



To: Jill Bartolotta and Scott Hardy, Ohio Sea Grant College Program

From: Terra Bowling, Research Counsel II, National Sea Grant Law Center

Re: Plastic Legislation (NSGLC-20-04-07)

Date: August 28, 2020

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### **Advisory Summary**

In 2018, the National Sea Grant Law Center provided a memorandum to Ohio Sea Grant on plastic bag legislation.<sup>1</sup> The memorandum addressed questions regarding plastic bag ban legislation by local governments and how that legislation is impacted by state laws. In particular, it examined several state laws that prohibited local governments from setting local standards on plastic bag use, state laws that ban or limit plastic bag use, and actions by local governments. In addition, the memorandum considered the policy arguments used by advocates for and against plastic bag use. The memorandum concluded with a discussion of some considerations for Sea Grant professionals related to Sea Grant's nonadvocacy best practices.

Since 2018, many states and local governments have taken action regarding plastic bags. Six states have added laws banning the regulation of plastic bags, bringing the total number to 15. In 2018, California had the only true state-wide ban on plastic bag use. Now there are nine states with state-wide bans. Many municipalities have acted to regulate plastic bag use in the past two years, some despite state laws prohibiting these bans.

The information below builds on the 2018 memorandum, providing updated information on state laws that prohibit local governments from setting local standards on plastic bag use, state laws that ban or limit plastic bag use, and actions by local governments. In addition, the memorandum looks at state or local actions in the Great Lakes region for other plastic or trash, including straws, cigarette butts, expanded polystyrene (Styrofoam), and balloons. Finally, the memo addresses the impact of COVID-19 on these state and local actions.

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<sup>1</sup> *Plastic Bag Legislation*, Terra Bowling, NSGLC, and Kristina Alexander, Mississippi Alabama Sea Grant Legal Program, <http://nsglc.olemiss.edu/Advisory/pdfs/plasticbag.pdf>.



## **Plastic Bag Legislation**

As noted in the previous memo, there is a divide between states that ban businesses from handing out plastic bags (plastic bag bans) and states that prohibit the passage of any such ban (preemptive bans). Municipalities generally enact plastic bag bans or fees, but these actions are sometimes preempted or prohibited by state preemptive bans. In addition, some of these laws have been temporarily affected due to COVID-19. Citing the risk of spread of COVID-19 on reusable bags, some states and municipalities either temporarily lifted plastic bag bans or completely banned reusable bags.

### ***State and Municipal Acts Limiting or Banning Plastic Bags***

Plastic bag bans or restrictions by states and non-municipal entities had a slow start. The District of Columbia was the first non-municipal entity to restrict plastic bag usage, enacting a \$0.05 fee on any “disposable carryout bag” in 2009.<sup>2</sup> In 2015, Hawaii claimed the first state-wide ban; however, it was a “de facto” state ban, as it was enacted at the county level by each of the four counties within the state.<sup>3</sup> California’s was the first true statewide ban enacted by legislation.<sup>4</sup>

The number of states and territories limiting or banning plastic bags has increased exponentially in the last two years. There are currently nine states with plastic bag bans: California, Connecticut, Delaware, Hawaii, Maine, New York, Oregon, Vermont, and Washington. Below are actions taken by states to amend or enact plastic bag bans since 2018.

- Connecticut, in a 2019 budget agreement, implemented a 10 cent plastic bag fee on bags with a thickness less than four mils for two years. The law provides for an outright ban on the use of single-use plastic bags effective July 1, 2021.<sup>5</sup> The governor issued an executive order delaying the implementation of the plastic bag fee through June 30, 2020 due to COVID-19.<sup>6</sup>

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<sup>2</sup> D.C. CODE § 8-102, The Anacostia River Clean Up and Protection Act (2009).

<sup>3</sup> See MAUI COUNTY, HAW., CODE § 20.18.040 (2008); KAUA'I COUNTY, HAW., CODE § 22-19.2 (2009); HAWAI'I COUNTY, HAW., CODE § 14-118 (2013); HONOLULU, HAW., REV. ORDINANCES § 9-9.2 (2015).

