

BROOKLINE REVISION TO BAG REDUCTION BYLAW

ARTICLE 6

Submitted by: Clint Richmond, Andrew Fischer

Summary: Brookline passed the first law specifically addressing plastic shopping bags in the Commonwealth in 2012. Since then 33 other communities have successfully banned them. In particular, there is a contiguous group of communities that includes Brookline, Cambridge, Somerville, Newton, Watertown and Wellesley. However, our pioneering bylaw had some loopholes that can now be closed as they have been especially in neighboring Cambridge and other Massachusetts communities. This article also seeks to be more comprehensive by addressing paper and produce bags.

Problems with Petrochemical Plastics

The executive director of the U.N. Environment Programme, Achim Steiner, said in 2009 that "There is simply zero justification for manufacturing plastic bags anymore, anywhere." Here are the reasons why:

1. The production of single-use plastic bags made from fossil fuels is not sustainable

Single-use bags are not the highest and best use of non-renewable fossil fuels. Our overall goal is to reduce unnecessary petrochemical plastic packaging. We can't keep fossil fuels in the ground if fossil fuels are also being used for plastic.

2. Solid waste problems

The enormous number of plastic bags makes them difficult to manage.

Even if only a small percentage of the volume becomes litter, this causes a large amount of visual blight and animal harm. Plastic pollution is most acute in the marine environment. Hundreds of marine animal species suffer injury and death. In some cases, the majority of the population of a species have been affected (such as for whales). The World Economic Forum published a study this year stating that there will be as much plastic as fish in the ocean by 2050. Commenting on the report, the CEO of the Plastic Pollution Coalition said "One of the biggest problems [to] focus on is single use and disposable plastic."

These problems are compounded since petrochemical plastics do not biodegrade. Such plastics can persist for 1000 years. However, they are subject to fragmentation, and may enter our human food chain.

Plastic bags are not easily recycled and suffer from especially low recycling rates compared to valuable natural materials like paper. Pre- and post-consumer contamination makes them unsuitable for food or medical applications. Intentional contaminants include additives and dyes. Plastics are generally downcycled into non-recyclable products such as plastic lumber. The printing inks reduce its already extremely low value.

3. Plastic packaging is bad for human health

Satisfying the demand for the raw materials of plastics is one of the causes of the growth of fracking. Concerns around fracking include the exposure to toxic fracking chemicals, water use and pollution, and the generation of huge volumes of toxic liquid waste.

The industry is not required to list additives to plastics, which can migrate from the bag into the contents and be ingested by consumers. These chemicals include dyes and copolymers. In addition, there are chemical impurities and contaminants from the manufacturing process.

Sustainable Bags

The most sustainable packaging uses natural materials such as paper or cloth. Such materials are biodegradable, compostable, and recyclable. We also want to encourage the use of re-usable solutions. This by-law will provide an opportunity to educate retailer and consumers about more sustainable options.

Why revisit the bag by-law?

The existing by-law contained deliberate exemptions modeled on the proposed state law at the time such as a small store exemption. While many retailers have substituted sustainable packaging, others (such as CVS and Pier 1) have simply adopted marginally thicker polyethylene bags (which use more fossil fuels and weigh more) that were counter to the intent of the law.

Summary

The bylaw does several things:

1. Applies the by-law equally to all stores as in most laws passed in the state since ours.
2. Defines re-usable plastic bags more robustly as in nearly every other law passed in the state since ours. This also includes eliminating polyvinyl chloride, a more toxic plastic than polyethylene or polypropylene.
3. Closes the loophole for petrochemical plastic produce bags. This is similar to the Williamstown by-law. The law will allow compostable plastic produce bags, which are readily available.
4. Makes paper bags more sustainable by requiring a minimum of 40% post-consumer recycled content as in Cambridge, Newton and most laws in California. Because of prior laws, these bags are readily available.

This by-law cannot impose a fee on paper or other single-use bags as has been done in other communities (most notably Cambridge). In Massachusetts, this right is reserved for cities (and has been confirmed by the Attorney General). However, retailers have always had the right to charge for bags, and we support retailers who wish to do so or otherwise

provide incentives such as rebates when you bring your own bag.

