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## Bans on Bans: Plastic Bags, Power, and Home Rule in South Carolina

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**BANS ON BANS: PLASTIC BAGS, POWER, AND  
HOME RULE IN SOUTH CAROLINA**

Madison Guyton\*

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I. INTRODUCTION

During the first decade of the twenty-first century, companies produced more single-use plastic bags than in all of the twentieth century combined.<sup>1</sup> In recent years, growing concerns surrounding the sheer number of single-use plastic bags littering the United States have contributed to the rising trend of local governments developing strategies to curb the pollution.<sup>2</sup> Ordinances regulating or banning plastic bag usage at the retail level are among the most

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1. EQUINOX CTR., PLASTIC BAG BANS: ANALYSIS OF ECONOMIC AND ENVIRONMENTAL IMPACTS 3 (2013), <https://energycenter.org/sites/default/files/Plastic-Bag-Ban-Web-Version-10-22-13-CK.pdf> [<https://perma.cc/9QJP-EZKZ>].

2. *Id.*

common legal mechanisms to address plastic litter.<sup>3</sup> Such ordinances either restrict or prohibit the distribution of single-use plastic bags by businesses.<sup>4</sup> Supporters of bag banning ordinances seek to reduce the number of plastic bags for varied reasons: distaste for the aesthetics of littered plastic bags, concern about plastic pollution's impact on the environment, and interest in businesses that depend on wildlife.<sup>5</sup> Governments also utilize bans on single-use plastic bags to reduce the cost of the bags clogging up expensive single-stream recycling machinery, which is ill-equipped to process the thin plastic film.<sup>6</sup>

Since 2007, when San Francisco became the first city in the United States to implement a ban on single-use plastic bags, two states and hundreds of local governments across the nation have restricted access to plastic bags in some way.<sup>7</sup> Yet, almost as soon as the trend to ban single-use plastic bags began, a parallel trend of passing laws to preempt all local governments from placing restrictions on the distribution of plastic bags likewise began.<sup>8</sup> As of 2019, fourteen states have curbed local control of plastic bags.<sup>9</sup> In 2015, in the face of a proposed bill in the Texas legislature that would preempt, but not substitute, local plastic bag bans, Fort Stockton Councilman Darren Hodges, a Tea Party Republican, fiercely defended his town's decision to ban plastic

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3. ENVTL. LAW INST., MARINE LITTER LEGISLATION: A TOOLKIT FOR POLICYMAKERS 26 (2016). Adopted in 2006, the San Francisco ban only applied to supermarkets and pharmacies with gross annual sales of more than \$2 million; it is estimated that the ban led to a 5 to 10 percent reduction in the number of plastic bags reaching the land fill. *Id.* at 27.

4. *See infra* Table 1.

5. *See infra* Section III.B.

6. SURFRIDER FOUND. & UCLA'S FRANK G. WELLS ENVTL. LAW CLINIC, FEDERAL ACTIONS TO ADDRESS PLASTIC MARINE POLLUTION 6 (2013).

7. Sara Gibbens, *See the Complicated Landscape of Plastic Bans in the U.S.*, NAT'L GEOGRAPHIC (Aug. 15, 2019), <https://www.nationalgeographic.com/environment/2019/08/map-shows-the-complicated-landscape-of-plastic-bans/> [https://perma.cc/5WXS-GK2M]; Adam Minter, *How a Ban on Plastic Bags Can Go Wrong*, BLOOMBERG OPINION (Aug. 18, 2015, 12:39 PM), <https://www.bloomberg.com/opinion/articles/2015-08-18/how-a-ban-on-plastic-bags-can-go-wrong> [https://perma.cc/DZV4-ZGNL].

8. Nat'l Conf. of State Legislators, *State Plastic and Paper Bag Legislation*, NCSL (Jan. 24, 2020), <http://www.ncsl.org/research/environment-and-natural-resources/plastic-bag-legislation.aspx> [https://perma.cc/L5FHTUYW].

9. *Id.* (states that have preempted plastic bag ordinances as of January 2020 are as follows: Arizona, Colorado, Iowa, Idaho, Indiana, Florida, Minnesota, Michigan, Mississippi, Missouri, North Dakota, Oklahoma, Tennessee, Texas, and Wisconsin); *see also* Emily Badger, *Blue Cities Want to Make Their Own Rules. Red States Won't Let Them.*, N.Y. TIMES (July 6, 2017), <https://www.nytimes.com/2017/07/06/upshot/blue-cities-want-to-make-their-own-rules-red-states-wont-let-them.html> [https://perma.cc/HG5H7JTW] (discussing state preemption of local rules, including states that have preempted plastic bag bans).

bags.<sup>10</sup> Mr. Hodges characterized Fort Stockton's ordinance as a local solution to a local problem that city officials had a "God-given right" to make.<sup>11</sup> Other local government leaders have voiced similar concerns in response to legislatures across the country crafting preemptive statutes.<sup>12</sup> South Carolina reflects this trend.

