**Types of Bag Laws**

- **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)
- **"First Generation" or "Straight" Ban**: ban on thin plastic bags only

**Best practice**: include fee component so all bag types are addressed & increase in the use of any bag is discouraged

**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 local ban and/or fee

**State law intended to block a bag law in a specific city**

In most states the entire amount of the fee must stay with retailer to avoid claims of "unconstitutional taxation" because generally the state must give permission for cities to collect a tax. (Depends on the state constitution, "enabling legislation" can allow cities to adopt taxes.)
**PLASTICBAGLAWS.ORG**

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**DO PLASTIC BAG LAWS WORK?**

- **CALIFORNIA**
  - Statewide ban on thin plastic bags (under 2.25 mils) & min 10-cent fee for paper & reusable
  - Law was adopted by the legislature and later approved by statewide voter referendum
  - 151 local jurisdictions had adopted bag laws prior to upholding statewide law
  - A similar local law in San Jose, CA: reusable bag use increased from 4% to 62%, plastic bag litter decreased 58% on streets and 89% in storm drains
  - **WASHINGTON, D.C.**
    - 60%+ reduction in single-use carryout bag consumption in first year
    - Corresponding reduction in plastic bag litter in D.C.’s Anacostia River
    - 83% of D.C. residents and 90% of D.C. businesses support the law or are neutral

- **CHICAGO**
  - Initially adopted a straight ban on all thin plastic bags (under 2.25 mils) but large chains, including Walmart, simply switched to giving away thicker plastic bags that qualify as reusable bags
  - In reaction, environmental groups and some retailers united to push for a 7-cent tax on all carryout bags
  - In the first month after the tax, the number of plastic and paper bags Chicagoans consumed at grocery stores dropped 42%

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**WHY REGULATE PLASTIC BAGS?**

<table>
<thead>
<tr>
<th>WINDBLOWN LITTER</th>
<th>MARINE IMPACTS</th>
<th>WASTE MANAGEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Even if disposed of properly, plastic bags get caught in the wind</td>
<td>Plastic bags can entangle or choke marine life</td>
<td>There is no viable market for dirty plastic bags</td>
</tr>
<tr>
<td>Visible in environment as litter (often caught in trees)</td>
<td>Break down into small pieces</td>
<td>Clog recycling machinery</td>
</tr>
<tr>
<td>Litter clean-up costs taxpayers</td>
<td>Sea turtles mistake for jellyfish</td>
<td>Contaminate other recyclables</td>
</tr>
</tbody>
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**RECYCLING PLASTIC BAGS IS NOT THE ANSWER**

- Recycling is a commodities market: some materials are more valuable than others & dirty plastic bags don’t have a viable market.
  - Plastic bag recycling rates are difficult to measure, estimated at ~5%.
  - Plastic bags often clog municipal recycling machinery when recycled curbside.
- Instead of take-back recycling programs at retailers, focus should be on customers bringing their own bags (BYOBag).
- Bag reduction laws (bans & fees) encourage BYOBag behavior.

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**WASTE MANAGEMENT HIERARCHY**

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By Jennie Romer, Esq, founder of plasticbaglaws.org last updated 5/9/19