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An overview of plastic bag laws by Jennie Romer

Disclaimer: This is not legal advice.

The information in this presentation is not, nor is it intended to be, legal advice. You should consult an attorney for individual advice regarding your specific situation.

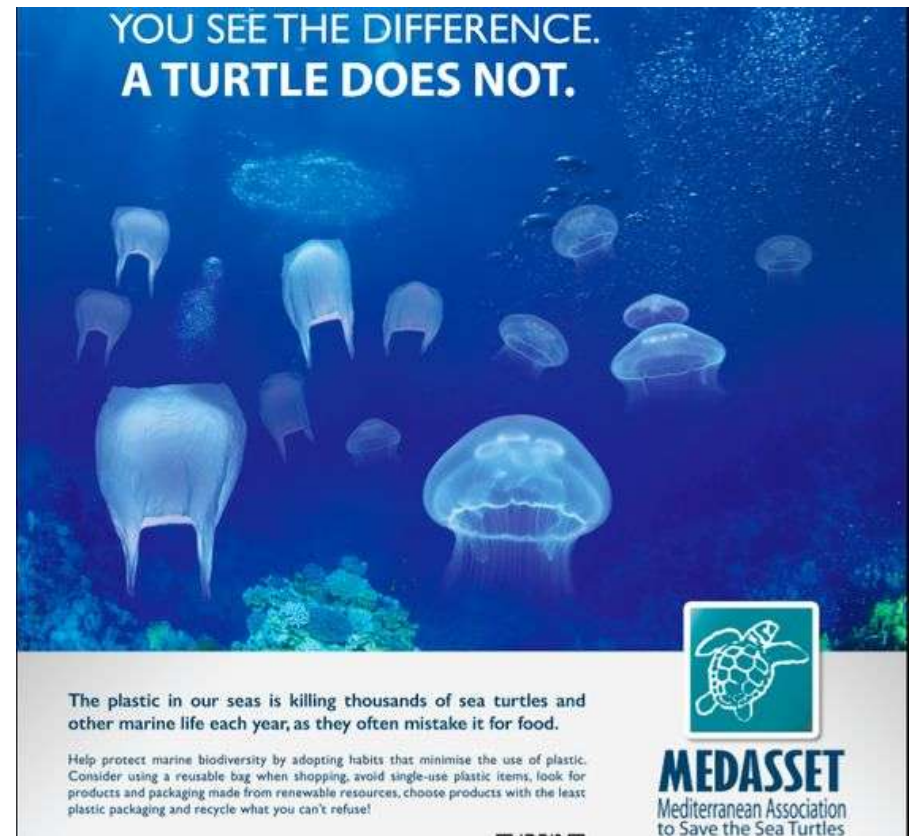
Why are we talking about plastic bags?

Large component of windblown litter

- even if disposed of properly
- very visible
- litter clean-up costs taxpayers

Marine Impacts

- Entangles/chokes marine life
- break down into small pieces



YOU SEE THE DIFFERENCE.
A TURTLE DOES NOT.

The plastic in our seas is killing thousands of sea turtles and other marine life each year, as they often mistake it for food.

Help protect marine biodiversity by adopting habits that minimise the use of plastic. Consider using a reusable bag when shopping, avoid single-use plastic items, look for products and packaging made from renewable resources, choose products with the least plastic packaging and recycle what you can't refuse!

MEDASSET
Mediterranean Association
to Save the Sea Turtles

Why are we talking about plastic bags?