<sup>4</sup> CAL. PUB. RES. CODE § 42287 (2016).

<sup>5</sup> CONN. GEN. STAT. ANN. § 22a-246a (2019).

<sup>6</sup> OFFICE OF THE CONNECTICUT GOVERNOR, EXECUTIVE ORDERS 7N AND 7NN (May 13, 2020), available at <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7NN.pdf>.



- Delaware updated its plastic bag law that implemented an in-store recycling program to ban single-use plastic bags in certain retail establishments. The ban applies to stores that are 7,000 square feet or larger, or have three or more Delaware locations, each at least 3,000 square feet. The law has exceptions for certain bag uses, such as bags used to contain meat and fish. The law is set to go into effect January 2021.<sup>7</sup>
- Maine enacted a law in 2019 that prohibits businesses from providing single-use carryout bags at the point of sale or otherwise making the bags available to customers, with exemptions for certain types and uses of plastic and paper bags. Stores that provide exempted single-use plastic bags must offer recycling stations within 20 feet of the store's entrance and must make sure that those products are in fact recycled. The ban was scheduled to go into effect on April 22, 2020 but was delayed to January 15, 2021 due to COVID-19. Businesses may provide a recyclable paper bag or reusable plastic bag for a minimum of five cents. Paper bags must contain a minimum of 20% post-consumer recycled content. The fee requirement does not apply to stores where less than 2% of retail sales are attributed to the sale of food and that have less than 10,000 square feet of retail area; restaurants; or food banks distributing food to customers for no charge.
- Oregon prohibits, as of January 1, 2020, retail establishments and restaurants from providing single-use plastic bags to customers, with certain exceptions.<sup>8</sup> They also must, in most instances, charge at least 5 cents for paper bags (with 40% or more post-consumer recycled content), reusable plastic bags (4 mils thick), and reusable fabric bags. Restaurants may still provide paper bags at no cost. The governor temporarily allowed stores to use plastic bags at the beginning of the COVID-19 pandemic, due to a paper bag shortage.<sup>9</sup>
- New York passed a plastic bag ban as part of its 2019 state budget legislation, which took effect March 1, 2020 but has not been enforced due to pending litigation. The law bans any business that collects sales tax from providing single-use plastic bags.<sup>10</sup> There are exceptions, including bags used to wrap meat, poultry, or seafood. There is no mandatory fee component; however, municipalities may opt-in to a 5-cent flat paper bag fee. A plastics company sued the state, challenging the

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<sup>7</sup> DEL. CODE ANN. tit. 7, § 6099A (West 2019).

<sup>8</sup> OR. REV. STAT. ANN. § 459A.757 (West 2020).

<sup>9</sup> Lizzy Acker, *Coronavirus Has Caused Paper Bag Shortage, Putting Plastic Bags Temporarily Back in Some Grocery Stores*, THE OREGONIAN (May 30, 2020), available at

<https://www.oregonlive.com/coronavirus/2020/06/coronavirus-has-caused-a-paper-bag-shortage-putting-plastic-bags-temporarily-back-in-some-oregon-grocery-stores.html>

<sup>10</sup> N.Y. ENVTL. CONSERV. LAW § 27-2803 (2019).



constitutionality of the ban. In August 2020, a New York court upheld the ban, but struck down the portion of the regulations setting the minimum thickness for plastic reusable bags at 10 mils.<sup>11</sup>

- Vermont passed a comprehensive law regulating plastic carry out bags, Styrofoam, and single use plastic straws, which went into effect July 1, 2020.<sup>12</sup> Single-use plastic bags are prohibited. Retailers may provide paper bags for 10 cents each (with an exception for bags less than 10 inches).
- Washington’s plastic bag law, enacted in 2020, will have a phased approach, with a prohibition on the use of single-use plastic carryout bags that will go into effect January 1, 2021.<sup>13</sup> The law includes an 8 cent charge on recycled paper carryout bags and reusable carryout bags to encourage shoppers to bring their own reusable carryout bags.<sup>14</sup> Paper bags provided by a retail establishment must contain 40% recycled content and reusable bags must be made of film plastic, be washable, and able to be used at least 125 times.