In 2015, the Town of the Isle of Palms became the first municipality in South Carolina to ban the distribution of single-use plastic bags by businesses.<sup>13</sup> Since then, fifteen other municipalities and two counties have passed comparable plastic bag bans.<sup>14</sup> As of January 2020, at least one city and two additional counties are considering whether to implement similar ordinances.<sup>15</sup> Although the local ordinances vary in their methods of implementation, penalties for offenders, and scope of restricted products, the localities enacted the bans for similar reasons: namely to prevent litter from polluting waters, often citing to the preservation of the quality of the tourism and seafood industries.<sup>16</sup>

While studies conducted among residents and businesses of the localities demonstrate support for the bans, the ordinances still have harsh critics. The

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10. Shailia Dewan, *States Are Blocking Local Regulations, Often at Industry's Behest*, N.Y. TIMES (Feb. 23, 2015), <https://www.nytimes.com/2015/02/24/us/govern-yourself-state-lawmakers-tell-cities-but-not-too-much.html?module=inline> [https://perma.cc/2LWM-V9SU].

11. *Id.* (quoting a Texas city councilman fiercely defending his town's decision to ban plastic bags as a local solution to a local problem that city officials had a "God-given right" to make).

12. *See id.*

13. Briana Saunders, *Where Are Grocery Bags and Other Plastics Banned in SC? Curious SC Checked the List*, ISLAND PACKET (Feb. 28, 2019, 4:19 PM), <https://www.islandpacket.com/news/local/article226575529.html> (last visited Mar. 20, 2020).

14. *See infra* Table 1; *see also* Saunders, *supra* note 13 (discussing the passing and implementation of local plastic bag bans across South Carolina).

15. *See* Isabella Cueto, *Lexington County May Join Other SC Counties in Banning Plastic Bags*, STATE (S.C.), June 26, 2019, at A1 (noting Lexington County could become the next county or municipality to join banning single-use plastic bags); Mike Fitts, *Richland County Inches Toward Plastic Bag Ban*, FREE TIMES (S.C.), Aug. 7–13, 2019, at 8 (noting Richland County is taking the next steps on a ban); David Purtell, *Georgetown City Council Continues Talks on Banning Plastic Bags*, SOUTH STRAND NEWS (Dec. 27, 2018), [https://www.southstrandnews.com/news/georgetown-city-council-continues-talks-on-banning-plastic-bags/article\\_6e4367da-094f-11e9-8b3c-ff37b002a0ca.html](https://www.southstrandnews.com/news/georgetown-city-council-continues-talks-on-banning-plastic-bags/article_6e4367da-094f-11e9-8b3c-ff37b002a0ca.html) [https://perma.cc/8Y24-7F3M] (noting that Georgetown City Council members are weighing a potential ban on single-use plastic in the city); *see also* Cindy Landrum, *Paying for Plastic? Greenville Councilman Wants City to Consider Plastic Bag Fee*, GREENVILLE J. (Mar. 6, 2019), <https://greenvillejournal.com/news/paying-for-plastic-greenville-councilman-wants-city-to-consider-plastic-bag-fee/> [https://perma.cc/E38S-ZSBH] (discussing Greenville City Councilman's view that a fee instead of a ban may serve as part of a solution to plastic pollution).

16. Steve Toloken, *As South Carolina Bans Grow, Bag Makers Seek Help*, PLASTICS NEWS (Mar. 28, 2019, 2:00 AM), <https://www.plasticsnews.com/article/20190328/NEWS/190321238/as-south-carolina-bans-grow-bag-makers-seek-help> [https://perma.cc/CG5B-DQBC].

South Carolina Retail Association (SCRA) has urged the General Assembly to block local governments from banning plastic bags.<sup>17</sup> When speaking on the recent proliferation of ordinances banning plastic bags in South Carolina, a representative for the D.C.-based American Progressive Bag Alliance (APBA) indicated restrictions on single-use plastics in South Carolina coastal communities rank among some of the strictest in the nation.<sup>18</sup> The APBA representative also noted emotion, not science, drives plastic bag bans at the local level—indicating state legislators have a greater capacity to make scientifically based decisions.<sup>19</sup> Studies do exist to support the notion that banning plastic bags may not lend to sustainability as much as supporters think. For example, Clemson University recently conducted a study on the nationwide use of grocery bags; the study found that regulations banning or imposing fees on single-use plastic bags may tend to pose more overall harm than benefit to the environment.<sup>20</sup> Yet, while the APBA and other industry groups give environmental arguments to rebut the pollution concerns of bag ban advocates, the groups' major concerns revolve around businesses. Two of the nation's top packaging companies, Novolex and Sonoco, have headquarters in Hartsville, South Carolina, and the two companies, as well as other key players in the plastic bags industry, have contributed significantly to the push against local ordinances.<sup>21</sup>

In South Carolina's 123rd legislative session, several lawmakers responded to concerns of retail associations and plastics manufacturers.<sup>22</sup> The most recent bill requires “any regulation regarding the use, disposition, sale, or imposition of any prohibition, restriction, fee imposition, or taxation of auxiliary containers” be enacted by the General Assembly.<sup>23</sup> If passed, the proposed legislation would also supersede and preempt any political subdivision's ordinance concerning retail level regulation of disposable containers such as bags.<sup>24</sup> Lawmakers supporting the bill argue a uniform

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17. Sammy Fretwell, *Handy Shopping Sacks or Public Nuisance? Plastic Bags Cause Bitter Political Fight in SC*, GREENVILLE NEWS (Feb. 28, 2019, 11:49 AM), <https://www.greenvilleonline.com/story/news/2019/02/28/plastic-bag-bans-cause-bitter-political-fight-south-carolina/3015497002/> [<https://perma.cc/V8KP-6G67>].

