

# 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**

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**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.**

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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](#),<sup>(1)</sup> 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 <sup>(2)</sup> 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 <sup>(3)</sup> on carryout bags.<sup>(4)</sup> 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.<sup>(6)</sup>

**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.<sup>(6)</sup>

### 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](#).<sup>(7)</sup>

#### 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%).<sup>(8)</sup> 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](#),<sup>(9)</sup> 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.<sup>(10)</sup> 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.”<sup>(11)</sup> 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.<sup>(12)</sup> 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.<sup>(13)</sup>**

## 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.<sup>(14)</sup> 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.<sup>(15)</sup> 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.<sup>(16)</sup> 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.<sup>(17)</sup> 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<sup>(18)</sup> 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.<sup>(19)</sup> 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.<sup>(20)</sup> 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.<sup>(21)</sup> 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](#).<sup>(22)</sup>



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.<sup>(23)</sup> 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.<sup>(24)</sup>

## 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).<sup>(25)</sup> 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.<sup>(26)</sup> 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](#)<sup>(27)</sup> 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.<sup>(28)</sup>



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.<sup>(29)</sup> 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.<sup>(30)</sup> 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.<sup>(31)</sup>

## 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.”<sup>(32)</sup> 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.<sup>(33)</sup>
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.<sup>(34)</sup>
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."<sup>(35)</sup>

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.

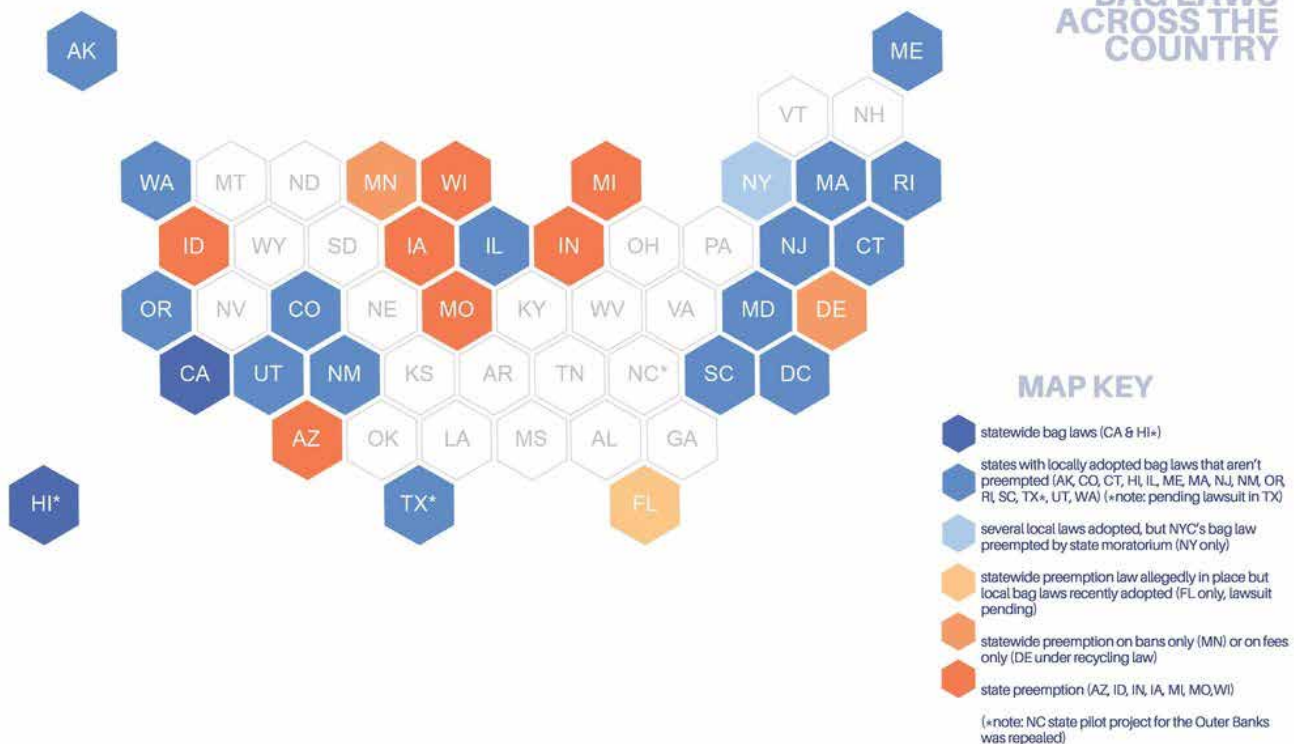


## E. MAP OF BAG LAWS IN THE U.S.

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](http://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.<sup>(36)</sup>