Local governments in the following states have bans or restrictions on plastic bag use: Alaska, California, Colorado, Connecticut, Florida, Hawai'i, Illinois, Maine,<sup>15</sup> Maryland, Massachusetts, Minnesota, New Mexico, New York, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont and Washington. New to the list since 2018 are Florida, Minnesota, New Jersey, Ohio, Pennsylvania, and Vermont. Since 2018, Texas municipalities with bag bans have repealed those ordinances following a court ruling discussed below. Several U.S. municipalities that have enacted bag bans or fees are located in states that have bag ban preemption laws, including Colorado, Florida, and Minnesota. The local government actions in these states are discussed in the next section on state preemption bans.

In Canada’s Great Lakes provinces, several municipalities have plastic bag bans. In Ontario, Fort Frances and Mono have bag bans.<sup>16</sup> Ottawa, Ontario is considering a ban.<sup>17</sup> Rimouski, Farnham, and Saint-Jean-sur-Richelieu are among several cities in Quebec that ban plastic

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<sup>11</sup> *Poly-Pak Industries, Inc. v. New York*, No. 902673 (N.Y. Sup. Ct. August 20, 2020).

<sup>12</sup> VT. STAT. ANN. tit. 10, § 6692 (West 2020).

<sup>13</sup> WASH. REV. CODE ANN. § 70.002.001 (West 2020).

<sup>14</sup> The fee will increase to 12 cents in 2026.

<sup>15</sup> All local ordinances in Maine will be inactive after the state bag ban goes into effect January 15, 2021.

<sup>16</sup> FORT FRANCES, ONT., No. 11/20 (2020); MONO, ONT., No. 2020-5, (2020).

<sup>17</sup> Dan Karpenchuck, *Ontario Businesses Taking the Lead to Reduce Plastic Waste*, WFBO NPR (Feb. 5, 2020), available at <https://news.wbfo.org/post/ontario-businesses-taking-lead-reduce-plastic-waste>.



bags. News reports state that Canada is considering a countrywide plastics ban in 2021 that would include plastic bags, straws, and other single-use items.<sup>18</sup>

### **State Laws Prohibiting Local Bans**

Fifteen states have preemptive bans that prohibit local governments from enacting bag bans: Arizona, Colorado Florida, Idaho, Indiana, Iowa, Michigan, Minnesota, Mississippi, Missouri, North Dakota, Oklahoma, Tennessee, Texas, and Wisconsin. As noted in the previous memo, multiple states have enacted legislation that prohibit local plastic bag bans, closely following a model law prepared by the American Legislative Exchange Council (ALEC). ALEC is a group consisting of state legislators, which is headquartered in Arlington, VA, a D.C. suburb, and favors “limited government, free markets, [and] federalism.” Key provisions of the model legislation, an “Act to Establish Statewide Uniformity for Auxiliary Container Regulations,”<sup>19</sup> are:

- 1) A definition of “auxiliary container” to mean any receptacle of any fabrication designed to transport purchases from or at a food service or retail facility;
- 2) A prohibition on local units of government from regulating or restricting the use, disposition, or sale of auxiliary containers, including taxing the items;
- 3) A statement that the prohibition does not restrict creating curbside recycling or a commercial recycling program; and
- 4) A statement that the ban does not apply to the use of auxiliary containers on the property of local governments.

Although some of the enacted “auxiliary container” legislation follows the ALEC model verbatim, other laws are modified. For example, the Mississippi legislation on auxiliary containers is narrower in scope than the ALEC model, as it applies only to food service establishments rather than to all retailers. States that use the “auxiliary containers” language to prohibit local plastic bag ordinances include: Arizona, Idaho, Indiana, Michigan, Mississippi, North Dakota, Oklahoma, Tennessee, and Wisconsin.<sup>20</sup> Six other states

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<sup>18</sup> Mia Rabson, *Single-Use Plastic Ban Coming in 2021 After Report Concludes There Is Evidence of Harm*, CBC (Jan. 30, 2020), <https://www.cbc.ca/news/politics/environment-canada-report-plastics-ban-1.5445611>.

