



October 8, 2013

2013-R-0332

PLASTIC BAG REDUCTION METHODS

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You asked for examples of how state and local governments discourage the use of plastic carryout bags.

SUMMARY

Governments, mostly county and municipal, discourage the use of plastic carryout bags through bans, fees, mandatory recycling requirements, and education programs. Many that do are located in coastal states, and the provisions of their implementing ordinances vary considerably.

The ordinances generally apply to certain types of bags or businesses. Some provide for specific alternatives and others impose criminal or civil penalties for noncompliance. Some ordinances also aim to reduce or eliminate the use of paper carryout bags. Many exempt plastic bags used for certain purposes, such as those used to carry fruit, vegetables, nuts, candies, or other loose items (i.e., produce or product bags). They often explicitly allow the use of reusable bags, which are generally handled-bags designed for multiple reuse and made out of cloth or some other durable or machine washable fabric. Plastic reusable bags must often be at least 2.25 mils (.00225 inches) thick. If an ordinance allows for the use of recyclable paper bags, the bags must often be 100% recyclable, made of at least 40% post-consumer recycled content, and labeled as “reusable” or “recyclable.”

No state has banned the use of plastic carryout bags on a statewide basis, but many counties and municipalities have imposed local bans. North Carolina's legislature adopted a ban that applies only to its Outer Banks region. By July 2015, all four of Hawaii's counties will ban these bags, with varying exemptions, thus creating a de facto statewide ban. Barrington, Rhode Island's ban sunsets in 2015 unless the Town Council renews it. Westport is the only Connecticut municipality that bans plastic bags for retail checkout of purchased goods. Brookline, Massachusetts bans non-compostable and non-marine degradable plastic bags, but provides temporary waivers for food service establishments that can show an economic hardship or that they have no alternative to the checkout bags.

Like plastic bag bans, no states impose a fee or tax on plastic carryout bags, but several local jurisdictions do. For example, Montgomery County, Maryland and Washington, D.C. impose a five-cent per bag charge, while Boulder, Colorado imposes a 10-cent fee. The fees also apply to paper bags. Most of the revenue generated by these fees is used for environmental projects.

Some municipalities, particularly in California, couple plastic bag bans with fees on paper bags. Sunnyvale, California, for example, bans plastic carryout bags and imposes a 10-cent per bag fee, increasing to 25-cents in 2014, on recyclable paper carryout bags. It staggered the date by which stores were required to comply with its requirements, giving smaller stores more time to do so.

Madison, Wisconsin bans the disposal of non-contaminated recyclable plastic bags, including most grocery and retail bags, which must be separated from other solid waste and recycled.

Although the above methods may include an informational or educational component, some localities rely primarily on education programs to reduce plastic bag use. For example, Tuscan, Arizona requires retailers to (1) train employees on how to reduce their use, (2) educate customers on the environmental benefits of recycling or reducing the use of these bags, and (3) implement a public education program. It also requires them to collect and recycle plastic bags and report data on plastic bag use. In 2011, Wilton, Connecticut conducted a six-month educational program to decrease disposable bag use that, among other things, distributed free reusable bags to consumers.

The methods described above represent a sample of those used across the nation. More information about these and other approaches is available at several websites, such as plasticbaglaws.org and banthebag.com, which track plastic bag laws. You can also contact us for additional information.

PLASTIC CARRYOUT BAG BAN

Ban in Statutorily-Designated Environmentally Sensitive Areas — North Carolina's Outer Banks

In 2009, North Carolina's legislature enacted a law banning retailers in the Outer Banks from providing customers with plastic carryout bags, except (1) reusable bags and (2) bags to hold unpackaged fish, meat, poultry, or produce. Under the law, reusable bags may be made of cloth, some other machine washable fabric, or a nonwoven plastic material weighing at least 80 grams per square meter.

The law limits a retailer's ability to substitute paper bags for the banned plastic bags. It prohibits retailers from using paper bags unless (1) the bags are recycled paper bags and (2) the retailers offer a cash refund to customers who use their own reusable bags. The refund amount must equal the retailer's cost of providing a paper bag, multiplied by the number of reusable bags the customer fills. Prepared foods retailers can use recycled paper bags to comply with food sanitation or handling standards.

The law also requires retailers, but not prepared foods retailers, to post a sign discouraging the use of single use bags.

Retailers violating the ban are subject to administrative penalties of up to (1) \$100 for a first violation, (2) \$200 for a second violation, and (3) \$500 for subsequent violations, if occurring within a 12-month period (N.C. Gen. Stat. §§ 130A-22 and 130A-309.120 et seq.).

De Facto Statewide Ban — Hawaii

Once its ordinance banning plastic carryout bags takes effect in 2015, Honolulu County will join Hawaii's other three counties (Hawai'i, Kaua'i, and Mau'i) in banning the use of these bags, thus creating a de facto statewide ban.