18. Toloken, *supra* note 16.

19. *Id.*

20. ROBERT M. KIMMEL ET AL., LIFE CYCLE ASSESSMENT OF GROCERY BAGS IN COMMON USE IN THE UNITED STATES 16 (2014).

21. Tom Barton & Avery G. Wilks, *Are Legislators Killing Local Control as Favor for Big Business?*, STATE (S.C.), Feb. 18, 2019, at A1 (noting Novolex and Sonoco have donated more than \$50,000 to candidates for office since 2015).

22. See generally S.B. 394, Gen. Assemb., 123rd Sess. (S.C. 2019) (giving the General Assembly power to enact regulations regarding the prohibition, restriction, fee, imposition, or taxation on auxiliary containers).

23. *Id.* §§ 39-17-710 to -720(A).

24. *Id.* § 39-17-720(A).

statewide rule is necessary to protect consumers, commerce, and retailers from a confusing hodgepodge of rules differing from town to town.<sup>25</sup> However, representatives of local governments with potentially preempted ordinances expressed frustration with the General Assembly's "micromanaging" efforts to address pollution issues without providing other working solutions to their concerns.<sup>26</sup>

During a hearing on the proposed legislation, Will Haynie, mayor of Mount Pleasant, reached the heart of what fuels the current debates around local bans on single-use plastics: not litter, not water pollution, not the impact on businesses, but power. Mayor Haynie said, "We wanted to be here not to debate the thickness of plastics bags, but to ask you to respect our right to govern and to represent our 87,000 citizens the way you represent your districts in the state of South Carolina."<sup>27</sup> Limiting or excluding the restrictions a local government may place on businesses is within the General Assembly's power.<sup>28</sup> However, as the conversations about limiting local restrictions on auxiliary containers demonstrate, in making such a decision, the General Assembly aggravates an ongoing tension between streamlining legislation to reduce confusion among citizens and stifling local experimentation on how to address major issues.

In the subsequent parts, this Note seeks to illuminate and contribute to the issue of plastic bag regulation by local governments in South Carolina. Part II, "Background," examines how the state grants power to local governments, how the state can limit local power, how courts enforce those limitations, and how the trend of local governments passing plastic bag bans emerged. Part III, "Case Study: Beaufort County," reviews the text of Beaufort County's ordinance and then surveys the information that supporters and opponents of plastic bag bans provided to decisionmakers to consider when drafting the ordinance. Part IV, entitled "A Survey of Ordinances," provides a brief comparison of the current bans in South Carolina and considers the applicability of regulatory framework. Part V, entitled "Proposed Legislation," gives a brief description of recent efforts the General Assembly has made to prohibit plastic bag banning ordinances. Part VI, entitled "A Question of Power," considers the role of the Home Rule Act in reactive express preemptive legislation and the degree to which local governments might have recourse. Finally, Part VII, "Conclusion," discusses the impact of reactive express statutory preemption of plastic bag bans specifically and then generally.

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25. Barton & Wilks, *supra* note 21.

26. Toloken, *supra* note 16.

27. *Id.* (statement of Mount Pleasant Mayor Will Haynie).

28. *See infra* Section II.A.

## II. BACKGROUND

A. *The Home Rule Act of 1975*

In 1975, the South Carolina General Assembly enacted the Home Rule Act, which establishes that cities and counties are political subdivisions of the state, and then outlines the powers, duties, functions and responsibilities counties and municipal governments.<sup>29</sup> By passing the Home Rule Act, the General Assembly intended to abolish the application of Dillon's Rule—the common law doctrine requiring narrow interpretation and strict construction of all grants of power to political subdivisions—and to restore autonomy to local governments in South Carolina.<sup>30</sup> The Act provides revisions to the state's constitution by adding a new article on local government, Article VIII. The state legislature codified the Act for county government in Title 4 of the South Carolina Code and for municipal government in Title 5 of the South Carolina Code.<sup>31</sup> The South Carolina Supreme Court noted Article VIII clearly demonstrates the electorate and the General Assembly, determined that “county government should function in the county seats rather than at the State Capitol,” took serious efforts to give home rule to county governments.<sup>32</sup>

The codification of the Home Rule Act also reflects an intent to empower local governments to take action. Section 4-9-25 grants general police powers to counties.<sup>33</sup> The last sentence of § 4-9-25 calls for the courts to liberally construe the granted powers in favor of the county,<sup>34</sup> which works to

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29. Cindi R. Scoppe, *The Home Rule Act that Didn't Really Allow Home Rule*, STATE (S.C.), Jan. 18, 2016, at 17.

