment of such fines may be enforced through civil action as provided in [insert reference to pertinent code]. No more than one (1) penalty shall be imposed upon a food establishment within a three (3) month period.

Section 5. Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance. Such decision shall not affect the validity of the remaining portions of this ordinance, which shall remain in full force and effect.

Section 6. Effective Date

The provisions of this ordinance shall take effect on [Month date, year].

PLASTIC BAG LAW ACTIVIST TOOLKIT

2019



SURFRIDER
FOUNDATION



SURFRIDER FOUNDATION'S PLASTIC BAG LAW ACTIVIST TOOLKIT FOR U.S. CITIES & STATES

**SUPPLEMENT TO SURFRIDER'S
RISE ABOVE PLASTICS ACTIVIST TOOLKIT**

JANUARY 2019

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TABLE OF CONTENTS

I. INTRODUCTION: HOW TO USE THIS TOOLKIT

II. TYPES OF PLASTIC BAG LAWS:

- a. Why Straight Plastic Bag Bans Are Problematic
- b. Recommended U.S. Bag Law Structures: Ban/Fee Hybrids and Fee on All Bags
- c. Non-Recommended Plastic Bag Law Structures
- d. Important Clauses to Consider in Drafting Bag Laws
- e. Map of Bag Laws in the U.S

III. PREEMPTION: WATCH OUT THAT LOCAL BAG LAWS DON'T GET BLOCKED BY STATE LEGISLATION

IV. BEST STATISTICS TO INCLUDE IN YOUR BAG LAW CAMPAIGN

- a. Harmful Effects of Plastics & Plastic Bags
- b. Studies Show Bag Fee Laws and Ban/Fee Hybrid Laws Are Effective

V. START A BAG CAMPAIGN IN YOUR COMMUNITY

- a. Build a Campaign in Your Community (Using the [RAP Activist Toolkit](#))
- b. Typical Bag Law Allies and Opponents

VI. IMPLEMENTING A BAG LAW

- a. Implementation
- b. Enforcement
- c. How to Gather Effectiveness Data

APPENDIX:

Recommended Online Resources, Sample Local and State Bag Laws

The information in this toolkit is not, nor is it intended to be, legal advice. You should consult an attorney for individual advice regarding your specific situation.

CONTACT:

If you have questions about this toolkit or would like information and/or help with a plastic bag law initiative in your area, please contact:

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HOW TO USE THIS TOOLKIT

As part of Surfrider Foundation's Rise Above Plastics campaign, Surfrider partnered with PlasticBagLaws.org to create this U.S. Plastic Bag Law Toolkit. This Toolkit is a supplement to Surfrider's [Rise Above Plastics Activist Toolkit](#),⁽¹⁾ which gives an overview of the problems of single-use plastics and outlines plastics reduction laws. Here, we focus exclusively on best practices for drafting plastic bag laws. The intended audience for this Toolkit includes Surfrider Foundation chapters, local community leaders, organizations, and even legislators. We anticipate that most people using this Toolkit already have some background on the plastic bag ⁽²⁾ issue and are ready to take the next steps to advocate for state and local plastic bag laws in their communities.

The first plastic bag law in the U.S. was adopted in San Francisco in 2007. Since then, plastic bag laws have expanded to all corners of the country.

Cities and towns are leading the way: at least [345 municipalities in 25 states](#) have adopted bans and/or fees ⁽³⁾ on carryout bags.⁽⁴⁾ As of January 2019, California is the only state to adopt a statewide plastic bag law, but Hawaii has county-by-county laws that cover nearly the whole state and many other states are currently considering statewide bag laws. Over the past decade, plastic bag laws in the U.S. have developed nuances in response to effectiveness concerns, state constitutional issues, and lawsuits. Here, we summarize the collective wisdom gained from drafting and implementing plastic bag laws in the U.S.

OUR GOAL IS TO EMPOWER ADVOCATES WITH A DEEPER UNDERSTANDING OF THE INTRICACIES OF PLASTIC BAG LAWS, PREPARING THEM TO EFFECTIVELY FIGHT AGAINST PLASTIC POLLUTION.



PHOTO: NOWIM CHORVAT

II. TYPES OF BAG LAWS

The recommended ways to structure comprehensive policies that address all carryout bag types are a **Ban/Fee Hybrid** and a **Fee on All Bags**. Plastic bag “bans” sound like the ultimate sweeping policy choice. However, the fee component is by far the most effective way to [change consumer behavior](#) and reduce overall carryout bag consumption.⁽⁶⁾

SURFRIDER FOUNDATION HAS FOUND THAT A BAN/FEE HYBRID AND A FEE ON ALL BAGS ARE THE TWO MOST EFFECTIVE POLICIES AT REDUCING PLASTIC BAG POLLUTION AND HAS ADOPTED THEM AS THE TWO OFFICIALLY RECOMMENDED POLICY OPTIONS.

TYPES OF BAG LAWS

Best Practice: Include a fee component so all bag types are addressed and increase in overall bag use is discouraged.

Recommended Structures:

Bag Fee: Fee mandated for all carryout bags

“Second Generation” Ban or “Ban/Fee Hybrid”: Ban on thin plastic bags, fee for all other carryout bags (paper, reusable, compostable)

Non-Recommended Structures:

“First Generation” or “Straight” Ban: Ban on thin plastic bags only

A. WHY STRAIGHT PLASTIC BAG BANS ARE PROBLEMATIC

A “straight” plastic bag ban generally means that thin plastic bags are banned, but paper and reusable bags are still available for free. This style of ordinance is sometimes called a “first generation” plastic bag ban. Straight plastic bag laws often result in consumers taking whatever alternatives are still available for free. In this scenario, consumption of free paper and thicker plastic bags that qualify as a “reusable bag” (2.25 mils thick under most laws) often increases as consumption of thin single-use plastic bags decreases. For example, a recent straight plastic bag ban implemented in Chicago resulted in many stores, including Wal-Mart, simply upping the thickness of their plastic bags to cross the threshold from “single-use” plastic to “reusable” plastic bags without a significant decrease in the total number of bags used.

STRAIGHT PLASTIC BAG BANS ALSO ATTRACT OPPOSITION FROM GROCERS’ INDUSTRY GROUPS. SEE PAGE 21 FOR A DETAILED DISCUSSION OF GROCERS’ INDUSTRY CLAIMS.

B. RECOMMENDED U.S. PLASTIC BAG LAW STRUCTURES: BAN/FEE HYBRID AND FEE ON ALL BAGS

Below are graphics depicting specific examples of the two recommended carryout bag law structures (Ban/Fee Hybrid, Fee on All Bags). See Appendix II for the text of specific ordinances.

BAN/FEE HYBRID MODEL



Alameda County Waste Management Authority

FEE ON ALL BAGS MODEL*



District businesses selling food or alcohol are required to charge \$0.05 for each disposable paper or carryout bag.

*Washington D.C.'s plastic bag law is the oldest and most popular carryout bag fee model, but has two flaws. The 5-cent fee applies to single-use paper and plastic, but not reusable bags provided by the retailer. The fee should also apply to reusable bags provided by the retailer to avoid the loophole of thicker plastic bags that qualify as reusable being given away for free. Also, Surfrider recommends a fee of at least 10 cents to effectively incentivize consumers to bring their own bags.