Problematic to municipal waste mgmt

- clogs machinery
- no viable market for dirty bags
- contaminates other recyclables

Given away for free, little thought given to whether needed or how to dispose

Used only briefly and persist in the environment forever



Plastic bags have become an icon of waste

Unlike most environmental issues, bags are something that people can do immediately to make a difference

- simply refusing a bag at checkout
- working on local legislative campaigns
- tangible results



How I got involved

As a law student, volunteered at San Francisco Board of Supervisor's office researching law journal article after first plastic bag ban



Photo credit: City and County of San Francisco

How I got involved

Saw need for info-sharing between cities/advocacy groups

Created website with text of bag laws and lawsuit documents

Wrote law journal articles

Consult on drafting reasonable legislation for non-profits, cities, businesses



plasticbaglaws.org

A resource for legislative bodies considering laws limiting the use of plastic bags

Types of Bag Laws

“First Generation” or “Straight” Ban

- bans thin plastic

Bag Charge

- applies to all carryout bags

Hybrid / “Second Generation” Ban

- ban on thin plastic bags
- charge for paper and reusable



Argument: Recycling

Recycling plastic bags instead of reducing bag use is not the answer

“reduce reuse recycle” in that order

Recycling is a commodities market, some materials more valuable than others & dirty bags don't have viable market

Plastic bag recycling rate is ~5%



EPA's waste management hierarchy

Argument: Recycling

Plastic bags clog most municipal recycling machinery

Plastic bags must be recycling in store collection programs

Focus should be on BYOBag instead of taking bags back for recycling



photo credit: Sims Municipal Recycling NYC (Twitter account)

Argument: Reusable Bags

Reusable bags won't kill you

Many bag laws require that reusable bags be washable

Study about bacteria in reusable bags (funded by the plastics industry) concluded that people should wash their reusable bags

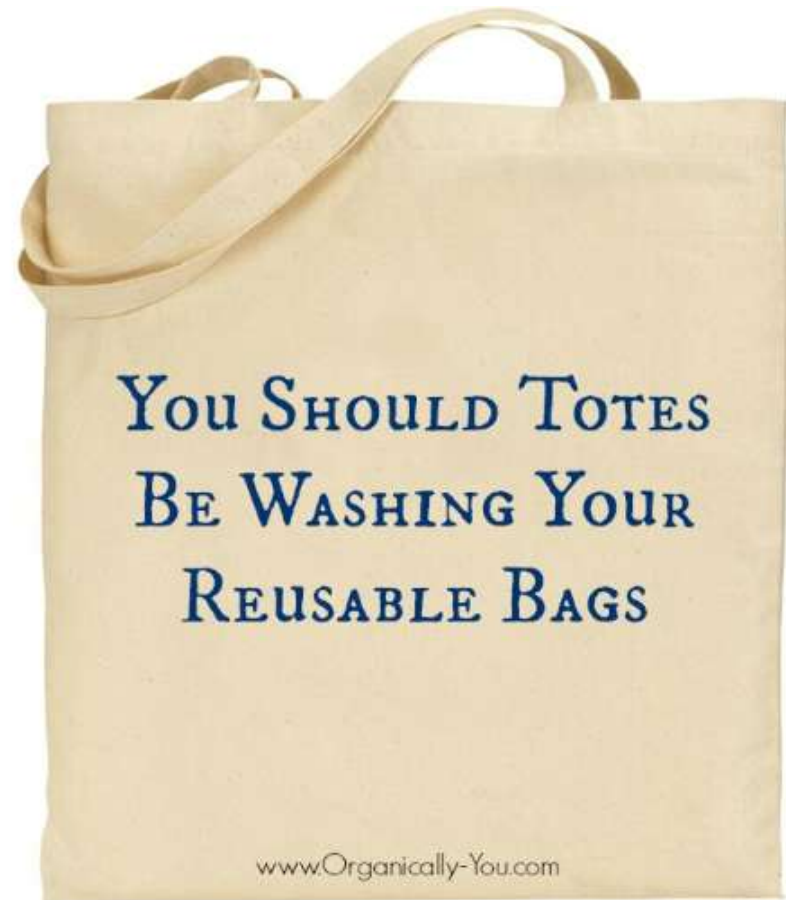


photo credit: www.organicallyyou.com

Argument: Reusable Bags

Reusable bags are only better for the environment than single-use plastic bags if you reuse them several times