30. *Williams v. Hilton Head Island*, 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993). Following Dillon's Rule, political subdivisions could only exercise powers granted in express words, powers necessarily implied in or incident to the powers granted, and powers essential to the purposes of the corporation. JOHN DILLON, *MUNICIPAL CORPORATIONS* 173 (2d ed. 1873); see also William Peter Maurides, *The Use of Preemption to Limit Social Progress in South Carolina: The Road to the Bathroom Bill*, 69 S.C. L. REV. 977, 981 (2018) (explaining the transition from the rigidity of Dillon's Rule to local rule).

31. MUN. ASS'N OF S.C., *FORMS AND POWERS OF MUNICIPAL GOVERNMENT* 2 (2017).

32. *Knight v. Salisbury*, 262 S.C. 565, 569, 571, 206 S.E.2d 875, 876–77 (1974); see also, e.g., *Duncan v. Cty. of York*, 267 S.C. 327, 341, 228 S.E.2d 92, 98 (1976) (declaring South Carolinians “speaking through the constitution, have mandated a change” to the division of power within the state).

33. S.C. CODE ANN. § 4-9-25 (1986) (providing for counties to have the powers in relation to security, general welfare, and health).

34. *Id.* (“All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for

statutorily reverse Dillon's Rule.<sup>35</sup> Section 5-7-30 establishes the municipal general police power,<sup>36</sup> and § 5-7-10 provides for the liberal construction of municipal powers to statutorily remove Dillon's Rule for municipalities.<sup>37</sup> For a county ordinance to become applicable within the boundaries of a municipality, the municipality and the county must come to a formal agreement, and the municipality must formally adopt the county's ordinance. Before a county ordinance takes effect within the boundaries of a municipality, however, the municipality must reach a formal agreement with the county and adopt its ordinance.<sup>38</sup>

While the Home Rule Act does not operate retroactively to abolish special legislation effective in South Carolina prior to its enactment, the Act does prohibit the General Assembly from enacting special legislation and voids any special legislation that contradicts general law.<sup>39</sup> Therefore, counties and municipal governments may regulate as they see fit, unless the state or federal government has prohibited additional regulation in a specific area or has established a comprehensive system that expressly or impliedly occupies the field of the regulation.<sup>40</sup> Furthermore, local ordinances may enlarge upon statutory provisions as long as the statutes do not provide otherwise and no conflict exists between the local ordinance and state or federal law.<sup>41</sup>

Certain authorities refer to the general police powers established by the Home Rule Act as a "gap filler," meaning the power allows local governments to identify and to fill any gaps in a regulation instead of first seeking specific authorization from the General Assembly.<sup>42</sup> The power to fill regulatory gaps without first seeking authorization enables local governments to be more responsive to the needs of their citizens. Still, if a local government action does not reflect the popular will of government across the state, the General Assembly may preempt the local government's action to further the principle

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preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.").

35. S.C. ASS'N OF CTYS., *HOME RULE HANDBOOK FOR COUNTY GOVERNMENT* 18 (2013); Maurides, *supra* note 30, at 981.

36. S.C. CODE ANN. § 5-7-30 (2004) ("Each municipality of the State may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State").

37. *Id.* § 5-7-10.

38. Marvin C. Jones, Op. S.C. Att'y Gen. (Aug. 10, 2011) (opining a county would not likely have the authority to enforce an ordinance regulating alcohol sales within a municipality unless the county and municipality agreed the county had that authority).

39. *Graham v. Creel*, 289 S.C. 165, 168, 345 S.E.2d 717, 719 (1986).

40. S.C. ASS'N OF CTYS., *supra* note 35, at 7-8.

41. See George L. Schroeder, Op. S.C. Att'y Gen. No. 84-66 (June 11, 1984).

42. S.C. ASS'N OF CTYS., *supra* note 35, at 7-8.



of majority rules with minority rights.<sup>43</sup> Additionally, if several local governments have ordinances that create issues with regulatory uniformity or significant interlocal conflicts, the General Assembly may exert its power over local authority to create uniformity.<sup>44</sup>

### *B. Judicial Review of Local Exercises of Power*

When stakeholders question the validity of an ordinance, the South Carolina Supreme Court has developed a two-step process of review.<sup>45</sup> First, the Court determines whether the local government had the power to enact the ordinance.<sup>46</sup> If the state has preempted the particular area the ordinance concerns, then the ordinance is an invalid exercise of power by the local government.<sup>47</sup> For the state to preempt an entire field, the law “must make manifest a legislative intent that no other enactment may touch upon the subject in any way.”<sup>48</sup> For a finding that preemptive conflict exists between a state statute and a local ordinance, both must contain irreconcilable conditions, whether implied or express.<sup>49</sup> If no inconsistency between the state law and local ordinance exists, even if one is silent where the other speaks, then no conflict exists, and “where no conflict exists, both laws stand.”<sup>50</sup> When an ordinance and statute do conflict, however, the court’s inquiry ends because the statute preempts the city from enacting its ordinance.<sup>51</sup> If the local government did have the power to enact the ordinance, then the court moves to step two and considers whether the ordinance is consistent with the

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43. See Maurides, *supra* note 30, at 995–96.