I. EVOLUTION OF SECOND GENERATION PLASTIC BAG BANS (A.K.A. BAN/FEE HYBRID)

U.S. cities that pioneered the original plastic bag ban laws created Ban/Fee Hybrid laws (a.k.a. "second generation bans") after straight bans failed to result in the desired consumer behavioral change. These cities didn't see a significant increase in customers bringing their own bags to stores. The new Ban/Fee Hybrid ordinances that replaced the straight bans kept the ban on thin plastic in place and added a 10-cent fee to all other carryout bags including paper and reusable bags of any kind. To be clear, the reusable bags subject to the 10-cent fee are reusable bags provided by the retailer, customers are not charged for bringing their own bags. When customers are suddenly presented with the question "Would you like to purchase a bag for that?" the evidence shows that bag consumption drops dramatically.

THE TAKE-HOME LESSON HERE IS THAT EITHER A FEE ON ALL BAGS OR A BAN/FEE HYBRID THAT COVERS ALL TYPES OF BAGS ARE THE MOST EFFECTIVE METHODS IN REDUCING OVERALL BAG CONSUMPTION AND ALSO AVOID THE RISK OF LAWSUITS.

II. WHAT MODEL IS BEST FOR MY COMMUNITY?

Surfrider Foundation supports both the Ban/Fee Hybrid model and the Fee on All Bags model. For a detailed list of the pros and cons of various bag ordinance structures, see the New York State Plastic Bag Task Force Report.⁽⁶⁾

C. NON-RECOMMENDED PLASTIC BAG LAW STRUCTURES

I. VOLUNTARY PLASTIC BAG REDUCTION PROGRAMS

Countless examples show that voluntary plastic bag reduction programs (e.g. non-binding resolutions, corporate programs, state mandates for recycling) fail to reduce the number of bags that enter the waste stream or are littered and often have very minimal results relative to their high cost. Plastics industry lobbyists often call for voluntary efforts to reduce plastic bag consumption before cities move forward with bag laws, delaying effective laws sometimes for years. Surfrider has an overview of why these programs don't work [here](#).⁽⁷⁾

II. PLASTIC BAG RECYCLING LAWS

Plastic bag recycling laws generally refer to state laws that require grocery stores to provide a plastic bag recycling collection bin in a public space in the store. People typically see recycling as something positive and “green,” but the truth is that plastic carryout bag recycling rates are extremely low (around 5%).⁽⁸⁾ The exact recycling rate is hard to determine because most plastic bag recycling statistics are estimates based on the recycling rates for plastic films more generally. The bigger issue is that some plastic bag recycling bills, including the one in [Delaware](#),⁽⁹⁾ have included preemption language which blocks local plastic bag fees from being enacted in the future. Whenever there is recycling language in a proposed policy, be vigilant to make sure that the bill doesn't include poison pill preemption language. The same applies for all legislation impacting packaging. For more on preemption of bag regulation, see Section III of this Toolkit.



D. IMPORTANT CLAUSES TO CONSIDER IN DRAFTING BAG LAWS

I. WHERE SHOULD THE MONEY FROM THE FEE GO?

There are three main ways that the money paid for a carryout bag can be classified: tax, regulatory fee, or charge. Courts have found that the distinction between a fee and a tax depends on the nature and function of the charge imposed, not on what the government chooses to call it. As a best practice, campaigns should be careful to pick the appropriate term and be consistent in messaging. A “tax” is money collected by a government that goes to that government’s general fund or to a special fund with a dedicated purpose. Cities and towns generally don’t have the power to levy taxes unless specifically granted permission to do so by the state in which they’re located. This depends on the state constitution, and there are exceptions. For example, Chicago’s 7-cent carryout bag fee is a tax that goes to the general fund and was adopted as part of the budget process. Also, Washington, D.C. adopted a 5-cent tax on carryout bags where a portion of the money generated goes to bag outreach and river clean-up via the [Anacostia River Clean Up and Protection Fund](#), which received bag tax revenue of over \$2 million dollars in 2016.⁽¹⁰⁾ A “regulatory” fee is money collected by a governmental body linked to a regulatory scheme and is designed to raise money to help defray an agency’s regulatory expenses. Whether regulatory fees are allowed depends on the state constitution and additional requirements may apply. Aspen implemented an ordinance banning the use of single-use plastic checkout bags at supermarkets and mandating a \$0.20 fee for single-use paper bags in 2012. The paper bag fee was adopted as a “waste reduction fee,” [found to be a regulatory fee](#), with a small portion retained by merchants and the remainder deposited into a special “Waste Reduction and Recycling Account.”⁽¹¹⁾ A “charge” is money that retailers are mandated to charge, but all of the money stays with the retailer and no money goes to the government. Bag charges came about when cities started discussing imposing paper bag fees that would be directed to local governments for environmental purposes, but those cities were threatened with lawsuits for unconstitutional taxation. To avoid this claim of unconstitutionality, most municipalities that mandate bag charges require that the entire amount must stay with the retailer. After [Los Angeles County](#) was sued, the California Court of Appeals found that because no money went to the government, the mandatory charge could not be considered a tax.⁽¹²⁾ Many other cities across the U.S. then followed LA County’s model and required that the entire amount of the charge stay with stores. Plastics industry groups often use the fact that bag law money



must legally remain with the retailer to malign the laws as “grocers-getting-rich,” but the truth is that there isn’t much of a choice for local lawmakers. For Ban/Fee Hybrids, the money staying with the retailer helps offset the greater cost of the allowable alternatives (paper and reusable), which are usually significantly more expensive than single-use plastic bags.

IS THE CARRYOUT BAG CHARGE TAXABLE? WHETHER A BAG CHARGE IS TAXABLE DEPENDS ON THE STATE WHERE THE LAW IS ADOPTED. THE CALIFORNIA STATE BOARD OF EQUALIZATION ISSUED A SPECIAL NOTICE FINDING THAT SALES TAX DOES NOT APPLY TO CITY AND COUNTY BAG CHARGES.⁽¹³⁾

II. HOW MUCH SHOULD THE FEE BE?

Higher fees generally correlate with reduced bag consumption and the amount of the fee depends largely on the politics of the jurisdiction adopting the law. The political makeup of the city should be considered when deciding what fee amount to propose. In the U.S., the lowest fee amount is 5 cents per bag, including in Washington, D.C., and the highest fee amount is 25 cents per bag in some jurisdictions in California, including San Mateo County. A gradual rise in the fee amount through automatic increase has become relatively common—most of the jurisdictions currently at 25 cents per bag started at 10 cents per bag and increased to 25 cents per bag.⁽¹⁴⁾ Another approach is a cost differential between single-use bags and reusable bags, where reusable bags have a higher minimum fee because they require more resources for manufacture and disposal and are meant to have a longer lifetime. For example, New Castle, NY adopted a Ban/Fee Hybrid and set the minimum fee for paper bags at 10 cents and the minimum fee for reusable bags at 25 cents.⁽¹⁵⁾ Some retailers, including [Beacon's closet](#), also have their own internal carryout bag policies where they charge more for reusable bags than for paper bags.⁽¹⁶⁾ Whenever possible the bag fee should be a minimum fee rather than a flat fee so that retailers have the option to provide various types of carryout bags at different prices. This also allows for stores that already have adopted their own strict internal carryout bag policies and are selling their bags at a higher price, such as IKEA and Patagonia, to continue their current program.



III. WHAT STORES SHOULD BE COVERED?

The breadth of what types of businesses are covered by a plastic bag ordinance is primarily a function of the political will of a city: How far are they willing to go? Options include covering (1) only city vendors, (2) only supermarkets, (3) supermarkets and large pharmacy chains, (4) all stores that sell food, (5) all retail, or (6) all retail and restaurants. Most ordinances are focused on plastic carryout bags common at grocery stores or stores that sell food. Some ordinances phase in implementation in two parts, starting with larger stores then expanding to smaller stores. A best practice is to cover as many businesses as possible. This may mean starting with an ordinance that is comprehensive and covers all retail and restaurants, then ultimately determine which stores will be covered during the bill negotiation process.