Mandate a per-bag fee for reusable bags if possible in jurisdiction

Definition of reusable bag often allows for plastic bags of a certain thickness to qualify as reusable (2.25 or 4.0 mils)



photo credit: 1bagatime.com

Argument: Compostable & Biodegradable

FTC recognized that compostable & biodegradable marketing claims regarding plastics have potential to mislead consumers

Compostable plastic bags must meet ASTM D6400 standard, but commercial composting facilities aren't available in most areas

The term “biodegradable” with regard to plastic bags doesn't have commonly accepted standard



Argument: Paper Bags

Life Cycle Assessment reports look at a variety of factors

These reports put little emphasis on aquatic impacts and litter

Most bag laws require that paper bags be made of 100% recycled material (40% post-consumer)

Mandate a per-bag fee for paper carryout bags if possible in that jurisdiction



photo credit: ULINE

Do Bag Laws Work?

Austin, TX's law bans plastic bags under 4.0 mils thick

FIGURE 1. Before and After Photos from the Allied Waste Services Landfill in Austin, Texas.

Photos on the left were taken on the 25th of February, 2013.

Photos on the right were taken on the 24th of March, 2015.

While the photographers were different, the locations were replicated as accurately as possible.



photo credit: Austin Resource Recovery

Do Bag Laws Work?

Bag fees are shockingly effective

Consumers hate the idea of paying for something they're accustomed to get for free, react disproportionately to the cost

TAX? No, this is an avoidable fee

Money often stays with the retailer

EFFECTIVE MAY 14 IN SB

YES REUSABLE

\$ 10¢ PAPER

NO PLASTIC

SANTABARBARACA.GOV/BAGS 805-564-5669

CITY ORDINANCE 9434

Do Bag Laws Work?

Plastic bag use in England dropped 85% the year after 5p charge

Carryout bag usage went from
7 billion → 500 million per year

Almost \$30 million pounds collected
by retailers was donated to
charities



Do Bag Laws Work?

Plastic bag litter generally decreases
and reusable bag use goes up

Washington DC

- 60%+ reduction in 1 year
- corresponding reduction in plastic bag litter in river

San Jose, CA

- reusable bag use 4% → 62%
- plastic bag litter decreased 89% in storm drains



Preemption lawsuit in Texas

Lawsuit pending for City of Laredo regarding whether Texas Health & Safety Code preempts Laredo's plastic bag ban

Language from Code:

Sec. 361.0961. RESTRICTIONS ON AUTHORITY OF LOCAL GOVERNMENT OR OTHER POLITICAL SUBDIVISION. (a) A local government or other political subdivision may not adopt an ordinance, rule, or regulation to:

- (1) prohibit or restrict, for **solid waste management purposes**, the sale or use of a **container or package** in a manner not authorized by state law;
- (2) prohibit or restrict the processing of solid waste by a solid waste facility, except for a solid waste facility owned by the local government, permitted by the commission for that purpose in a manner not authorized by state law; or
- (3) assess a fee or deposit on the sale or use of a container or package.

How Long Does It Take To Adopt A Bag Law?

Timeline of Austin's ordinance:

- 2007: Resolution requesting City Manager investigate studies to reduce plastic bags
- 2008: Resolution adopting plan to reduce plastic bags entering City's waste stream by 50%
- 2010: Resolution directing City Manager to determine cost to taxpayers of processing plastic bags in waste stream
- 2011: Resolution directing City Manager to process an ordinance providing for phase out of single-use bags
- 2012: Ordinance to phase in regulation of carryout bags (ban) adopted
- 2013: Ordinance implemented

What's the Best Policy?