44. See Nestor M. Davidson, *The Dilemma of Localism in an Era of Polarization*, 128 YALE L.J. 957 (2019).

45. *Foothills Brewing Concern, Inc. v. City of Greenville*, 377 S.C. 355, 361, 660 S.E.2d 264, 267 (2008) (first citing *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 211, 574 S.E.2d 196, 198 (2002); and then citing *Bugsy’s v. City of Myrtle Beach*, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000)).

46. *Id.* (first citing *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 211, 574 S.E.2d 196, 198 (2002); and then citing *Bugsy’s v. City of Myrtle Beach*, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000)).

47. *Id.* (first citing *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 211, 574 S.E.2d 196, 198 (2002); and then citing *Bugsy’s v. City of Myrtle Beach*, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000)).

48. *Bugsy’s*, 340 S.C. at 94, 530 S.E.2d at 893 (citing *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 552, 397 S.E.2d 662, 663 (1990)).

49. See *Fine Liquors, Ltd.*, 302 S.C. at 553, 397 S.E.2d at 664 (quoting *McAbee v. S. Ry., Co.*, 166 S.C. 166, 169–170, 164 S.E. 444, 445 (1932)).

50. *Id.* (quoting *McAbee*, 166 S.C. at 169–70, 164 S.E.2d at 445).

51. *Foothills Brewing Concern, Inc.*, 377 S.C. at 361, 660 S.E.2d at 267 (first citing *Denene*, 352 S.C. at 211, 574 S.E.2d at 198; and then citing *Bugsy’s*, 340 S.C. at 94, 530 S.E.2d at 893).

Constitution of South Carolina and state law.<sup>52</sup> Because ordinances are legislative enactments, the court presumes an ordinance is constitutional and places the burden of proving the invalidity of the ordinance on the party attacking it.<sup>53</sup>

### C. *Why Plastic Bag Bans?*

In the absence of a state regulatory scheme targeted at the distribution of single-use plastic bags, almost twenty municipalities in South Carolina have exercised their police powers under the Home Rule Act by placing restrictions on plastic bags to preserve the health and the order of their political subdivisions.<sup>54</sup> Most of the municipalities are found along the coast. One municipality in Colleton County,<sup>55</sup> two municipalities in Horry County,<sup>56</sup> four municipalities in Beaufort County,<sup>57</sup> and six municipalities in Charleston County<sup>58</sup> boast local ordinances banning plastic bags. Some of the ordinances include other single-use items, such as Styrofoam containers and plastic straws.<sup>59</sup> Commenters have noted the bans are popular in the coastal communities of South Carolina due to the visible impacts of plastic pollution on the marine ecosystem, such as bags getting caught in waterways and bags floating out to sea endangering aquatic life.<sup>60</sup> The Beaufort County ordinance

52. *Id.* (citing *Denene*, 352 S.C. at 211, 574 S.E.2d at 198).

53. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 425, 593 S.E.2d 462, 467 (2004) (quoting *Whaley v. Dorchester Cty. Zoning Bd. of Appeals*, 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999)).

54. *See infra* Section II.C.

55. EDISTO BEACH, S.C., CODE art. IV, §§ 38-130 to -137 (2019) (effective upon adoption).

56. NORTH MYRTLE BEACH, S.C., CODE art. VIII, §§ 12-111 to -114 (2019) (effective Jan. 1, 2021); SURFSIDE BEACH, S.C., CODE art. IV, §§ 7-180 to -185 (2019) (effective June 1, 2018).

57. BEAUFORT, S.C., CODE §§ 6.6001–6006 (2019) (effective Nov. 1, 2018); BLUFFTON, S.C., CODE art. VI, §§ 12-151 to -155 (2019) (effective Nov. 1, 2018); HILTON HEAD ISLAND, S.C., CODE § 9-4-10 to -50 (2019) (effective Jan. 1, 2020); PORT ROYAL, S.C., CODE art. IV, § 10.9 (2019) (adopted Feb. 14, 2018).

58. CHARLESTON, S.C., CODE art. V, §§ 14-53 to -58 (2019) (effective Jan. 1, 2020); FOLLY BEACH, S.C., CODE §§ 112.01-112.05, 112.99 (2019) (effective Jan. 1, 2017); JAMES ISLAND, S.C., CODE tit., § 112.01 (2019) (effective Jan. 1, 2020); ISLE OF PALMS, S.C., CODE § 3-4-1 to -9 (2019) (effective Jan. 1, 2020) (repealing and replacing the former ordinance pertaining to single-use plastic bags, §§ 3-4-1 to -6 (adopted June 23, 2015)); KIAWAH ISLAND, S.C., CODE art. 14, §§ 14-401 to -405 (2019) (effective Sept. 8, 2019); MT. PLEASANT, S.C., CODE tit. V, §§ 53.01–.07, -.99 (2019) (effective Apr. 16, 2019); SULLIVAN'S ISLAND, S.C., CODE § 14-36 (2018) (effective Dec. 1, 2018).

59. *See, e.g.*, FOLLY BEACH, S.C., CODE § 112.03(E); JAMES ISLAND, S.C., CODE § 112.01.