Most plastic bag bans do not include restaurants. This is due in large part to the political will of each municipality or state, opposition from the restaurant industry, as well as practical concerns regarding the logistics of food delivery. A lawsuit was filed against San Francisco claiming that San Francisco's inclusion of restaurants in their 2012 carryout bag law was preempted by the [California Health and Safety Code](#). The case went to the Court of Appeal and San Francisco won.⁽¹⁷⁾ Some states specifically preempt regulation of certain types of businesses (e.g., liquor stores), and those businesses might need to be exempt from plastic bag ordinances.

IV. HOW SHOULD “REUSABLE BAG” BE DEFINED?

The definition of “Reusable Bag” has become a very important topic in drafting plastic bag laws. One of the biggest problems that cities encounter when implementing their plastic bag ordinances is that some stores give away thick plastic bags that just barely fall within the definition of reusable bag. The most important thing is for a fee to apply to all reusable bags provided by the retailer.

Advocates should keep in mind that the reusable bag definition usually sets a minimum standard for bags that can be given away or sold at checkout. Many U.S. cities and the California state bill allow for plastic film bags over 2.25 mils⁽¹⁸⁾ to qualify as reusable (other requirements must be met as well). Some cities, including Austin, TX and Portland, OR, set a higher thickness requirement of 4.0 mils, sometimes with the hope that more expensive bags will be price-prohibitive for retailers. An Austin study reported that a thicker gauge 4.0 mils bag needed to be used 4-12 times in order to offset its overall environmental impact versus a single-use plastic bag.⁽¹⁹⁾ Some cities are experimenting with setting the mils requirement much higher in order to discourage the use of reusable bags made from plastic film altogether. For example, [Greenwich, CT's Reusable Checkout Bag Ordinance](#) requires that reusable checkout bags made from plastic must have a minimum thickness of 12 mils.⁽²⁰⁾ These double-digit mils requirements are new and we've yet to see the results of implementation. Another option that's been discussed is a ban on all film plastic bags.⁽²¹⁾ Some bag laws also regulate non-woven plastic bags made from Polypropylene Non-Woven (PPNW) material, which is measured in grams per square meter (GSM) rather than mils. California's statewide bag law sets the [minimum at 80 GSM](#).⁽²²⁾



Many bag laws require that reusable bags do not contain lead, cadmium, or any other heavy metal in toxic amounts. [Model Toxics in Packaging Legislation](#) is more specific in that it prohibits the intentional use of those metals and also limits the sum of incidentally introduced lead, mercury, cadmium, and hexavalent chromium to a combined maximum of 100 parts per million by weight in any packaging component.⁽²³⁾ Many states have adopted and codified this model legislation, so a best practice is to specify that reusable bags must meet that standard.

Advocates should avoid a fate similar to California's statewide law, S.B. 270, which has a reusable bag definition that is several pages long and requires that manufacturers obtain several expensive certifications for each reusable bag. Advocates should carefully consider the utility of each requirement and weigh them against the ease of enforcement and compliance. These requirements in California have made it difficult for small reusable bag companies to comply and led to a lawsuit by large bag manufacturers against reusable bag companies over certification compliance.⁽²⁴⁾

V. REQUIRE POST-CONSUMER CONTENT FOR BOTH PAPER BAGS, AND PLASTIC BAGS

Most local bag laws in the U.S. require post-consumer content for paper bags. Post-consumer recycled content is material from products that people or businesses already used (e.g., shipping cartons, plastic bottles) versus pre-consumer recycled content, which is material from the manufacturing process (e.g., scraps left over when envelopes are cut).⁽²⁵⁾ It's important to require post-consumer recycled content to drive a market for truly recycled materials and divert recyclable materials from landfill. Under most ordinances, paper carryout bags must be 100% recyclable and include a minimum of 40% post-consumer recycled content. Standard-sized paper shopping bags that meet these criteria are now widely available. Requiring post-consumer recycled content for paper bags is important in straight plastic bag bans, because environmental impacts of paper versus plastic bags are closely analyzed. Many ordinances also require that paper bags must contain no old growth fiber.

Until recently, most ordinances did not require post-consumer recycled content for plastic bags because plastic bags containing post-consumer recycled content were difficult to obtain. However, the California statewide law has created a market for post-consumer recycled content film plastic bags. The California statewide bag law requires that bags marketed as reusable that are made from plastic film must be made from a minimum of 20% post-consumer recycled material after January 1, 2016.⁽²⁶⁾ As more and more jurisdictions require post-consumer content, the percentage of post-consumer content readily available should be monitored and requirements should be adjusted accordingly.

VI. ALLOW FOR LIMITED-TIME GIVEAWAYS OF REUSABLE BAGS AT STORE

Bag laws that include a fee on reusable bags should allow for limited-time giveaways so that stores can periodically give away reusable bags to customers during the transition period and for special events. Additionally, a good Surfrider Chapter outreach event would be to organize reusable bag giveaways at certain shopping centers and grocery stores (e.g., in low-income areas or high traffic shopping areas), coupled with educational materials about the benefits of reusable bags.

VII. SPECIFY THAT BIODEGRADABLE AND COMPOSTABLE BAGS ARE NOT ALLOWED

Beware of greenwashing. In recent years, there's been tremendous market pressure towards developing plastic bags out of biodegradable material. Customers want a bag that they can use for the exact length of time needed to take their groceries home, at which time they want the bag to quickly biodegrade into the environment. As scientists continue to work on developing plastics that meet tough standards for biodegradability, advocates should watch carefully for plastic products marketed as biodegradable or marine degradable.

The Federal Trade Commission (FTC) created detailed guidelines called [Green Guides](#)⁽²⁷⁾ regarding what claims may be made about biodegradable and compostable plastics. The California legislature took it a step further, adopting legislation that made it illegal to market plastic bags as biodegradable and required that any plastic bag labeled with the term "compostable" meet the applicable ASTM International standard specification.⁽²⁸⁾

The concern is that the term biodegradable is an inherently misleading and misunderstood term with regard to plastics. While there are established testing criteria for compostable plastics, namely the ASTM International D6400 standard, experts cannot agree on testing criteria for biodegradable plastics. An ASTM standard for [marine degradability](#) was created, but later withdrawn.⁽²⁹⁾ A best practice is not to allow “biodegradable” or “marine degradable” plastic bags, and only to allow compostable plastic bags if a bag fee applies and only under certain circumstances.⁽³⁰⁾ Keep in mind, however, that compostable bags do not break down in the marine environment and still pose grave threats to marine life. There is a lot of confusion about the definitions of terms like bioplastics, biodegradability, and compostability. The term “bioplastics” is used to describe both fossil fuel-derived plastics that are biodegradable, and biomass or renewable resource-derived plastics (termed bio-based plastics). 5 Gyres’ new [Ban List 2.0](#) report found that most bioplastics that claimed to be biodegradable or compostable did not break down in a reasonable time frame in the soil or the marine environment.⁽³¹⁾

ALERT TO COMBAT GREENWASHING

California law requires that a manufacturer or supplier selling products in California, upon a request from a member of the public shall respond with information and documentation within 90 days [demonstrating compliance](#) with the degradable and/or compostable regulations “in a format that is easy to understand and scientifically accurate.”⁽³²⁾ This means that if a customer sees a product sold in California marketed as “biodegradable,” “degradable,” or “decomposable,” or any form of those terms, a customer can send an information request to the manufacturer or supplier and the manufacturer or supplier is legally obligated to respond.