**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):**

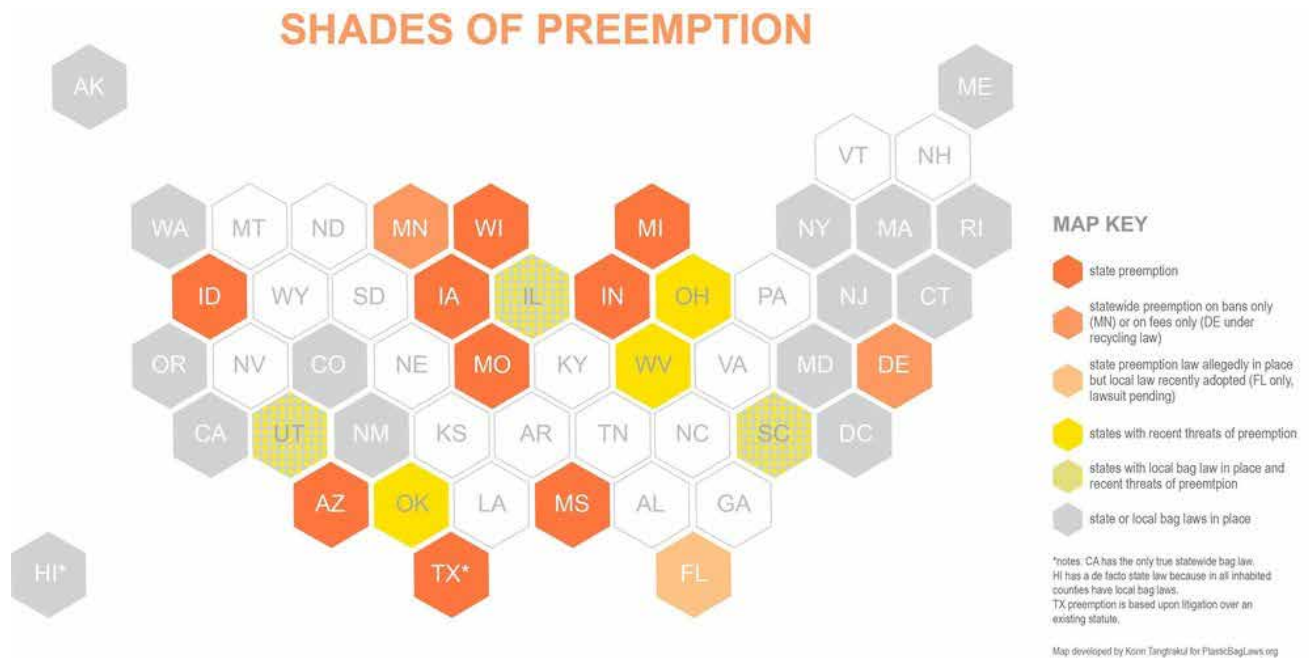
Boilerplate language preempting local laws on plastic bags or “auxiliary containers”

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](http://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](mailto: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,<sup>(37)</sup> 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.<sup>(38)</sup>
- \* An estimated [5-13 million tons](#) of plastic enter our oceans each year from land-based sources.<sup>(39)</sup>
- \* 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.<sup>(40)</sup>
- \* 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.<sup>(41)</sup>
- \* The most commonly used plastics, when exposed to the elements, release methane and ethylene—two powerful greenhouse gases that can exacerbate [climate change](#).<sup>(42)</sup>