60. *See* Chloe Johnson, *S.C. Statehouse Effort to Undercut Bag Bans Failed This Year*.

on single-use plastic bags notes that its purpose is to “improve the environment of the county.”<sup>61</sup> While the purpose and intent section of the Charleston County plastic bag ban does not mention the environment, the preamble to the adopted ordinance stated that the reduction of single-use plastic is “in the best interest of the citizens and residents of the County, environment, and marine life.”<sup>62</sup> The coastal municipalities which incorporated purpose statements into their bag-banning ordinances acknowledge the desire to “improve the environment” of the city or town as the driving force behind the regulation.<sup>63</sup>

Because coastal communities were the earliest adopters of local bans on single-use plastic bags, some commenters characterize the support and opposition to such bans as resting along geographic lines.<sup>64</sup> Yet, inland, the City of Camden and the Town of Arcadia Lakes have passed ordinances to reduce plastic bags.<sup>65</sup> The purpose and intent sections of these ordinances mirror those ordinances from governments along the coast as designed “to improve the environment.”<sup>66</sup> In August 2019, the Richland County Council voted to conduct a year-long communications campaign, including public hearings and meetings with stakeholders, before taking a final vote on a proposed ordinance banning an assortment of single-use bags and containers.<sup>67</sup> Richland County Councilwoman Allison Terracio said, “We don’t have the coasts but we do have the [Congaree] river.” Her statement suggests that the proposed ordinance arises from concerns about littering waterways, which was a key motivator for local governments on the coast

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*But the Fight’s Not Over.*, POST & COURIER (May 13, 2018), [https://www.postandcourier.com/news/s-c-statehouse-effort-to-undercut-bag-bans-failed-this/article\\_c6b596ca-4edc-11e8-9ca7-87350045c5d7.html](https://www.postandcourier.com/news/s-c-statehouse-effort-to-undercut-bag-bans-failed-this/article_c6b596ca-4edc-11e8-9ca7-87350045c5d7.html) [https://perma.cc/7S89-43S6].

61. BEAUFORT COUNTY, S.C., CODE § 38-161 (2019).

62. CHARLESTON COUNTY, S.C., CODE art. V, § 7.5-141 to -146 (2019); Charleston County, S.C., Ordinance 2047 (Mar. 21, 2019).

63. See *infra* Table 1; see, e.g., BEAUFORT, S.C., CODE § 6-6001 (2019); BLUFFTON, S.C., CODE § 12-151 (2019); EDISTO BEACH, S.C., CODE § 38-130 (2019); FOLLY BEACH, S.C., CODE § 112.01 (2019); HILTON HEAD ISLAND, S.C., CODE § 9-4-10 (2019); ISLE OF PALM, S.C., CODE § 3-4-1 (2019); SURFSIDE BEACH, S.C., CODE § 7-180 (2019).

64. See, e.g., Seanna Adcox, *SC Bill Voiding Plastic Bag Ban Advances, Setting Up a Floor Fight Next Year*, POST & COURIER (Apr. 11, 2019), [https://www.postandcourier.com/politics/sc-bill-voiding-local-plastic-bag-bans-advances-setting-up/article\\_6b9a22f2-5c7f-11e9-a320-13fc7d3f0057.html](https://www.postandcourier.com/politics/sc-bill-voiding-local-plastic-bag-bans-advances-setting-up/article_6b9a22f2-5c7f-11e9-a320-13fc7d3f0057.html) [https://perma.cc/AT4R-3GAC].

65. See ARCADIA LAKES, S.C., CODE art. VI, § 6.601 (2019); CAMDEN, S.C., CODE tit. IX, § 103.01 (2019).

66. ARCADIA LAKES, S.C., CODE art. VI, § 6.601 (2019); CAMDEN, S.C., CODE tit. IX, § 103.01 (2019).

67. Fitts, *supra* note 15.

who passed similar ordinances.<sup>68</sup> Thus, even inland, the problem of how to reduce the amount of plastic pollution and its related impacts represents a significant concern for some local governments.

Of the local governments with plastics banning ordinances, most have conducted extensive background research and worked with residents and local businesses before doing so, just as the Richland County Council plans to do.<sup>69</sup> Through the research that local governments compiled both before and after passing the ordinances, government officials found support from residents and local business, and when crafting the ordinances, the governments considered concerns from opponents of bans on single-use plastics.<sup>70</sup> The experiences of Beaufort County, South Carolina, illustrate the systematic manner in which a local government might propose and implement an ordinance banning plastic bags.

