

12.3.2018

18-1457 - Memo on Single Use Plastic Bans

To
City Councilmembers

From
Jonathan Griffin,
Legislative Analyst

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Re
Single-Use Plastic Bans

Single-Use Plastic Bans

I was asked to research single-use plastic bans and examine what peer cities are doing regarding plastic use bans.

What is Single-Use Plastic?

The UN defines single-use plastics, sometimes known as disposable plastics, as plastics “commonly used for plastic packaging and include items intended to be used only once before they are thrown away or recycled. These include, among other items, grocery bags, food packaging, bottles, straws, containers, cups and cutlery.”

Current State of Single-Use Plastic Bans

U.S. cities and states have commonly restricted single-use plastic by banning or taxing plastic grocery bags. By one count, approximately [350 cities](#) currently ban or assess fees on plastic bag use. [California and Hawaii](#) also prohibit plastic bags statewide. Cities are beginning to examine other SUP bans. [Many of these cities are located on or near coastal waterways](#). Specifically, the cities of [Malibu](#), [Seattle](#), Charleston, and [Fort Myers Beach](#) have banned plastic straws and/or cutlery.

A number of cities also assess fees on bag use. [Some cities](#) assess fees for plastic bag use, while others [tax paper or reusable bags](#) in conjunction with bans on plastic bags. These taxes are typically between five and twenty cents.

Worldwide, [over 60 countries ban plastic bags](#), and [many more](#) are considering bans on plastic straws and all single-use plastic.

Plastic Bag Bans and Issues in Colorado

[At least nine cities in Colorado](#) assess fees or ban plastic bag usage.

State Preemption

[Colorado Revised Statute §25-17-104](#) was originally passed in 1989 and amended in 1993.

The statute appears to preempt local regulation of plastic. The statute states “[n]o unit of local

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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” (emphasis added). Despite this language, [many national groups](#) and academic papers make no mention of Colorado’s law. All of Colorado’s bans on plastic bag use were enacted after 1993. When Aspen’s plastic bag ban was challenged as [a violation of the state’s Taxpayer Bill of Rights \(TABOR\)](#), no mention was made of the preemption.

Taxpayers Bill of Rights (TABOR)

Aspen’s [2011 ban on plastic bag use](#) also included a provision that if a consumer were to use a paper bag provided by a merchant, they would be charged a 20-cent fee. [The Colorado Union of Taxpayers Foundation sued Aspen](#) on the grounds that the 20-cent fee was a tax, and under TABOR, it needed voter approval prior to enactment. The fee was upheld by the trial court and then affirmed by the Colorado Supreme Court. [The Supreme Court ruled that the fee was not a tax](#), reasoning “[w]hen a government exercises its authority pursuant to its police power to regulate for health and safety, and imposes a charge as part of a regulatory regime, and the charge is reasonably related to the direct or indirect cost of regulating the activity, such a charge is not a tax subject to voter approval.”

Are Bans Effective?

Because of their position as a [partisan flashpoint](#), there are many conflicting reports on the effectiveness of plastic bag bans. However, recently released [academic reports](#) have shown a reduction in plastic bag use in California. Plastic bag fees have been effective revenue streams, earning Washington, D.C. [over \\$10 million](#) between its enactment in 2010 and May 2015. Boulder has reported over [\\$1 million](#) in earnings since 2013.