VIII. ADDRESS THE CONCERNS OF LOW-INCOME COMMUNITIES

The argument that bag fee laws disproportionately impact low-income communities is important to address, both in the structure of the ordinance and in the campaign and associated messaging. Here are three key points:

1. Advocates working on bag fee bills should be very clear that plastic bag fees are intended to encourage people to bring their own bags rather than paying the fee. A study looking at the response to Washington DC's bill (a 5-cent tax on all bags) shows this reduction in consumption happens across all demographics.⁽³³⁾
2. Since the point is to get people to bring their own bags, cities pursuing this type of legislation must be careful to ensure that low-income community members that don't already have their own reusable bags can get some reusable bags for free. Many cities require education and outreach and reusable bag giveaways in low-income communities within the text of the law. For example, New York City's bag bill required that the Department of Sanitation work with local businesses and nonprofit organizations to do targeted outreach prioritizing reusable bag distribution to residents in households with annual income below 200% of the federal poverty line.⁽³⁴⁾
3. Most bag laws include an exemption for transactions paid for in whole or in part by food stamp programs (e.g., SNAP or WIC). This exemption is often included because many legislators feel that the most vulnerable members of low-income groups should receive extra assurances of food security.

IX. INCLUDE A CLAUSE MANDATING A REPORT REGARDING IMPLEMENTATION

A best practice is to mandate that a report regarding implementation be prepared by the implementation/enforcement agency, or whichever agency is best suited for the task. Requirements for the report should be laid out in the text of the bag law. For example, NYC's bag law required that the Sanitation Commissioner conduct a study two years after the law went into effect and mandated that certain information be part of the study: "percentage reduction in single-use plastic or paper carryout bags usage by residents; residents' attitudes toward the law, disaggregated by race and income; and whether residents are substituting other types of plastic bags for single-use carryout bags."⁽³⁵⁾

There is a need for data on bag law implementation in the US, so it is imperative to gain more information. Mandatory reports examining the effectiveness of bag laws can help insulate successful laws from recall by showing that the laws work. Moreover, these reports add to the public narrative, demonstrating that these types of laws are effective at curbing pollution.

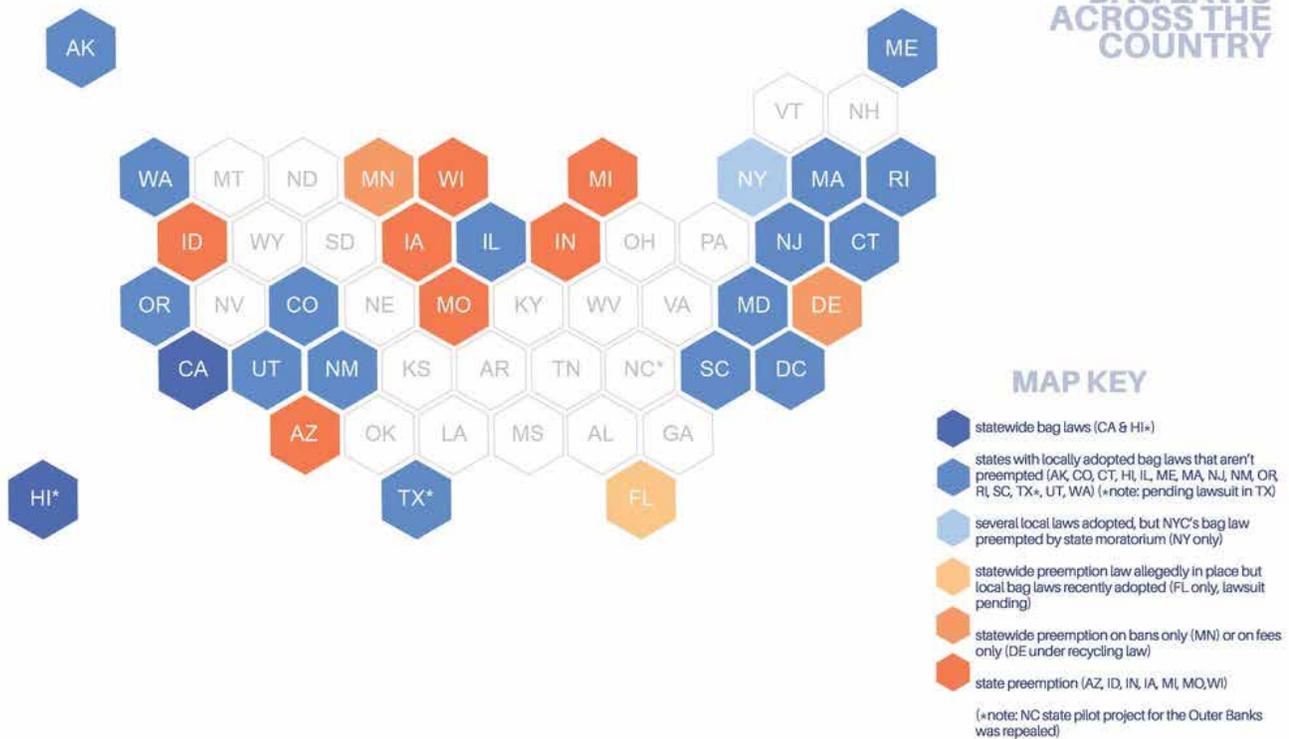


E. MAP OF BAG LAWS IN THE U.S.

The map of plastic bag reduction laws in the U.S. below was created by Korin Tangtrakul in partnership with PlasticBagLaws.org and is accurate as of November 7, 2018. The current version can be found at plasticbaglaws.org/factsheet.

FACT PLASTIC BAG LAWS SHEET IN THE U.S.

BAG LAWS ACROSS THE COUNTRY



III. PREEMPTION: WATCH OUT THAT LOCAL BAG LAWS DON'T GET BLOCKED BY STATE LEGISLATION

The preemption doctrine refers to the concept that a higher authority of law will displace a lower authority when two authorities come into conflict (e.g., federal law trumps state law, state law trumps local law). In the context of plastic bag laws, preemption concerns generally relate to legislation passed at the state level that explicitly blocks local plastic bag reduction legislation (e.g., bans and fees). Preemption is currently considered to be the [biggest challenge to fighting plastic pollution locally](#), because any progress made at the local level on plastic bag reduction laws is at risk of being trumped by a law passed by the state legislature.⁽³⁶⁾

The three main types of preemption related to plastic bag laws are:

- 1) Preemption that applies broadly to any local regulation of bags or “ancillary containers,”
- 2) Plastic bag recycling laws that include a preemption clause blocking local plastic bag laws, and
- 3) State laws crafted to block a specific local bag law.

TYPES OF PREEMPTION

Preemption: The action of forestalling, especially of making a preemptive attack.