### III. CASE STUDY: BEAUFORT COUNTY

#### A. *The Ordinance*

The Beaufort County ordinance banning plastic bags comprises six sections: “Purpose and Intent,” “Definitions,” “Regulations,” “Exemptions,” “Penalties,” and “Effective Date and Review.”<sup>71</sup> In addition to stating that the county adopted the ordinance with the goal of improving the environment, § 6-38-161, “Purpose and Intent,” also encourages businesses to make reusable bags for sale, to facilitate the distribution of recyclable paper bags, and to offer bins for recyclable products.<sup>72</sup> Beaufort County also utilizes persuasion as a policy technique in the regulations section of the ordinance, where businesses “are strongly encouraged” to prominently display signage promoting the use of reusable carryout bags as well as recyclable paper carryout bags.<sup>73</sup>

In the definitions section, the County defines the terms “business establishment,” “single-use plastic carryout bag,” “reusable carryout bag,”

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68. Mike Fitts, *Richland Could Become the First Inland SC County to Ban Single-Use Plastic Bags*, POST & COURIER (July 10, 2019), [https://www.postandcourier.com/business/richland-could-become-the-first-inland-sc-county-to-ban/article\\_f90a24e4-b3b8-11e9-876a-13edffec34b0.html](https://www.postandcourier.com/business/richland-could-become-the-first-inland-sc-county-to-ban/article_f90a24e4-b3b8-11e9-876a-13edffec34b0.html) [https://perma.cc/95ET-D95H].

69. See, e.g., City of Charleston, *Minimizing Plastic Bags*, CHARLESTON SC, <https://www.charleston-sc.gov/1454/Minimizing-Plastic-Bags> [https://perma.cc/VC6B-KFL9] (finding 96% of the 4,733 residents surveyed supported efforts to reduce the use of plastic bags and finding 58% of the 222 businesses surveyed supported a plastic bag ban with another 17% of the businesses surveyed indicating neutrality on the issue).

70. See *infra* Section III.B.

71. BEAUFORT COUNTY, S.C., CODE §§ 6-38-161 to -166 (2019).

72. *Id.* § 6-38-161.

73. *Id.* § 6-38-163(c).

and “customer.”<sup>74</sup> For a bag to fit the definition of a reusable carryout bag, it must be specifically designed and manufactured to comply with the following requirements: the bag is capable of multiple reuses; it visibly displays language describing its ability to be reused and recycled; and unless it is a paper bag under a certain height and width, it must have handles.<sup>75</sup> Additionally, a reusable carryout bag must be constructed of durable materials or recyclable plastic with a minimum thickness of 2.25 mil.<sup>76</sup> A plastic bag—one predominantly made of plastic derived from either petroleum or a biologically-based source that does not fit the definition of a reusable carryout bag—would qualify as a “single-use plastic carryout bag” when a business establishment provides it to a customer to transport purchases.<sup>77</sup>

Through the regulations section, the ordinance prohibits business establishments within the unincorporated county limits from providing single-use plastic carryout bags to customers.<sup>78</sup> Additionally, the regulations section prohibits any person from providing single-use plastic bags at any county-sponsored events, county facility, or any event on county property.<sup>79</sup> The ordinance provides a variety of exemptions including dry cleaning bags, door hanger bags, newspaper bags, bags that pharmacists or veterinarians provide to contain prescription drugs, bags customers themselves bring into business establishments, and bags intended for use for garbage, pet waste, or yard waste.<sup>80</sup> Additionally, the exemption section covers bags that customers use inside business establishments to contain unwrapped prepared foods; frozen foods whether or not prepackaged; bulk items such as produce, grains, candy, or small hardware items; and flowers, potted plants, or other items necessary to prevent moisture from damaging other purchases.<sup>81</sup>

As provided by the penalties section, a violator of the regulations first receives a written warning.<sup>82</sup> If a business establishment continues to violate the regulations after receiving the written warning, it is then deemed guilty of a misdemeanor.<sup>83</sup> For a first offense after the written warning, a violator is subject to a fine of up to \$100 for a first violation.<sup>84</sup> For a second violation within a twelve-month period of a prior violation, the fine increases to a

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74. *Id.* § 6-38-162.

75. *Id.*

76. *Id.* The term “mil” is used to describe thickness in thousandths of an inch. *Mil: What Does Mil Mean?*, DISCOUNT PLASTIC BAGS, <https://www.discountplasticbags.com/mil> [<https://perma.cc/85T6-Z3BM>].

77. BEAUFORT COUNTY, S.C., CODE § 6-38-162.

78. *Id.* § 6-38-163(a).

79. *Id.* § 6-38-163(b).

80. *Id.* § 6-38-164(a)–(b), (d).

81. *Id.* § 6-38-164(c).

82. *Id.* § 6-38-165(a).

83. *Id.*

84. *Id.*

maximum of \$200, and for each subsequent violation within a twelve-month period, the fine increases to a maximum of \$500.<sup>85</sup> In addition to fines, a violator risks the suspension or revocation of all business licenses issued to the premises where the violation occurred.<sup>86</sup> Also, the county will not issue or renew a business license to a business establishment which violated the regulations until the business pays the appropriate fines in full.<sup>87</sup> The penalties section further declares any violation a public nuisance which the county may stop with a restraining order, injunction, or other lawful means.<sup>88</sup>

In addition to establishing a regulatory scheme to prohibit the distribution of single-use plastic bags, the effective date and review section of the ordinance obliges Beaufort County to implement an evaluation program to assess the success of the bag ban every three years from the effective date.<sup>89</sup> The ordinance provides it will take effect eight months from the date when every municipality in Beaufort County adopts the ordinance or a substantially similar ordinance.<sup>90</sup>

The City of Beaufort adopted the county ordinance in January 2018; within a month the towns of Bluffton, Hilton Head Island, and Port Royal, also adopted the ordinance.<sup>91</sup> The Town of Port Royal incorporated Beaufort County Ordinance Chapter 38, Article 6, into its municipal code by reference.<sup>92</sup> The City of Beaufort adopted the entire ordinance, only replacing the term “county” with “city.”<sup>93</sup> The Town of Bluffton made insubstantial changes such as adding a provision to encourage all business establishments to make reusable carryout bags or recyclable paper bags available to customers. Bluffton also left out the effective date and review section included in the county ordinance.<sup>94</sup> Similarly, Hilton Head left out the effective date

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85. *Id.*

86. *Id.* § 6-38-165(b).