In general, the counties (1) ban businesses from providing plastic checkout bags to customers and (2) allow them to provide reusable bags and recyclable paper bags. But the counties' ordinances vary by, among other things, the bags and businesses exempt from the bans, effective dates, and penalties.

For example, Honolulu and Kaua'i counties exempt produce or product bags. Honolulu also exempts newspaper and laundry bags, prescription medication bags, bags sold in packages, and bags to carry live animals, among other types of bags. Hawai'i and Kaua'i counties exempt certain nonprofit and community booster organizations from the bans. Hawai'i lets businesses phase out plastic checkout bags by allowing them to sell the bags to consumers for a certain period before they are banned. And Honolulu's 2015 effective date allows businesses to deplete their plastic bag inventories.

Penalties for violating the bans vary by county. For example, Hawai'i issues first-time violators a warning. Honolulu and Maui may issue violators stop orders. The amount of civil fines for violations ranges from \$100 to \$1,000, depending on the county and whether the violation is a first, second, third, or subsequent offense. Fines collected for violating Maui's ordinance are deposited into the open space, natural resources, cultural resources, and scenic views preservation fund (Hawai'i County, Haw., Code § 14-114 et seq.; Honolulu County, Haw., Ordinance 12-8; Kaua'i County, Haw., Code § 22-19.1 et seq.; Maui County, Haw., Code §§ 19.530.030 and 20.18.010 et seq.).

Broad Retail Bans

Barrington, Rhode Island. Barrington's ordinance prohibits retail sales establishments from providing plastic carryout bags, but exempts produce or product bags; bags used to contain frozen meats or fish, flowers or plants, or unwrapped prepared foods; bags used to protect goods from damage or contamination from other purchased goods; double-opening plastic bags; and bags over 28 inches by 36 inches.

It applies to retail stores, farmers' markets, flea markets, and restaurants, but not yard or tag sales, other sales at a resident's home, or sales by nonprofit organizations.

The ordinance explicitly allows retailers to sell reusable bags or recyclable paper bags to customers. The paper bags must be 100% recyclable and contain at least 40% post-consumer recycled content with no old growth fiber. (Old growth fiber refers to uncut, virgin forest with very little human-caused disturbance). They must also be labeled as "reusable" and "recyclable" or have the universal recycling logo on the bag's exterior.

First-time violators receive a written notice to stop the violation. The violator must then confirm, in writing, within 14 days that the violation has ended. Second violations occurring after the 14-day period and within one year of confirmation that the first violation ceased are subject to a \$150 penalty. The penalty for third and subsequent violations occurring within one year of the second is \$300.

Unless renewed, the ordinance sunsets in 2015 (Barrington, R.I., Code § 161-6 et seq.).

Westport, Connecticut. Westport is the only Connecticut municipality that bans plastic checkout bags. The ban, which became operative in 2009, does not apply to produce or product bags, bags used to carry meat, and bags over 28 inches by 36 inches. Under the ordinance, retailers may only provide consumers reusable bags or 100% recyclable paper bags. The paper bags must, among other things, contain no old growth fiber.

The ordinance applies to sales in retail stores, sidewalk sales, farmers' markets, flea markets, and restaurants, but not yard or tag sales, other sales by residents at their homes, and sales by nonprofits. It gave retailers six months from its effective date to dispose of their then-existing plastic checkout bag inventory and convert to alternative packaging materials.

Under the ordinance, violators are first issued a written notice and a deadline to correct the violation before given a citation and fined. The fine is \$150 and additional \$150 fines are imposed for each day a violation continues, beginning four days after the initial citation (Westport, Conn., Code § 46-113 et seq.).

Limited Retail Ban — Brookline, Massachusetts

Brookline's ordinance, which takes effect in December 2013, prohibits certain retail establishments from providing non-compostable and non-marine degradable plastic checkout bags to customers, but exempts those used to carry loose produce or products. It explicitly allows retailers to sell reusable checkout bags and use recyclable paper bags at checkout.

Establishments subject to the ban include (1) retail stores with at least 2,500 square feet; (2) retail stores with at least three locations under the same name in the municipality that total at least 2,500 square feet; (3) retail pharmacies with at least two locations under the same

owner in the municipality; and (4) full-line, self-service supermarkets that sell dry grocery, canned good, nonfood items, and some perishables, with over \$1 million in gross annual sales.

The ordinance allows food service establishments to seek a waiver for up to six months if compliance is not feasible due to economic hardship or the unavailability of alternative checkout bags. Waivers may be extended for an additional six months.