American Legislative Exchange Council (ALEC):

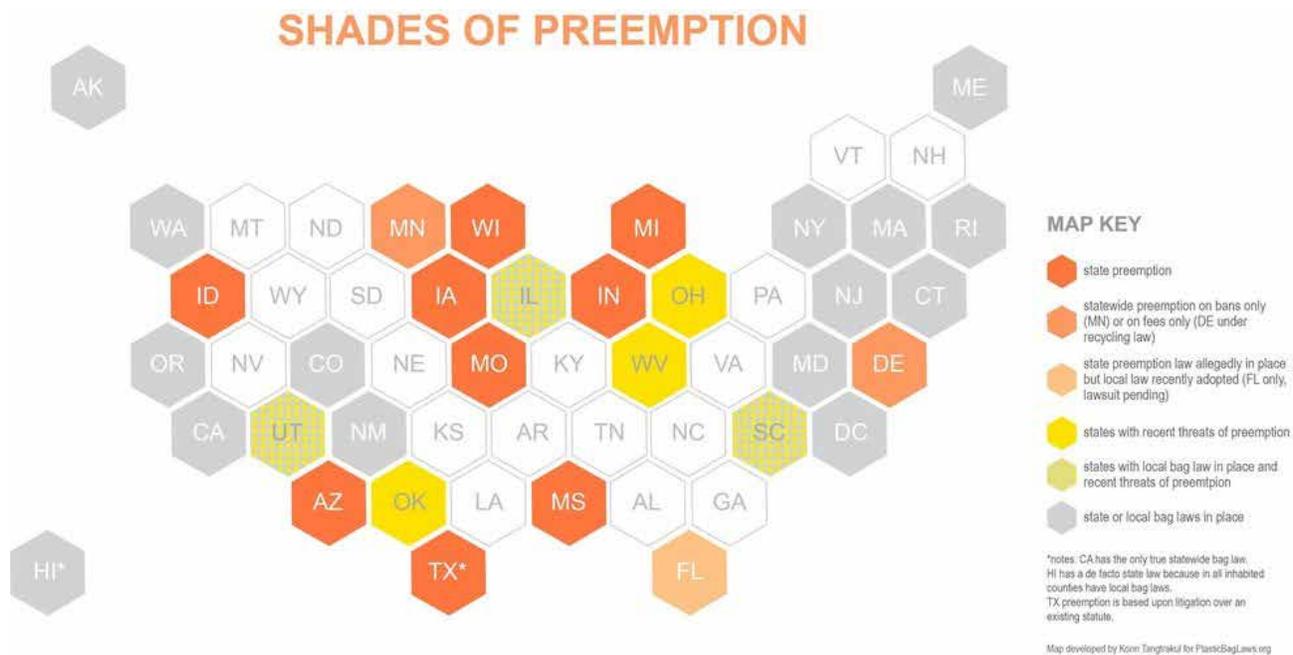
Boilerplate language preempting local laws on plastic bags or “auxiliary containers”

Statewide plastic bag recycling law that includes a clause preempting ban and/or fee

State law intended to block a bag law in a specific city

The best way to push back on preemption is a strong on-the-ground presence to continue to pass local single-use plastic bag regulations coupled with talking to state legislators to make sure that they’re aware of the importance of the issue to their constituents. Another successful strategy to fight against preemption is to develop a statewide coalition of groups working on the issue so that there’s a presence at the state level to challenge the industry lobbyists that threaten to silence local voices and action on the topic of plastic pollution. Lastly, another important strategy is to diligently track the effectiveness of local bag laws and share those statistics with legislators to demonstrate how bag reduction policies effectively change consumer behavior and reduce the amount of single-use plastic pollution in local parks, streets, beaches, and waterways.

The map of plastic bag preemption laws in the U.S. below was created by Korin Tangtrakul in partnership with PlasticBagLaws.org and is accurate as of July 25, 2018. The current version can be found at plasticbaglaws.org/preemption.



IV. BEST STATISTICS TO INCLUDE IN YOUR BAG LAW CAMPAIGN

This section builds an argument for the public record in favor of plastic bag laws by providing information showing:

- 1) Harms caused by plastic bags and
- 2) Why plastic bag reduction laws are effective

These statistics can be converted into “Whereas” statements to insert into your Plastic Bag Law.

NOTE: Advocates should make sure to get this information on the record before a bill is adopted. Information is added to the legislative record for a bill by submitting it to the city council clerk. The most common way to submit information to the clerk is a letter of support laying out the information that you find most important and attaching primary sources—including relevant reports or studies. In some jurisdictions, the record for the bill is closed when the bill is adopted and only documents in the administrative record can be relied upon for some potential lawsuit claims. Also, Surfrider Legal Department has a toolkit available on how to build an administrative record. Contact legal@surfrider.org to request a copy.

A. HARMFUL EFFECTS OF PLASTICS & PLASTIC BAGS

Be very careful to only rely on well-vetted information sources where a primary source can be verified. Below are examples of information you might want to include. Many of the examples listed below are pulled from Surfrider’s [Beachapedia](#) page,⁽³⁷⁾ which provides updated pollution facts and figures with footnotes. When possible, also include local examples of harms specific to your community. When describing the problem of plastic pollution, be careful to distinguish between harms of plastic products more generally versus harms caused specifically by plastic bags.

Plastic in the Ocean

- * Plastic is the most [common type](#) of marine litter worldwide.⁽³⁸⁾
- * An estimated [5-13 million tons](#) of plastic enter our oceans each year from land-based sources.⁽³⁹⁾
- * Plastics do not biodegrade, but instead [break up into small particles](#) that persist in the ocean, adsorb toxins, and enter the food chain through fish, seabirds and other marine life.⁽⁴⁰⁾
- * Studies have shown that most [bioplastic products persist in the marine environment](#) just like their petroleum-based plastic counterparts. Therefore, the same argument made for restricting traditional single-use plastic products should apply to bioplastic products.⁽⁴¹⁾
- * The most commonly used plastics, when exposed to the elements, release methane and ethylene—two powerful greenhouse gases that can exacerbate [climate change](#).⁽⁴²⁾

Marine Life

- * Impacts of marine debris have been reported for [663 marine wildlife species](#) and the majority of encounters reported were with plastic debris.⁽⁴³⁾
- * Plastic bags, which resemble jellyfish, are the most commonly found synthetic item in sea turtles’ stomachs, and [34% of dead leatherback sea turtles](#) were found to have ingested plastic.⁽⁴⁴⁾
- * Researchers found that [80% of seabird species](#)⁽⁴⁵⁾ that spend most of their time at sea (of the order Procellariiformes), which include petrels, albatrosses, and shearwaters, have plastic in their [stomachs](#).⁽⁴⁶⁾
- * Recent [studies estimate](#) that fish off the West Coast ingest over 12,000 tons of plastic a year.⁽⁴⁷⁾

Land-Based Plastic Pollution & Economic Damage Caused By Plastic

- * Plastic bag litter can pose a potentially **lethal threat to grazing cattle**, because ingested plastic bags have been known to block all liquid to the rumen. If a cow is known to ingest a plastic bag a rancher might slaughter the animal early or risk it developing septicemia, rendering the carcass valueless to the rancher.⁽⁴⁸⁾
- * Plastic bags mistakenly disposed of in curbside recycling bins end up **clogging recycling** machinery, which costs municipal recycling processors money.⁽⁴⁹⁾
- * Cleanup of plastic bags is costly. According to one study, West Coast communities are spending more than \$520,000,000 – over one half billion dollars – each year to **combat litter** and curtail marine debris.⁽⁵⁰⁾
- * Plastic bag litter harms the economic value of **cotton crops**, by sticking to cotton bolls, causing contamination that can be traced back to individual cotton farmers and deducted from their profits.⁽⁵¹⁾

Plastics on Your Plate

- * UC Davis researchers found **plastic and fibrous debris** in 25% of individual fish and in 67% of all species of the fish sold in California markets.⁽⁵²⁾
- * Researchers who analyzed sea salt sold in China found between 550 and 681 microplastic particles per kilogram of **sea salt**.⁽⁵³⁾