<sup>19</sup> *Act to Establish Statewide Uniformity for Auxiliary Container Regulations*, American Legal Exchange Council (Jan. 20, 2018), available at <https://www.alec.org/model-policy/act-to-establish-statewide-uniformity-for-auxiliary-container-regulations>.

<sup>20</sup> ARIZ. REV. STAT. § 9-500.38 (2016); IDAHO CODE ANN. § 67-2340 (West 2016); IND. CODE ANN. § 36-1-3-8.6 (West 2016); MICH. COMP. LAWS ANN. § 445.591 (West 2017); Miss. S.B. 2570 (eff. July 1, 2018); N.D. CENT. CODE ANN. § 23.1-08-06.1 (West 2019); OKLA. STAT. ANN. tit. 27A, § 2-11-504 (West 2019); TENN. CODE ANN. § 7-51-2002 (West 2019); and WIS. STAT. § 66.0419 (2016).



produced their own legislation to restrict local ordinances: Colorado, Florida, Iowa, Minnesota, Missouri, and Texas.<sup>21</sup>

### *Local Ordinances in the Face of Preemption*

In 2008, the Florida legislature passed a law to prohibit local regulations of plastic bags or auxiliary containers. The law stated that “prudent regulation of recyclable materials is crucial to the ongoing welfare of Florida’s ecology and economy” and then banned any local restriction of the use of plastic bags or “auxiliary containers.”<sup>22</sup> The prohibition was described as temporary, in place only while the state studied the issue. However, there has been no legislation enacted since the findings of the report were released. Several Florida municipalities have enacted plastic bans in the last couple of years, including Coral Gables’ ban on food service providers using Styrofoam containers. The Florida Retail Federation filed suit alleging that the ordinance violated the state statute. The circuit court upheld the city’s ordinance, finding that the preemption statute was unconstitutionally vague. A state appellate court reversed that decision, holding that the statute was constitutional and clearly preempted the city’s ban. The Florida Supreme Court has declined to hear the appeal.<sup>23</sup> Coral Gables’ ban is effectively preempted. Other Florida municipalities, including Surfside, Gainesville, and Palm Beach, have repealed bans due to the threat of litigation.<sup>24</sup>

Colorado has a broad ban on local governments regulating plastic, “No unit of local government shall require or prohibit the use or sale of *specific types of plastic materials or products or restrict or mandate containers, packaging, or labeling for any consumer products.*”<sup>25</sup> In spite of the law, thirteen municipalities in Colorado have enacted bans or imposed fees on bags, including Aspen, Boulder, Breckinridge, Denver, Telluride, and Vail. These have not been challenged in court yet.

In Minnesota, the state legislature passed a preemption law in 2017 that specifically allowed merchants to provide plastic bags and banned cities from banning bags.<sup>26</sup> Both Minneapolis and Duluth had bag ban ordinances set to go into effect that year that were

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<sup>21</sup> COLO. REV. STAT. ANN. § 25-17-104; FLA. STAT. § 403.7033 (2008); MINN. STAT. ANN. § 471.9998 (West 2017); MO. REV. STAT. § 260.283 (2015); and N.Y. Leg. Memo 7 (2017).

<sup>22</sup> FLA. STAT. § 403.7033 (2008).

<sup>23</sup> *Fla. Retail Fed'n, Inc. v. City of Coral Gables*, 282 So. 3d 889 (Fla. Dist. Ct. App. 2019), *review denied*, No. SC19-1798, 2020 WL 710303 (Fla. Feb. 12, 2020).

<sup>24</sup> Alexi C. Cordona, *Retailers Quashed Coral Gables' Ban on Styrofoam and Plastic Bags. Now What?*, MIAMI NEW TIMES (Feb. 18, 2020), available at <https://www.miaminewtimes.com/news/coral-gables-loses-fight-to-ban-styrofoam-and-plastic-bags-11538028>.