Initial violators receive a warning notice. The first violation after the warning notice is subject to a \$50 penalty and the penalty for subsequent violations is \$100 (Brookline, Mass., Code § 8.33.1 et seq.).

PLASTIC CARRYOUT BAG FEE

10-Cent Fee on Disposable Bags — Boulder, Colorado

In Boulder, certain retail establishments and businesses must charge a 10-cent fee for each disposable bag (paper or plastic) they provide to customers. This requirement applies to full-line, self-service food markets that (1) sell a line of staple foodstuffs, meats, produce, dairy products, or other perishable items; (2) operate year round; and (3) are located in a permanent building. They may provide disposable bags, at no charge, to customers who provide evidence of participating in a federal or state food assistance program.

Under the ordinance, the following bags are exempt from the fee: produce or product bags; bags to carry frozen food or meat; prescription drug bags; newspaper, door-hanger, and laundry-dry cleaning bags; bags sold in packages; bags used to protect goods from damage or contamination by other purchased items; and bags to contain unwrapped prepared foods, plants, or flowers. The ordinance requires the paper bags provided to customers to be 100% recyclable, with at least 40% post-consumer recycled content.

Stores may keep 40% of the fee revenue for such things as collecting and remitting the fees and providing signs and educational information for customers. The balance of the revenue is paid to the municipality for mitigating the effects of disposable bags, which includes the administrative costs for developing and implementing the fee.

Stores delinquent in collecting fees or that underpay them are liable for the fees due, interest, and penalties. The ordinance also allows for criminal sanctions. First and second convictions occurring within two years are subject to fines of up to \$500. Third and subsequent

convictions occurring within two years of the first violation are punishable by fines of up to \$1,000, imprisonment for up to 90 days, or both (Boulder, Colo., Code §§ 5-2-4 and 6-15-1 et seq.).

Five-Cent Tax — Montgomery County, Maryland

The county's ordinance imposes a five-cent tax for each carryout bag (paper or plastic) that a retail establishment provides to a customer. It applies to retailers such as supermarkets, convenience stores, service stations, restaurants, and other sales outlets.

Exempted bags include produce or product bags; prescription medicine bags; newspaper, dry cleaning, garbage, pet, or yard waste bags; bags provided at seasonal events or by occasional retailers; and restaurant take away bags.

Retailers may keep 20% of the collected taxes to cover their collection and remittance costs. The balance is remitted to the County to cover its administrative costs and fund the construction of stormwater management facilities. Retailers who fail to remit the taxes are liable for the amount due, interest, and penalties.

Retailers violating the ordinance face maximum fines of \$500 for a first offense and \$750 for repeat offenses (Montgomery County, Md., Code §§ 1-19 and 52-101 et seq.).

Five-Cent Fee for Disposable Carryout Bags — Washington, D.C.

In 2009, Washington D.C.'s Town Council adopted an ordinance requiring certain retail establishments to charge a five-cent fee on disposable carryout bags, which must all be 100% recyclable, specially marked to encourage recycling, and contain at least 40% post-consumer recycled content if made of paper or be made of certain polyethylene film if made of plastic. The ordinance exempts from the fee many of the same bags excluded by Boulder and Montgomery County (above).

Licensed food or alcoholic beverage retailers must collect the fee. They keep 20% of the fee revenue, but their share increases to 40% if they offer a carryout bag credit program that gives consumers at least five cents for each carryout bag the consumers provide to package their purchases.

The remainder of the collected fees is deposited into the Anacostia River Clean Up and Protection Fund, which is used to clean and protect impaired waterways. Specifically, the revenue can be used to, among

other things, educate people about trash impact on the environment, provide reusable carryout bags to residents, buy and install equipment to minimize trash pollution entering waterways, promote conservation programs, and fund cleanup efforts.

Violators are liable for the fees due, interest, and penalties. The penalties are infractions that range from \$100 for a first offense to \$800 for fourth and subsequent offenses (Washington, D.C., Code § 8-102.01 et seq.).

HYBRID MODEL: PLASTIC BAG BAN AND PAPER BAG FEE

Sunnyvale, California

Sunnyvale's bag ordinance bans stores from providing plastic carryout bags to customers. The ban includes compostable and biodegradable bags, but not reusable bags and produce or product bags. Stores must provide only reusable bags or recyclable paper carryout bags to customers.

Under the ordinance, reusable bags are bags that, among other things, can be reused for at least 125 times, have a volume of at least 15 liters, have no toxic levels of heavy metals, and are labeled with information on the manufacturer, bag's country of origin, and bag's composition. Recyclable paper carryout bags must be (1) compostable and 100% recyclable with at least 40% post-consumer recycled content; (2) labeled as recyclable with the manufacturer's name, bag's country of origin, and percentage of recycled content; and (3) recyclable through the municipal curbside program.

