



## City of Somerville Massachusetts

### Agenda Item 197061

Work Completed  
Jun 12, 2014 7:00 PM

#### Assistant City Solicitor Responding to #196628 re: Plastic Bag Reduction.

#### Information

<b>Department:</b>	Law	<b>Sponsors:</b>	
<b>Category:</b>	Officer's Communication	<b>Purposes:</b>	Officer's Communication

#### Attachments

[plastic reduction bylaw - Brookline](#)  
[plastic reduction bylaw - Great Barrington](#)  
[plastic reduction bylaw - Manchester](#)  
[plastic reduction bylaw - Nantucket](#)

#### Official Text

Dear Honorable Board Members:

Aldermen Gewirtz and Neidergang requested this office to provide information on plastic bag reduction techniques being utilized in other municipalities. There are three towns that have passed bylaws restricting the use of plastic bags at retail establishments. They are Brookline, Great Barrington and Manchester-by-the-Sea. Each of those bylaws was enacted in 2013 after review and approval of the Attorney General (statute requires towns to obtain AG approval of newly passed bylaws, inapplicable to City of Somerville). You can find the AG's comments on those laws at the AG's website. From the Home page go to "Bureaus", then "Municipal Law Unit." At the bottom of that page is a link to "Municipal Law Unit (MLU) Decision Lookup." Go to that page and type in the time period and the keyword "plastic" and you can read the AG's opinions and comments on all three bylaws. The AAG conducting the review finds all of them to pass muster and she offers advice on pitfalls to avoid and amendments to consider.

In addition, back in 1990, Nantucket passed a very vaguely worded bylaw requiring biodegradable packaging. All four bylaws are attached. I am told that both Marblehead and Cambridge are considering similar proposals on the banning of plastic bags. There are just a few other towns engaging in the regulation of packaging. Concord has a plastic water bottle ban for plastic bottles a liter or smaller, and both Bolton and Amherst have polystyrene bans on food packaging.

Without speaking to the policy benefits, a plastic bag reduction ordinance, standing alone, is legally defensible as an appropriate use of the police power to protect the health, safety and welfare of the City's inhabitants and has been found by the AG not to conflict with state law.

It is my opinion, however, that imposing a deposit fee would be more problematic. None of the cities or towns are proposing or have implemented a deposit fee for the use of plastic bags although Manchester permits retailers to charge a fee for a paper bag if the merchant so desires. The deposit proposal appears on its face to be analogous to the bottle bill. However, it must be realized that the bottle bill is a more complex law, a set of laws in reality, than would appear at first blush. See, G.L. c. 94 Sections 321 through 327. It is a statewide system administered by the Dept. of Energy and Environmental Affairs See, 301 CMR 4.01 et seq. and regulated by the Department of Revenue. Its laws and rules are enforced by the Attorney General. There are laws and rules regarding refunds, as well as rules for dealers and distributors of bottles, as well as the establishment of redemption centers. Bottler's and distributors are required to maintain Deposit Transaction Fund accounts and have strict reporting requirements regarding the volume of containers sold and returned and must provide an accounting of unclaimed deposits on a monthly basis. In addition, the Commonwealth is required to reimburse a bottler or distributor if they come up short in their Deposit Transaction Fund, i.e., if the amount they are entitled to is less than the amount in the fund because they had more bottles returned to them than they had distributed.

To legally impose a deposit system for plastic bags, the City would have to impose similar requirements for monitoring, controlling and redistributing the deposited funds that are just as complex.

If I can be of any further assistance please do not hesitate to contact me.

Sincerely,

Matthew J. Buckley  
Assistant City Solicitor

## Meeting History

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**May 22, 2014 7:00 PM Video**    **Board of Aldermen**    **Regular Meeting**

**RESULT:    PLACED ON FILE**

**May 27, 2014 5:30 PM**    **Environment and Energy Special Committee - old**    **Committee Meeting**

**RESULT:    WORK COMPLETED**

**Jun 12, 2014 7:00 PM Video**    **Board of Aldermen**    **Regular Meeting**

**RESULT:    WORK COMPLETED**

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