<sup>25</sup> COLO. REV. STAT. ANN. § 25-17-104.

<sup>26</sup> MINN. STAT. ANN. § 471.9998 (West 2017).



preempted by the state law. In 2019, Duluth and Minneapolis tried again, enacting ordinances that required retailers to charge customers 5 cents for each single use plastic bag.<sup>27</sup> These types of fees are not specifically prohibited by state law.

In at least one state, municipalities have repealed their plastic bag laws due to judicial action. A retailers' association filed suit alleging that a state solid waste disposal law preempted the City of Laredo's ordinance regulating one-time-use plastic and paper bags. A lower court upheld the city ordinance. The Texas Court of Appeals reversed, finding that state law preempted the plastic bag ban.<sup>28</sup> The court ruled that Texas Health & Safety Code § 361.0961 blocks local governments from adopting an ordinance that "prohibits or restricts, for solid waste management purposes, sale or use of a container or package." In 2018, the Texas Supreme Court affirmed the appellate court decision.<sup>29</sup> Texas municipalities repealed their plastic bag bans following the decision.

## **Plastic Bans in the Great Lakes**

### *Straws, Cutlery, and Food Service Containers*

Only one Great Lakes state has enacted state-wide laws regarding the use of single-use plastics and/or polystyrene expanded foam (aka Styrofoam). In 2020, New York enacted a state law that prohibits food service providers from selling, offering for sale, or distributing disposable food service containers that contain Styrofoam. The law also prohibits manufacturers from selling, offering for sale, or distributing Styrofoam loose fill packaging and will be in effect January 1, 2022.<sup>30</sup>

Local governments in Minnesota, New York, and Pennsylvania have enacted ordinances regarding single-use plastics and Styrofoam. In 2015, Minneapolis updated its ordinance regulating containers used in food service establishments.<sup>31</sup> The "Green to Go" ordinance requires food and beverage sold for immediate consumption to be placed in "environmentally acceptable packaging" that meets reuse, recycling, or composting standards outlined in the ordinance. Both Styrofoam and rigid polystyrene plastic are prohibited under the ordinance unless they are used for an exempted purpose, such as in

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<sup>27</sup> Dan Kraker, *Duluth, Minneapolis Push for State's First Fees on Plastic Bags*, MPR News (Nov. 1, 2019), <https://www.mprnews.org/story/2019/11/01/duluth-minneapolis-push-for-states-first-fees-on-disposable-bags>; <https://duluthmn.gov/city-clerk/plastic-carryout-bag-fee/ordinance-no-10662/>.

<sup>28</sup> *Laredo Merchants Ass'n v. City of Laredo*, No. 04-15-00610, 2016 WL 4376627 (Tex. App. Aug. 17, 2016).

<sup>29</sup> *City of Laredo v. Laredo Merchants Ass'n*, 550 S.W.3d 586 (Tex. 2018).

<sup>30</sup> N.Y. ENVTL. CONSERV. LAW § 27-003 (Consol. 2020).

<sup>31</sup> MINNEAPOLIS, MINN., CODE OF ORDINANCES, Title 10, Ch. 204.10-50.



nursing homes or hospitals. Polyethylene-lined paper cups and containers and rigid polystyrene lids for those containers were originally exempt from the ordinance, however the exemptions expired in 2019. Utensils, straws, and stir sticks are not regulated by the ordinance. Foods prepackaged by the manufacturer, producer, or distributor are exempt, as well as plastic films less than 10 mils thick. Certain businesses are exempt, including licensed catering companies, hospitals, and nursing homes.

St. Louis Park, Minnesota regulates containers, utensils, and straws.<sup>32</sup> The “no waste” ordinance prohibits food establishments from selling or conveying any food or beverage packaging which is not zero waste packaging. Single-use cups and containers with lids must have the same category of packaging and compostable cups must be labeled “compostable.” Single-use utensils must be compostable.