Production of Plastic

- * Globally we've produced an estimated **8.3 billion metric tons** of plastic as of mid-2017. ⁽⁵⁴⁾
- * Globally we've generated an estimated **6,300 million metric tons** of plastic waste as of 2015 and it's estimated that only 9% of the plastic waste generated globally has been recycled.⁽⁵⁵⁾
- * In 2015, about **730,000 tons of high density poly-ethylene (HDPE)** plastic “bags, sacks and wraps” of waste were generated in the United States, but only 5.5% of this total was recycled.⁽⁵⁶⁾
- * Traditionally made from petroleum byproducts, plastic in the United States is now most **commonly sourced** from the nation's production of natural gas.⁽⁵⁷⁾



PHOTO: WOODS WHEATCROFT

WARNING: THE FOLLOWING STATISTICS SHOULD NOT BE QUOTED:

These statistics were debunked and have been referenced in [lawsuits by the plastics industry](#) to show that environmentalists were not using well-vetted facts. There are plenty of good statistics supporting plastic bag laws, so debunked statistics like these should never be quoted.⁽⁵⁸⁾

* “100,000 marine animals are killed by plastic bags annually.” Or “According to the National Oceanographic and Atmospheric Administration, plastic debris kills an estimated 100,000 marine mammals annually, as well as millions of birds and fishes.” This is the most commonly cited inaccurate claim.

[This] figure is based on a [misinterpretation](#) of a 1987 Canadian study in Newfoundland, which found that, between 1981 and 1984, more than 100,000 marine mammals, including birds, were killed by discarded nets. The Canadian study did not mention plastic bags.⁽⁵⁹⁾

* “The Great Pacific Garbage Patch is a floating island of trash twice the size of Texas.”⁽⁶⁰⁾

This claim was [challenged](#) by a University of Oregon professor and has been raised in lawsuits by plastics industry groups against plastic bag laws. Plastic in the ocean should be more accurately described as smog. Explanation by [5Gyres](#):⁽⁶¹⁾

“No, the plastic island in the North Pacific Gyre doesn’t actually exist. . . . This myth actually perpetuates the plastic pollution problem, positioning it as something that we can sweep up and “away,” while continuing to use plastic without consequence. There are concentrations of plastic in the gyres, but the material is constantly in the process of breaking down into smaller and smaller pieces, which permeate all waters. In the ocean, plastic is less like an island, and more like [smog](#).”⁽⁶²⁾

B. STUDIES SHOW BAG FEE LAWS AND BAN/FEE HYBRID LAWS ARE EFFECTIVE.

The two main results that effectiveness studies track are:

- 1) [Reducing plastic bag consumption, and](#)
- 2) [Reducing litter.](#)

[Below are some examples—be sure to include statistics based on a law similar to the structure of the bill that you’re supporting. Use additional local examples when possible.](#)

Statistics from Ban/Fee Hybrids

* The City of San Jose’s bag ban on thin plastic bags and 10-cent charge for paper bags resulted in the percentage of customers bringing their own reusable bags to the store going from [4% to 62%](#), reduced plastic bag pollution in storm drains by 89%, and reduced downtime in municipal solid waste (MSW) operations related to disruptions from plastic bags by up to 35-50% within a year of implementation.⁽⁶³⁾

* In Alameda County, CA a ban on thin plastic bags and a fee on paper and reusable bags led to an [80% decline](#) in the use of single-use paper and plastic bags, a 200% increase in the number of shoppers bringing reusable bags, or not using a bag at all, and a 44% decrease in plastic bags found in County storm drains.⁽⁶⁴⁾

* A [study examining Aspen’s two grocers](#) covered by the City ordinance banning the use of single-use plastic checkout bags at Aspen supermarkets and mandating a 20-cent fee for single-use paper bags found that 45% didn’t use any type of bag to carry out their purchases, another 40 percent used reusable bags, and 15% paid 20 cents per paper bag.⁽⁶⁵⁾



Statistics from “Fee on All Bags” Laws

* Washington, D.C.’s bag law mandating a 5-cent tax on all single-use plastic and paper carryout bags resulted in an over 60% reduction in single-use carryout bag consumption in the first year. D.C.’s Anacostia River saw a corresponding reduction in plastic bag litter. The bag law proved to be **popular with the public**: 83% of D.C. residents and 90% of D.C. businesses support the law or are neutral about the law.⁽⁶⁶⁾

* A study comparing carryout bag use at large Chicago supermarkets in the months just before and just after implementation of a 7-cent tax on all checkout bags (plastic, paper, reusable) found a **42% reduction** in the number of single-use bags used per trip, a 20% increase in the number of customers bringing reusable bags, and a 12.2% increase in customers using no bags.⁽⁶⁷⁾

Statistics from Straight Plastic Bag Bans (These studies show an increase in paper bag consumption).

* In **Westport, CT**, a retail checkout bag survey of 2,456 shoppers showed that in areas affected by the straight plastic bag ban ordinance, over 50% of customers used “reusable” bags (including thicker plastic bags), roughly 45% of customers used paper bags, and only 2% of customers carried out with no bag. Compared to similar stores in areas unaffected by the ordinance, the straight plastic bag ban ordinance increased paper bag usage drastically (from virtually no usage to a prevalence of about 45%).⁽⁶⁸⁾

* In San Francisco, a straight plastic bag ban ordinance was first implemented in 2007, only applying to large retail stores with over \$2 million in annual sales. [UseLessStuff](#) conducted a survey on 25 covered stores and found that the ordinance was ineffective at changing consumer behavior. Retailers switched to paper bags (or thicker plastic bags labeled “reusable”) and excessive double-bagging of paper bags was observed, with few people bringing bags of their own.⁽⁶⁹⁾

This list of plastic bag law effectiveness data was prepared through a partnership between Scientist Action and Advocacy Network ([ScAAN](#)) and [PlasticBagLaws.org](#). For the current list of effectiveness studies and analysis please visit www.plasticbaglaws.org/effectiveness.

LITIGATION: TYPICAL LEGAL CLAIMS IN PLASTIC BAG LAWSUITS

Lawsuits against plastic bag laws are generally brought by plastic bag manufacturing industry groups, and to a lesser extent retail associations. Most of this litigation occurred in California at the local level in the years leading up to California’s statewide bag law. For a non-exclusive list of litigation documents involving plastic bag laws, please see plasticbaglaws.org/litigation. Here are the standard types of claims that have been brought:

ENVIRONMENTAL CLAIMS

The plastics industry’s main argument against straight plastic bag bans (without a paper bag fee component) has been an environmental one, that if single-use plastic bags are banned then people will just use paper—or whatever is free—and therefore the outcome of bans could be worse for the environment.

UNCONSTITUTIONAL TAXATION CLAIMS

Most cities don’t have the authority to collect taxes under their state constitutions except as expressly permitted. To avoid lawsuits, most U.S. bag laws mandate that the entire amount of a bag fee charge stay with the retailer. Cities in states where this constitutional issue doesn’t exist may collect all or part of the bag fee as a tax or a regulatory fee and place the money into an environmental fund. See the *Where Should the Money from the Fee Go?* section on page 6 for more information.

STATE PREEMPTION CLAIMS

Preemption is currently considered to be the biggest challenge to fighting plastic pollution locally, because any progress made at the local level on plastic bags bans and fees are at risk of being trumped by a state law passed by the state legislature.