We urge Town Meeting to close the loopholes, and make the other proposed improvements. In doing so we will stay in the vanguard in the state on this highly visible issue.

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To see if the Town will amend the General By-Laws by revising the Article 8.33 as follows (additions are indicated in underlining, and deletions are indicated in strike-out):

ARTICLE 8.33 SUSTAINABLE PLASTIC BAGS REDUCTION

SECTION 8.33.1 Definitions

The following words shall, unless the context clearly requires otherwise, have the following meanings:

“DirectorOfficer”, the ~~Director of Public Health Services~~ Town Administrator or his/her designees responsible for enforcement.

“ASTM D6400”, the American Society for Testing and Materials (ASTM) International “Standard Specification for Compostable Plastics”.

“ASTM D7081”, ASTM International “Standard Specification for Biodegradable Plastics in the Marine Environment”.

“Checkout bag”, a carryout bag provided by a store to a customer at the point of sale. Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of the store.

“Compostable plastic bag”, a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.

“Department”, the ~~Brookline Department of Public Health~~.

“Marine degradable plastic bag”, a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability; and conforms to any other standards deemed acceptable by the ~~Officer~~ Director, provided additional, ~~Offieer~~ Director-approved standards are as stringent as ASTM D7081.

“Product Bag” bags in which loose produce, bulk items, unwrapped baked goods or prepared food, or other products are placed by the consumer to deliver such items to the

point of sale or check out area of the store.

“Reusable bag”, a bag that is either (a) made of cloth or other machine washable fabric; or (b) made of plastic other than polyethylene or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material that is more than 4 mils thick.

“Reusable check-out bag”, a sewn reusable bag with stitched handles that is specifically designed for multiple reuse and is either (1) made of cloth or other machine washable fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material can carry 25 pounds over a distance of 300 feet.

"Recyclable Paper Bag" means a paper bag that is (1) 100 percent recyclable including the handles; (2) contains at least 40% post-consumer recycled paper content; and, (3) displays the words "recyclable" and "made from 40% post-consumer recycled content" (or other applicable amount) in a visible manner on the outside of the bag.

“Retail establishment”, any retail space located in the City including without limitation a restaurant, food or ice cream truck, convenience store, retail pharmacy, or supermarket. ~~store that satisfies at least one of the following requirements: (a) a retail space of 2,500 square feet or larger or at least three (3) locations under the same name within the Town of Brookline that total 2,500 square feet or more; or (b) a retail pharmacy with at least two locations under the same ownership within the Town of Brookline; or (c) a full-line, self-service supermarket that had annual gross sales in excess of \$1,000,000 during the previous tax year, and which sells a line of dry grocery, canned goods or nonfood items and some perishable items;~~

SECTION 8.33.2

(a) If a retail establishment as defined in Section 1 provides plastic checkout bags to customers, the plastic bags shall comply with the requirements of being either a recyclable paper bag, a reusable checkout bag, or a compostable plastic bags that is compostable, as well as marine degradable plastic bags.

(b) If a retail establishment provides product bags to customers, the bags shall comply with the requirements of being either a recyclable paper bag, reusable bag, or a compostable plastic bag. (a) Nothing in this section shall be read to preclude any

~~establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.~~

(c) The ~~Director~~Officer may promulgate rules and regulations to implement this section.

SECTION 8.33.3 PENALTIES AND ENFORCEMENT

(a) Each Retail Establishment as defined in Section 1, above, located in the Town of Brookline shall comply with this by-law.

(1) If it is determined that a violation has occurred the ~~Officer~~Director shall issue a warning notice to the Retail Establishment for the initial violation. (2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the ~~Officer~~Director shall issue a notice of violation and shall impose a penalty against the retail establishment.

(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) \$50 for the first offense

B) \$100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court. (4) No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.

(5) A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

SECTION 8.33.4

All of the requirements set forth in this by-law shall take effect ~~December~~July 1, 201~~3~~7. In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative checkout bags or economic hardship, the ~~Director~~Officer may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional six-month period upon showing of continued infeasibility as set forth above.

Or take any other action relative thereto.