Several local governments in New York, including New York City, have Styrofoam regulations in place. As one example, Suffolk County prohibits the sale and use of any disposable food service item that contains Styrofoam. It prohibits the sale of Styrofoam loose fill packaging, with exceptions for pre-packaged foods, mobile food commissary, and containers for uncooked eggs, or raw meat, pork, fish, and seafood.<sup>33</sup> Suffolk County also regulates straws. Food service establishments may only provide single-use beverage straws or stirrers upon request, and the straws must be biodegradable or backyard compostable. The ordinance prohibits the sale of single-use straws that are individually wrapped in plastic. There are exceptions for pre-packaged beverages, beverages purchased at a drive through or self-service station, or distribution of a plastic straw to someone with a medical or physical condition.<sup>34</sup>

There are at least a couple of municipal straw bans in the Great Lakes. As noted above, St. Louis Park, Minnesota regulates containers, utensils, and straws.<sup>35</sup> Single-use straws may only be provided upon request. Narberth, Pennsylvania prohibits the distribution of single-use plastic straws by retail establishments.<sup>36</sup> It does not preclude reusable straws, recyclable paper straws, or compostable straws.

In Canada’s Great Lakes provinces, at least two municipalities have gone further than plastic bag bans to regulate other types of plastic. Styrofoam single-use food packaging, plastic straws, and stir sticks will be prohibited in Fort Frances, Ontario beginning in

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<sup>32</sup> ST. LOUIS PARK, MO., CITY CODE § 12-201-209 (2019).

<sup>33</sup> SUFFOLK COUNTY, N.Y., MUNICIPAL CODE § 446-31-40 (2019).

<sup>34</sup> *Id.* § 643-30-34 (2019).

<sup>35</sup> ST. LOUIS PARK, MO., CITY CODE § 12-201-209 (2019).

<sup>36</sup> NARBERTH, PA., GENERAL LEGISLATION § 388-1-5 (2018).





January 2021.<sup>37</sup> As noted above, reports state that Canada is considering a countrywide plastics ban in 2021 that would include straws and other single-use items.

States and municipalities outside of the Great Lakes region have also enacted regulations on the use of Styrofoam, straws, and plastic utensils. California and Oregon have statewide straw bans.<sup>38</sup> Vermont has a more comprehensive plastics law.<sup>39</sup> In Vermont, food service providers may not offer plastic straws automatically, but they may be provided upon customer request. Hospitals, nursing homes, and care facilities are exempt from the prohibition. Plastic food stirrers are prohibited. Styrofoam is prohibited for retail stores and food service providers, with exceptions for meat, poultry, and seafood. Many municipalities in other states have enacted straw, Styrofoam, or other plastic bans.

### *Balloon releases*

Balloon bans are more uncommon than other types of plastic bans. East Hampton, New York prohibits the intentional release or disposal of any balloon, except in public receptacles, authorized private receptacles, or recycling centers. It also prohibits a person, corporation, or other entity from organizing the release of, condoning the release of, or intentionally causing to be released, any balloon.<sup>40</sup> Outside of the Great Lakes, an ordinance in Folly Beach, South Carolina prohibits single use plastic carryout bags, balloons, plates, bowls, cups, containers, and other similar articles made of Styrofoam from the beach.<sup>41</sup>

### *Bottles*

A refund value on plastic bottles is one way to encourage beach goers to recycle their containers. Two Great Lakes states have these. Michigan establishes a 10-cent deposit fee on all beer, wine, wine coolers, canned cocktails, soft drinks, and carbonated and mineral water.<sup>42</sup> New York establishes a 5-cent deposit and refund value for all beer, malt, and wine products; carbonated soft drinks; soda water; and sugar-free water beverages.<sup>43</sup> In Canada, Saint Hippolyte in Quebec enacted a ban on single-use water bottles less than 1L in June 2020.<sup>44</sup> Outside of the region, California, Massachusetts, and Oregon have similar programs.

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<sup>37</sup> FORT FRANCES, ONT., No. 11/20 (2020).