HEALTH & SAFETY CODE CLAIMS Claims were brought in California claiming that plastic bag laws concerning bags from restaurants were preempted under the California Health & Safety Code. Those lawsuits were unsuccessful.

V. START A BAG CAMPAIGN IN YOUR COMMUNITY

A. BUILD A CAMPAIGN IN YOUR COMMUNITY

Please refer to Surfrider's [Rise Above Plastics Activist Toolkit](#) starting at page 6 for detailed information about how to build a campaign in your community or join a [Surfrider chapter near you](#) to learn more information about how to start a campaign.

B. TYPICAL BAG LAW ALLIES AND OPPONENTS

Every city and town is different, but in the last decade of bag law campaigns, some themes have emerged in the U.S. as far as where bag law allies and opponents are typically found.

I. TYPICAL BAG LAW ALLIES

The environmental groups most interested in plastic bag reduction tend to be groups concerned specifically with waste reduction, water and ocean issues, and conservation. A list of key partner organizations working on the issue is included in Appendix I. Other interested parties often include neighborhood associations, business improvement districts, retail associations, political parties, recycling companies, social justice organizations, faith-based organizations, and local student groups. It's also a good practice to look for unexpected allies that care about the issue for a unique and interesting reason, which can help broaden the base of support for a bag law. You might also consider finding [Ocean Friendly Restaurants](#) in your community that would be strong allies for an ordinance that includes a ban on plastic bags for restaurants.

II. TYPICAL BAG LAW OPPONENTS

- * The American Chemistry Council (ACC) is a trade association for American chemical companies, including plastics and petrochemical companies. The ACC was a major opponent during the initial push for plastic bag laws, creating a division called the Progressive Bag Alliance (PBA) to promote increased reuse and recycling of plastic bags in 2005. The ACC currently focuses on promoting plastic bag recycling.⁽⁷⁰⁾
- * Society of the Plastic Industry replaced the ACC as the parent organization for PBA and changed the name to the American Progressive Bag Alliance (APBA), focusing on representing bag manufacturers. The APBA currently appears to be the biggest spender in efforts to defeat plastic bag laws. The APBA spent [\\$6 million to defeat California's](#) statewide bag law⁽⁷¹⁾ and for several years has spent as much as \$191,952 per year [lobbying](#) against bag laws in New York State.⁽⁷²⁾
- * Novolex, the parent company of Hilex Poly, the biggest plastic bag manufacturer in the U.S., is a major contributor to the APBA. Hilex Poly has also directly filed lawsuits against bag laws.
- * Save the Plastic Bag Coalition was an association funded by California plastic bag manufacturers that sued several cities in California over adoption of bag laws there circa 2008-2013.

III. POTENTIAL BAG LAW OPPONENTS THAT CAN AND SHOULD BE YOUR ALLIES

Grocers industry groups are also common opponents to bag laws, because paper bags cost significantly more than plastic. Thin plastic bags cost 1-3 cents and paper bags with handles and 40% post-consumer recycled content cost around 8-10 cents. Laws that ban plastic and don't mandate a fee on paper bags in practice often result in stores providing paper for free, since stores want to make sure consumers purchase as much as possible and most grocery stores don't want to run the risk of offending customers by charging for paper bags. The cost of supplying the more expensive paper bags for free cuts into the grocers' profit. As a result, grocery store associations often oppose straight plastic bag bans and sometimes file [lawsuits](#)⁽⁷³⁾ using many of the same arguments as the plastics industry.

The California Grocers Association (CGA) and the Food Industry Alliance (FIA) in New York are state grocer's associations that oppose plastic bag bans. The CGA opposed San Francisco's original straight plastic bag ban, but supported plastic bag laws that included a fee component, including [local Ban/Fee Hybrids](#)⁽⁷⁴⁾ and later supported the California bag bill, [S.B. 270](#) (a Ban/Fee Hybrid).⁽⁷⁵⁾ In New York, the FIA filed one lawsuit against a town regarding a [straight plastic bag ban](#).⁽⁷⁶⁾ Currently, the FIA opposes both straight plastic bag bans and [Ban/Fee Hybrid](#) laws, but supports laws mandating fees on all bags.⁽⁷⁷⁾

In Oregon and Washington, the Northwest Grocers Association has been a strong supporter over many years at both the local and statewide scale. Their support relies on well crafted, comprehensive policies that put a minimum charge on paper bags, recognizing the increased cost that stores face with just a ban on plastic bags. Additionally, they have been in support of statewide legislation - given the differences in local ordinances - as they prefer a consistent standard across the board for consumers.



VI. IMPLEMENTING A BAG LAW

AFTER A BAG LAW IS ADOPTED, THE NEXT STEPS ARE IMPLEMENTATION, ENFORCEMENT, AND MEASURING EFFECTIVENESS.

A. IMPLEMENTATION

Before a bag law goes into effect, the city or state agency charged with implementation is responsible for sharing information about the law with residents and retailers. Implementation materials generally include notices to retailers informing them about the law's requirements and signs for retailers to post near the register. The materials are often made available in several languages, depending on the jurisdiction. Some laws require that the retailer post signage, but most laws make the signage optional. Two jurisdictions with [robust implementation and enforcement programs](#) are District of Columbia Department of Energy & Environment and StopWaste, Alameda County, CA.⁽⁷⁸⁾ Los Angeles County also has compiled information regarding sourcing and testing of compliant reusable bags on their [About The Bag](#) website.⁽⁷⁹⁾

B. ENFORCEMENT

Most bag laws allow for an adjustment period between implementation of a law and when monetary enforcement fines are levied. This allows retailers a chance to adjust to the new law. Under many ordinances the first violation is a warning and the second violation is where fines start to be issued. Enforcement penalties are generally gradual. Having the amount of the bag fee on the receipt is the main way to verify enforcement of the law that includes a fee component, because it allows for the enforcement officer to easily see that customers are being charged for bags. Most bag laws require a warning for the first violation then are subject to a fine for the second violation. Fines for the second violation vary from \$50 to \$500 and increase as violations accrue. As a best practice, bag laws should not be used as a punitive measure against the consumer or a way for a municipality to generate large sums of general revenue.

C. HOW TO GATHER EFFECTIVENESS DATA

Two ways to measure the effectiveness of plastic bag laws are to look for reductions in the amount of single-use carryout bags being used at stores and the amount of plastic bag litter found in the environment.

I. OBSERVATIONAL SURVEYS OF SHOPPERS

Conducting observational surveys regarding which bags shoppers use at a grocery store before and after a plastic bag law goes into effect is a good way to measure the effectiveness of a bag law. Several protocols for these observational studies have been developed by university researchers, consultants, and community groups. These surveys carefully record each type of carryout bag used by shoppers (plastic, paper, reusable, no bag) so that the impacts of the law can be measured and analyzed. As an example of such protocols, the following materials have been developed based on those used by the team of researchers at ideas42, New York University, and the University of Chicago that evaluated the impact of Chicago's disposable bag tax: Data Collection and Entry Instructions, Bag Observation Data Entry Form, Log of Data Collection Sites. These materials are available at plasticbaglaws.org/effectiveness.

II. BAG PURCHASE DATA COLLECTED FROM STORES

Another way to collect data on the amount of single-use carryout bags being used at stores is to contact them directly to ask for the number of bags (usually measured in cases) purchased before versus after the bag law went into effect. As a general rule, larger stores are less likely to share operational information. The best tip for how to approach stores is to ask the manager and be persistent.