### Marine Life

- \* Impacts of marine debris have been reported for [663 marine wildlife species](#) and the majority of encounters reported were with plastic debris.<sup>(43)</sup>
- \* 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.<sup>(44)</sup>
- \* Researchers found that [80% of seabird species](#)<sup>(45)</sup> that spend most of their time at sea (of the order Procellariiformes), which include petrels, albatrosses, and shearwaters, have plastic in their [stomachs](#).<sup>(46)</sup>
- \* Recent [studies estimate](#) that fish off the West Coast ingest over 12,000 tons of plastic a year.<sup>(47)</sup>

## 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.<sup>(48)</sup>
- \* Plastic bags mistakenly disposed of in curbside recycling bins end up **clogging recycling** machinery, which costs municipal recycling processors money.<sup>(49)</sup>
- \* 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.<sup>(50)</sup>
- \* 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.<sup>(51)</sup>

## 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.<sup>(52)</sup>
- \* Researchers who analyzed sea salt sold in China found between 550 and 681 microplastic particles per kilogram of **sea salt**.<sup>(53)</sup>

## Production of Plastic

- \* Globally we've produced an estimated **8.3 billion metric tons** of plastic as of mid-2017. <sup>(54)</sup>
- \* 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.<sup>(55)</sup>
- \* 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.<sup>(56)</sup>
- \* Traditionally made from petroleum byproducts, plastic in the United States is now most **commonly sourced** from the nation's production of natural gas.<sup>(57)</sup>



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.<sup>(58)</sup>

\* “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.<sup>(59)</sup>

\* “The Great Pacific Garbage Patch is a floating island of trash twice the size of Texas.”<sup>(60)</sup>

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](#):<sup>(61)</sup>

“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](#).”<sup>(62)</sup>

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## 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.<sup>(63)</sup>

\* 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.<sup>(64)</sup>

\* 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.<sup>(65)</sup>



### 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.<sup>(66)</sup>

\* 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.<sup>(67)</sup>

### 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%).<sup>(68)</sup>



\* 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.<sup>(69)</sup>

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](http://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](http://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.<sup>(70)</sup>

\* 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<sup>(71)</sup> and for several years has spent as much as \$191,952 per year [lobbying](#) against bag laws in New York State.<sup>(72)</sup>

\* 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](#)<sup>(73)</sup> 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](#)<sup>(74)</sup> and later supported the California bag bill, [S.B. 270](#) (a Ban/Fee Hybrid).<sup>(75)</sup> In New York, the FIA filed one lawsuit against a town regarding a [straight plastic bag ban](#).<sup>(76)</sup> Currently, the FIA opposes both straight plastic bag bans and [Ban/Fee Hybrid](#) laws, but supports laws mandating fees on all bags.<sup>(77)</sup>

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.<sup>(78)</sup> Los Angeles County also has compiled information regarding sourcing and testing of compliant reusable bags on their [About The Bag](#) website.<sup>(79)</sup>

## **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](http://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](#).<sup>(80)</sup> 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.<sup>(81)</sup> 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.<sup>(82)</sup>

## 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](#)

## ACKNOWLEDGEMENTS:

The Toolkit features analysis of plastic bag law effectiveness data prepared through a partnership between Scientist Action and Advocacy Network ([ScAAN](#)) and PlasticBagLaws.org. The maps of plastic bag laws in this Toolkit were created by freelance cartographer [Korin Tangtrakul](#) in partnership with PlasticBagLaws.org and the other original graphics were created by freelance graphic designer Marianne Schwab in partnership with PlasticBagLaws.org.