The ordinance couples the ban with a 10-cent per bag fee charged to customers who receive recyclable paper carryout bags. The fee increases to 25 cents after January 1, 2014. But stores must give these bags or reusable bags, for free, to customers who participate in certain food assistance programs.

The ordinance's requirements took effect in two stages. They took effect in June 2012 for (1) full-line, self-service retail stores selling dry grocery, canned goods, or nonfood items and some perishable items with gross annual sales of at least \$2 million; (2) stores of at least 10,000 square feet of retail space selling perishable or non-perishable goods and generating sales or use tax; and (3) drug stores, pharmacies, supermarkets, grocery stores, convenience food stores, or other stores selling certain food items. Stores with under 10,000 square feet of retail space that sell perishable or non-perishable goods and generate sales or

use tax were subject to the requirements nine months later. The ordinance exempts certain charitable organizations that reuse and recycle donated goods and receive over 50% of their revenues from the donated goods.

Violators are first issued a written warning. Violations occurring after a warning are infractions. Maximum fines range from \$100 for a first infraction to \$500 for third and subsequent infractions. Fines are used to implement and enforce the ordinance (Sunnyvale, Cal., Code § 5.38.010 et seq.).

MANDATORY RECYCLING

In 2009, Madison, Wisconsin adopted an ordinance banning the disposal of non-contaminated recyclable plastic bags. The ordinance requires everyone to separate non-contaminated recyclable plastic bags from all other solid waste. It also prohibits placing these bags in containers for disposal with other refuse, garbage, or recyclables.

Under the ordinance, contaminated plastic bags are generally those soiled by organic or non-organic materials. Plastic bags containing any solid waste are considered contaminated. Bags subject to the ordinance include newspaper, bread, dry cleaning, consumer packaging (e.g., toilet paper and paper towel packaging), and most grocery and retail bags.

Violators are subject to fines of \$100 for a first violation, \$200 for a second, and \$400 for third and subsequent violations, if occurring within one year (Madison, Wis., Code §§ 1.08(3)(a) and 10.18(7)(f)).

EDUCATION PROGRAMS

Retailer-Focused — Tuscan, Arizona

In 2013, Tuscan began requiring certain retailers that provide plastic carryout bags to encourage recycling and reducing the use of plastic bags, through an educational program. The ordinance applies to retail businesses with (1) over 10,000 square feet of total retail space and (2) more than two locations in the municipality that receive at least 25% of their gross sales from the sale of medicine or food, drink, confection, or condiment for off-premises preparation.

These businesses must:

1. establish a plastic bag recycling program and educate customers about it, including providing information about the environmental benefits of recycling plastic bags or using reusable bags, such as reducing greenhouse gas, saving energy, and reducing litter;
2. train checkout and bagging clerks about ways to reduce plastic bag use; and
3. implement a public educational awareness program for school age children and the general public that includes contests, in-store promotions, videos, and social media.

As part of their plastic bag recycling program, the businesses must provide collection bins for plastic bags and other film plastic in visible, easily accessible, and clearly marked locations. They must also (1) recycle the returned plastic bags, (2) provide reusable carryout bags for purchase, and (3) have a “reduce, reuse, and recycle” message on all of the plastic carryout bags they provide.

The ordinance also requires retailers to report to the municipality the (1) amount of single use plastic bags given out per transaction, (2) total number of these bags given to customers, and (3) tons of film plastic collected.

District managers representing the retailers must meet quarterly with the municipality to discuss progress at (1) reducing customers’ plastic bag consumption and (2) increasing bag recycling (Tuscan, Ariz., Code §§ 15-1 and 15-60).

Public-Private Partnership — Wilton, Connecticut

In 2010-2011, Wilton’s Board of Selectmen decided to conduct a six-month educational program to (1) educate residents about how plastic and paper bags affect the environment and (2) increase reusable bag use. It approved \$2,500 for that purpose and asked the nonprofit Wilton Go Green (WGG) to develop and run the program. WGG partnered with a private supermarket, which also supplied reusable bags and served as a location to pick up bags and post signs about the program. The campaign’s goal was to have 50% of residents regularly use reusable bags.

The program distributed 12,000 free reusable bags, provided a car window sticker giveaway to remind shoppers to use reusable bags, and implemented a public relations campaign that included an art contest for the reusable bag design and information for local papers.

According to WGG, the program increased reusable bag use between five and 10%, but less than 20% of residents were using the bags. Based on these results, WGG intended to ask the board to consider further action on disposable bag use. WGG supports a ban on plastic bags in retail establishments that sell food, alcohol, and pharmaceuticals, coupled with a five-cent fee for each paper bag provided. It proposes splitting the fee revenue between the retailers and an environmental fund administered by the municipality's Conservation Commission.

HYPERLINKS

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