III. LITTER CLEAN-UP DATA SPECIFIC TO PLASTIC BAGS

In planning your campaign, you may want to reference data collected from litter and beach cleanups. It's important to gather baseline data before a bag law has been implemented as well as after. There are many organizations that conduct cleanups, so try to connect with local groups to see if any cleanups are already happening. If you conduct your own cleanup, be sure to use a standard data card, for example Surfrider's data card is available [here](#).⁽⁸⁰⁾ Record your data in a Google Sheet or other tracking system (if you are part of a Surfrider chapter, enter your data into Surfrider's Beach Cleanup database.). Track this data over time to see how many plastic bags were collected at a particular beach or within a city during a given amount of time. This is the data you will use in your campaign.

The results of local litter and beach clean-ups should be incorporated into messaging in support of a local bag ordinance campaign, for example:

- * If you are involved in the drafting stage, consider adding a line into the ordinance (i.e. "Beach cleanup data shows plastic bags are the fourth most common item found on local beaches")
- * Compile a report detailing beach cleanup data collected over the course of some period of time and submit your report to your city council or decision-making body
- * In public testimony, cite cleanup data ("Over the course of the past year, our volunteers have picked up over 8,000 plastic bags off beaches and tangled in fences and trees")

If you want to take your litter and beach cleanups to the next level, [BreakFreeFromPlastic's Brand Audit Toolkit](#) offers step-by-step guidance on how to plan a litter cleanup that includes a brand audit.⁽⁸¹⁾ The goal of brand audits is to identify the brands most responsible for plastic pollution found on our beaches and beyond. This information may help in the advocacy process. There are also several options available for apps that allow you to digitally capture the piece-by-piece data from your litter cleanup. One example is [Litterati](#), which geotags the location of the litter and provides keywords to help the user quickly identify the most commonly found brands and products.⁽⁸²⁾

IV. REVIEW INFORMATION FROM OFFICIAL REPORTS REGARDING IMPLEMENTATION

As mentioned above, a best practice is to mandate in the text of the law that a report regarding implementation be prepared by the implementation/enforcement agency or whichever agency is best suited for the task. If such a clause has been included in the bag law, it will likely provide a great resource for effectiveness information.

VII. CONCLUSION

After reading this Toolkit, you should be empowered with a deeper understanding of the intricacies of plastic bag laws. Here is a very basic take-home punch list on what to make sure to include in any plastic bag law:

- * Include a fee component (Ban/Fee Hybrid or Fee on All Bags).
- * Cover as many businesses as possible.
- * Make the fee a minimum fee.
- * Paper bags should be recyclable and contain at least 40% post-consumer recycled content (most important for Straight Plastic Bag Bans).
- * Mandate that a report regarding implementation be prepared by the implementation/enforcement agency.

IF YOU HAVE QUESTIONS ABOUT THIS TOOLKIT OR WOULD LIKE INFORMATION AND/OR HELP WITH A PLASTIC BAG LAW INITIATIVE IN YOUR AREA, PLEASE CONTACT:

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APPENDIX I: RECOMMENDED ONLINE RESOURCES

SURFRIDER FOUNDATION

The Surfrider Foundation is dedicated to the protection and enjoyment of the world's ocean, waves and beaches through a powerful activist network. Surfrider has been dedicated to addressing the plague of plastic pollution for over ten years, and we do so through education and advocacy on source-reduction solutions. Plastic bags are one of the most ubiquitous consumer items that can be easily replaced with reusable bags, and so a great place to start on advocating for solutions. In addition to this guide, we have several other resources to help address plastic pollution:

- * [Plastic Pollution Blog](#)
- * [Rise Above Plastics Activist Toolkit](#)
- * [Plastic Pollution Facts and Figures – Beachapedia](#)
- * [Plastic Straws Toolkit](#)
- * [Rise Above Plastics Program Resources](#)
- * [Surfrider Europe's Good Practices Guide: Banning Single-Use Plastic Bags](#)
- * [Ocean Friendly Restaurants Toolkit](#)

PLASTICBAGLAWS.ORG

The best place to start on PlasticBagLaws.org is the Primer page. There you'll find the most up-to-date fact sheet, videos by Jennie Romer, and links to the most relevant articles and webinars. Sign up for PBL's newsletter for periodic updates with the latest bag news.

PARTNER ORGANIZATIONS:

[5 Gyres](#)
[BreakFreeFromPlastic](#)
[Californians Against Waste](#)
[Citizens Campaign for the Environment](#)
[Clean Water Action](#)
[Global Alliance for Incinerator Alternatives – GAIA](#)
[Greenpeace](#)
[Heal the Bay](#)
[Plastic Pollution Coalition](#)
[Sierra Club](#)
[Story of Stuff](#)
[Texas Campaign for the Environment](#)
[Upstream](#)

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APPENDIX II: SAMPLE LOCAL BAG ORDINANCES

SAMPLE LOCAL BAG LAWS

ALAMEDA COUNTY, CA (2016 EXPANDED ORDINANCE)

(Ban/Fee Hybrid that includes all retailers and restaurants)

Reasons highlighted:

PRO: includes all retailers and restaurants/ “public eating establishments”

PRO: results from previous ordinance in Findings, including decrease in plastic bags in storm drains

FYI: ordinance adopted for county pursuant to Joint Exercise of Powers Agreement for Waste Management

TOWN OF NEW CASTLE, NY (2016)

(Ban/Fee Hybrid with cost differential for reusable vs. paper bags)

Reason highlighted:

PRO: higher minimum charge for reusable bags vs. paper bags (25 cents vs. 10 cents)

SAN MATEO COUNTY, CA (2013)

(Ban/Fee Hybrid)

Reason highlighted:

PRO: reusable bag charge increases from 10 cents to 25 cents after certain period of time

ASPEN, CO (2011)

(Ban/Fee Hybrid with money going to an Environmental Fund)

Reason highlighted:

PRO: adopted as a Waste Reduction Fee, most of which goes to Waste Reduction and Recycling Account

CITY OF LONG BEACH, NY (2016)

(Fee on All Bags)

Reason highlighted:

PRO: very simple 5-cent fee on all carryout bags

NEW YORK CITY, NY (2016 - MORATORIUM PREVENTED IMPLEMENTATION)

(Fee on All Bags)

Reasons highlighted:

PRO: reporting requirements for information on the progress of single-use carryout bag reduction

PRO: reporting requirements study on the effect of the law on residents

PRO: outreach and education prioritizing households with income below 200% of the federal poverty line

APPENDIX III: SAMPLE BAG LAWS

SAMPLE STATE BAG LAWS

CALIFORNIA STATEWIDE BAG LAW (2014)

(Ban/Fee Hybrid)

Reasons highlighted:

PRO: retailer not specifically required to comply may choose to opt-in to coverage under statewide law

PRO: only allows compostable plastic bags in limited circumstances, good example of what to consider

PRO: requires percentage of post-consumer recycled content for plastic film bags by a certain date

CON: overly complicated reusable bag definition

CON: only covers retailers that sell food, excludes restaurants

PROPOSED NEW YORK STATEWIDE BAG BILL (2018 - NOT ADOPTED)

(Ban/Fee Hybrid with cost differential for reusable vs. paper bags)

Reasons highlighted:

PRO: most of the money collected is directed to a solid waste account



PHOTO: WOODS WHEATCROFT



PHOTO: WOODS WHEATCROFT

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- ² All mentions of plastic bags refer to single-use plastic carryout bags unless otherwise noted.
- ³ Fee is often used as a general term in this Toolkit. The differences between fees, charges, and taxes on bags is discussed in Section II(d)(i).
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237 of 237