# 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

- <sup>1</sup> Rise Above Plastic Activist Toolkit, Surfrider Foundation (Apr. 11, 2018), available at [http://public.surfrider.org/RAP/RAP\\_Toolkit.pdf](http://public.surfrider.org/RAP/RAP_Toolkit.pdf)
- <sup>2</sup> All mentions of plastic bags refer to single-use plastic carryout bags unless otherwise noted.
- <sup>3</sup> 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).
- <sup>4</sup> There are many websites that track plastic bag laws in the U.S. Two resources are Californians Against Waste, National List of Local Plastic Bag Ordinances, <http://www.cawrecycles.org/list-of-national-bans> and Wikipedia Phase-out of lightweight plastic bags, [https://en.wikipedia.org/wiki/Phase-out\\_of\\_lightweight\\_plastic\\_bags](https://en.wikipedia.org/wiki/Phase-out_of_lightweight_plastic_bags)
- <sup>5</sup> Jennie Romer, Why Carryout Bag Fees Are More Effective Than Plastic Bag Bans, Huffington Post Blog (Jan.20,2017), [https://www.huffingtonpost.com/entry/why-carryout-bag-fees-are-better-than-plastic-bag-bans\\_us\\_588187ace4b08f5134b61f79](https://www.huffingtonpost.com/entry/why-carryout-bag-fees-are-better-than-plastic-bag-bans_us_588187ace4b08f5134b61f79)
- <sup>6</sup> New York State, New York State Plastic Bag Task Force Report: An Analysis of the Impact of Single-Use Plastic Bags, Options for New York State Plastic Bag Legislation (Jan. 13, 2018), available at [https://www.dec.ny.gov/docs/materials\\_minerals\\_pdf/dplasticbagreport2017.pdf](https://www.dec.ny.gov/docs/materials_minerals_pdf/dplasticbagreport2017.pdf)
- <sup>7</sup> Bill Hickman, Voluntary Plastic Bag Reductions Don't Work, Surfrider Foundation Blog, (Mar. 1, 2012), <https://www.surfrider.org/coastal-blog/entry/voluntary-plastic-bag-reductions-dont-work>
- <sup>8</sup> US EPA, Advancing Sustainable Materials Management 2015 Tables and Figures: Assessing Trends in Material Generation, Recycling, Composting, Combustion with Energy Recovery and Landfilling in the United States, at pp. 9,13, available at [https://www.epa.gov/sites/production/files/2018-07/documents/smm\\_2015\\_tables\\_and\\_figures\\_07252018\\_fnl\\_508\\_0.pdf](https://www.epa.gov/sites/production/files/2018-07/documents/smm_2015_tables_and_figures_07252018_fnl_508_0.pdf)
- <sup>9</sup> Del. Code Ann. tit.7, § 6099A(f)(1)(b) (2017) ("At-store recycling program"), available at <http://delcode.delaware.gov/title7/c060/sc09/index.shtml>
- <sup>10</sup> Government of the District of Col060/sc09/index.shtml 10 Government of the District of Columbia Department of Energy and the Environment, Anacostia River Clean Up and Protection Fund Fiscal Year 2016 Summary Report (May 11, 2017), available at <https://doee.dc.gov/sites/default/files/dc/sites/ddoe/publication/attachments/0%20FY16%20Bag%20Law%20Expenditure%20Report.pdf>
- <sup>11</sup> Judgment Affirmed, Colorado Union of Taxpayers Foundation v. City of Aspen, Colo., 2018 CO 36. No. 16SC377 (May 21, 2018), available at [https://www.courts.state.co.us/userfiles/file/Court\\_Probation/Supreme\\_Court/Opinions/2016/16SC377.pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Opinions/2016/16SC377.pdf)
- <sup>12</sup> Opinion, Schmeer, et al. v. Los Angeles County, et al., Cal. Ct.App., No. BC-470705 (Feb. 21, 2013), available at [http://static1.squarespace.com/static/59bd5150e45a7caf6bee56f8/59bd52da7e2a5fb4e246e4ad/59bd52ad7e2a5fb4e246df44/1505579693760/lit\\_CA\\_LA-County\\_26\\_Court-of-Appeal-Decision.pdf?format=original](http://static1.squarespace.com/static/59bd5150e45a7caf6bee56f8/59bd52da7e2a5fb4e246e4ad/59bd52ad7e2a5fb4e246df44/1505579693760/lit_CA_LA-County_26_Court-of-Appeal-Decision.pdf?format=original)
- <sup>13</sup> Special Notice, State Board of Equalization, Sales Tax Does Not Apply to City and County Paper Bag Surcharges (June 2011), <http://www.boe.ca.gov/news/pdf/l282.pdf>
- <sup>14</sup> Reusable Bag Law, San Mateo County (CA), 2013, available at <https://static1.squarespace.com/static/54d3a62be4b068e9347ca880/t/5581f948e4b0ab81730fd07c/1434581320184/SanMateoCity.pdf>
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