Acknowledge and address “Unintended Consequences” in other cities

When straight ban in Chicago was implemented Walmart simply switch to giving away thicker plastic (2.25 mils)

Solutions:

- many cities mandate charge for reusable & paper
- Austin requiring thicker bags (4.0 mils)



Photo credit: Zbigniew Bzdak, Chicago Tribune

Further Information

Visit www.plasticbaglaws.org for information including the text of local legislation, lawsuit documents, journal articles

Visit www.jennieromer.com for consulting inquiries regarding plastic bag laws and other sustainability policies



END OF SLIDESHOW

The additional slides that follow are drafts that I might use for the meeting the following day with advocacy groups – they go into greater detail on ordinance structure and lawsuits.

Local Bag Legislation Background

2004: Plastic bag tax in Ireland

- 22 euro-cents, led to ~95% reduction in bag consumption & corresponding reduction in roadside bag litter



2006-2007: San Francisco pursues similar fee

- 17-cent single-use bag fee proposed, preempted by state plastic bag recycling law
- State bill passes preempting fees on plastic bags
- SF adopts a plastic bag BAN instead (supermarkets & large pharmacies only)

Local Bag Legislation Background

2009: Washington DC adopts 5-cent charge on all single-use bags

- ❑ 60%+ reduction in carryout bag consumption in 1 year, corresponding reduction in plastic bag litter in river
- ❑ retailers keep 1-2 cents per bag, remainder to Anacostia River Fund
- ❑ game changer: previously thought larger charge was needed to affect consumer behavior



Local Bag Legislation Background

2008-2009: Other California cities try to replicate San Francisco

- ❑ lawsuit suits mostly based on CEQA (“paper might be worse than plastic” argument)
- ❑ City of Oakland lost because it lacked a strong administrative record

2010-2012: CA cities adopt “second generation” plastic bag bans

- ❑ “second generation” ban: ban on thin plastic, 10-cent charge for paper (& reusable)
- ❑ Retailers keep the money
- ❑ stands up better to plastic industry’s environmental & constitutional arguments

- LA County : 95% overall reduction in single-use bag consumption incl 30% reduction in paper

- San Jose: reusable bag use increased 4% → 62%, plastic litter decreased 59% on street, 89% in storm drains



Local Bag Legislation Background

2013-2016: NYC bill for 10-cent fee on all carryout bags

- ❑ Introduced Aug 2013
- ❑ Committee hearing in Nov 2014
- ❑ Amended to 5-cent fee and gained majority support in Apr 2016
- ❑ Implementation: Feb 2017



Main Potential Lawsuit Claims

State Environmental Quality Act Claims (For Bans)

- Demand that each municipality prepare full Environmental Impact Report (EIR) to show that bag ordinance won't have "unintended negative consequences"
- These reports can sometimes cost upwards of \$100K
- Concern: customers will switch from plastic to paper & paper could be worse for environment
- Claims most successfully avoided (or won) by charging for restricting paper and reusable



Main Potential Lawsuit Claims

Unconstitutional Taxation Claims

- Municipalities are generally only allowed to levy taxes that are authorized by the state
- Generally avoided by requiring that retailers keep entire amount of charge: if government collects no money it's not a tax
- Some cities have classified bag charges as regulatory fees direct the money to a specific fund (depends on which state)



Main Potential Lawsuit Claims

Preemption by Statewide Laws

- ❑ **Field Preemption**
Claims that plastic bag recycling legislation encompasses the entire field of what can be done about plastic bags and thus bans and fees are not allowed
- ❑ **Express Preemption**
Claims that local bag bans/fees are specifically disallowed under state legislation



Suggested Interim Steps

Get harms caused by plastic bags on the record

- Information gathering
 - costs of bag impacts
 - % of plastic bags in litter/storm drains
 - clogging recycling machinery
- Conduct survey of current bag types used by customers
- Resolution for an official City study



Suggested Interim Steps

Solidify & organize supporters

- Build coalition statewide & Houston-specific
 - email list, conference call
 - NGOs, individuals, legislators
- Local events and conferences
- Bag litter Instagram campaign



#BagItNYC

HOME ABOUT #BAGITNYC MAP DO MORE IN THE NEWS PREVIOUS EVENTS

#BagItNYC Mapping Project