<sup>38</sup> CAL. PUB. RES. CODE § 42271 (West 2020); OR. REV. STAT. § 616.892 (West 2020).

<sup>39</sup> VT. STAT. ANN. tit. 10, § 6692 (West 2020).

<sup>40</sup> EAST HAMPTON, N.Y., GENERAL LEGISLATION § 84-3 (2019).

<sup>41</sup> FOLLY BEACH, S.C., CODE OF ORDINANCES § 151.08 (2016).

<sup>42</sup> MICH. COMP. LAWS §§ 445.571–445.576 (2020).

<sup>43</sup> N.Y. ENVTL. CONSERV. LAW §§ 27-1001–27-1019 (Consol. 2020).

<sup>44</sup> SAINT HIPPOLYTE, QUEBEC, No. 1188-19 (2020).



### *Smoking bans (cigarettes)*

Many coastal communities have banned smoking on their beaches in an effort to reduce the amount of cigarette butts left behind by beach goers. Although there is not a state-wide law banning smoking at beaches in any Great Lakes states, municipalities in Illinois, Indiana, Michigan, Minnesota, New York, and Pennsylvania have enacted legislation prohibiting smoking in public parks and beaches. For example, Chicago bans smoking at beaches, playgrounds, and buildings owned or operated by the park district.<sup>45</sup> Violation of the ban results in a \$500 fine. Unfortunately, despite the ban, cigarette butts are still the most common form of litter found at Chicago beaches.<sup>46</sup>

The Pennsylvania Department of Conservation and Natural Resources initiated a Smoke-Free Beaches Program, which prohibits smoking at state park beaches designated as smoke-free.<sup>47</sup> The restriction applies at 44 of the state's 54 state swimming beaches. The beaches have designated smoking areas adjacent to the beach available.

### **COVID-19 & Plastic Bans**

The state of plastic bans has been in flux since the COVID-19 pandemic hit the United States. At the beginning of the outbreak in early March, the Plastics Industry Association wrote to the U.S. Department of Health and Human Services claiming that single-use plastics are the most sanitary choice for food consumption.<sup>48</sup> The movement to ban reusable bags (and increase the use of single use plastic bags) gained traction due to studies on the transmission of COVID-19 from surfaces. An early study done by the U.S. National Institutes of Health found that coronavirus can remain on plastics and stainless steel for up to three days.<sup>49</sup> Additionally, the CDC found that it is possible to contract the virus by touching a surface containing COVID-19 and then touching one's face, mouth, nose, or eyes.<sup>50</sup> Thus, critics of plastic bans argued that reusable bags have a higher rate of

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<sup>45</sup> CHICAGO, ILL., PARK DISTRICT CODE, Ch. 7 Section D.

<sup>46</sup> Grace Wong, *Cigarette Butts Make Up Nearly Half of Trash at Chicago Beaches, Study Shows*, CHICAGO TRIBUNE (Dec. 26, 2016), available at <https://www.chicagotribune.com/news/ct-lake-michigan-beaches-trash-met-20161227-story.html>.

<sup>47</sup> *Swimming in State Parks*, PENNSYLVANIA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, <https://www.dcnr.pa.gov/Recreation/WhatToDo/Swimming/Pages/default.aspx>.

<sup>48</sup> Gilliam Flacus, *Coronavirus Pandemic Deals Huge Setback to Push Against Plastics*, CHICAGO TRIBUNE (April 8, 2020), available at <https://www.chicagotribune.com/coronavirus/ct-nw-coronavirus-plastic-bag-reduction-20200408-im5knt5rxfauf5nfwqkf2cfl2yq-story.html>.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*



transmission of the virus because users tend to not wash them regularly, and reusable bags containing the virus come into contact with cashiers, the conveyor beltline in grocery stores, and other store products. Several states and local governments acted based on this reasoning.

The COVID-19 pandemic drove many states and local governments to prohibit the use of reusable bags. New Hampshire's governor temporarily directed all retailers to use single-use bags and prevented them from using reusable bags, with the restriction lifted in June.<sup>51</sup> Although municipalities in Massachusetts have plastic bag bans, the governor issued an order in March prohibiting the use of reusable checkout bags, banning grocery stores and pharmacies from charging for paper or plastic bags, and allowing those stores to issue paper or plastic bags despite any municipal bans on single-use plastic bags. The order was rescinded in June.<sup>52</sup> The San Francisco Department of Public Health issued an order preventing businesses from allowing customers to bring their own bags or other reusable items from home until May 3, 2020.<sup>53</sup>

The pandemic has also led to the temporary discontinuation or delay of plastic bans by some states and local governments. In April, the California governor suspended the statewide plastic bag ban for 60 days due to the coronavirus.<sup>54</sup> Maine's governor delayed the state's ban on single-use plastic bags from going into effect until January 15, 2021.<sup>55</sup> The Connecticut governor issued an executive order delaying the implementation of the plastic bag fee through June 30, 2020.<sup>56</sup> In Oregon, the governor temporarily relaxed its ban

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<sup>51</sup> OFFICE OF THE NEW HAMPSHIRE GOVERNOR, EMERGENCY ORDER 10 PURSUANT TO EXECUTIVE ORDER 2020-04 (March 21, 2020), *available at* <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-10.pdf>.

<sup>52</sup> OFFICE OF THE MASSACHUSETTS GOVERNOR, RECESSION OF ORDER OF THE COMMISSIONER OF PUBLIC HEALTH (July 10, 2020), *available at* <https://www.mass.gov/doc/recission-of-grocery-store-order-and-guidance/download>.

<sup>53</sup> *Coronavirus FAQs*, SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH, <https://www.sfdph.org/dph/alerts/coronavirus-faq.asp>.

<sup>54</sup> Alix Martichoux, *Plastic Bags Are Banned Again in California as COVID-19 Order Expires*, ABC 7 NEWS (June 23, 2020), <https://abc7news.com/california-plastic-bag-ban-are-reusable-bags-allowed-grocery-stores-during-covid-gavin-newsom/6262327/>.

<sup>55</sup> Press Release, Office of Governor Janet T. Mills, Governor Mills, Legislature Spearhead Emergency Legislative Package to Respond to COVID-19 (March 17, 2020), *available at* <https://www.maine.gov/governor/mills/news/governor-mills-legislature-spearhead-emergency-legislative-package-respond-covid-19-2020-03-17>.

<sup>56</sup> OFFICE OF CONNECTICUT GOVERNOR, EXECUTIVE ORDER No. 7N AND 7NN (May 13, 2020), *available at* <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7NN.pdf>.



on plastic bags because several grocery stores prohibited reusable bags during the first days of the pandemic, depleting the paper bag supply across the state.<sup>57</sup> Many municipalities temporarily lifted their plastic bag bans.

## **Conclusion**

Plastic bag bans pit local residents, environmentalists, and academics against the plastic bag industry and some consumers. Ban advocates worry about litter and plastic pollution. They claim the bans will cut down on fossil fuels used for manufacturing. Opponents claim plastic bag bans hurt the economy, creating a consumer tax and compelling people to shop online. They also say single-use plastic bag alternatives are more harmful to the environment in the long run as consumers buy thicker, reusable bags at a greater rate and purchase smaller trash bags to replace the single-use bags for their household needs.<sup>58</sup> With strong advocates on both sides of the debate, the regulation of plastic and plastic bans will continue to evolve.

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<sup>57</sup> Lizzy Acker, *Coronavirus Has Caused Paper Bag Shortage, Putting Plastic Bags Temporarily Back in Some Grocery Stores*, THE OREGONIAN (May 30, 2020), available at <https://www.oregonlive.com/coronavirus/2020/06/coronavirus-has-caused-a-paper-bag-shortage-putting-plastic-bags-temporarily-back-in-some-oregon-grocery-stores.html>

<sup>58</sup> Greg Rosalsky, *Are Plastic Bag Bans Garbage?*, MPR NEWS (April 9, 2019), available at <https://www.mprnews.org/story/2019/04/09/are-plastic-bag-bans-garbage>