87. *Id.* § 6-38-166(b).

88. *Id.* § 6-38-166(a).

89. *Id.* § 6-38-166(b).

90. *Id.* § 6-38-166(a).

91. See Maggie Angst, *So Long Plastic Bags. Here's When Beaufort County Is Getting Rid of Them for Good*, ISLAND PACKET (Feb. 15, 2018, 12:40 PM), <https://www.islandpacket.com/news/local/article200274529.html> [https://perma.cc/3CMS-WKZ8].

92. PORT ROYAL, S.C., CODE art. IV, § 10.9 (2019) (adopted Feb. 14, 2018). The ordinance provides it does not adopt Beaufort County Ordinance § 38-163(D), which requires all business establishments to provide customers reusable carryout bags or recyclable paper bags. *Id.* However, Chapter 28, Article 6 of the Beaufort County Code of Ordinances does not have § 38-163(D) or another provision requiring businesses to provide reusable or recyclable bags. BEAUFORT COUNTY, S.C., CODE §§ 6-38-161 to -166 (2019).

93. Compare BEAUFORT COUNTY, S.C., CODE §§ 6-38-161 to -166, with BEAUFORT, S.C., CODE §§ 6.6001–6006 (2019) (adopted Jan. 23, 2018).

94. Compare BEAUFORT COUNTY, S.C., CODE §§ 6-38-161 to -166, with BLUFFTON, S.C., CODE art. VI, §§ 12-151 to -155 (2019) (adopted Feb. 13, 2018).

and review section but kept all other language and organization substantially the same.<sup>95</sup> Following all of the municipalities' adoption of similar ordinances, Beaufort County's ordinance went into effect in November 2018.<sup>96</sup>

### *B. Voices Considered*

As demonstrated by the few weeks between the adoption of the plastic bag ban by Beaufort County and the adoption of substantially similar bans by every municipality within the county, the local governments of Beaufort through municipality-county efforts put considerable preparation and thought into establishing uniformity across restrictions.<sup>97</sup> In addition to collaborating with the incorporated municipalities, Beaufort County made significant efforts to ensure a careful dialogue took place when creating and considering the ban on single-use plastic bags. For example, Beaufort County Council's Natural Resource Committee held a work session three months prior to the final reading to receive public comment and input on the ordinance.<sup>98</sup> Members of the community sat in on the session and followed up on statistics cited during the meeting.<sup>99</sup> The council held an additional work session on October 5, 2017.<sup>100</sup> There, council members considered a petition signed by 739 county residents in support of the ban,<sup>101</sup> a statement of support by the Port Royal Sound Foundation,<sup>102</sup> a statement of Support from Audubon South

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95. Compare BEAUFORT COUNTY, S.C., CODE §§ 6-38-161 to -166, with HILTON HEAD ISLAND, S.C., CODE §§ 9-4-10 to -50 (2019) (adopted Jan. 9, 2018); see also Stephen Moody, *Businesses on Hilton Head Island Preparing for Plastic Bag Ban*, WJCL (Sept. 6, 2018, 10:21 AM), <https://www.wjcl.com/article/businesses-on-hilton-head-island-preparing-for-plastic-bag-ban/23007452> [<https://perma.cc/KA4Q-PCW2>] (describing how businesses prepared for the new ordinance to go into effect).

96. Katherine Kokal, *Beaufort County's Plastic Bag Ban Starts Today. Here's What You Need to Know*, ISLAND PACKET (Oct. 3, 2018, 3:27 PM), <https://www.islandpacket.com/news/business/article218936030.html> [<https://perma.cc/TZ82-DQD5>].

97. See *supra* note 91 and accompanying text.

98. See *infra* Section III.B.

99. See Email from Amy Lavine to Brian Flewelling, Chairman, Beaufort Cty. Council (Sept. 26, 2017, 9:11 AM), <https://beaufortcountysc.gov/council/committees/natural-resources/agendas/2017/092517.pdf> [<https://perma.cc/4WXF-PDZ5>].

100. Petition by Beaufort S.C. Indivisible to Beaufort Cty. Council and Port Royal Town Council (Oct. 5, 2017), <https://beaufortcountysc.gov/council/committees/natural-resources/agendas/2017/100517.pdf> [<https://perma.cc/9E43-MYNJ>].

101. *Id.*

102. Statement from Port Royal Sound Foundation to the Beaufort Cty. Council (Oct. 5, 2017), <https://beaufortcountysc.gov/council/committees/natural-resources/agendas/2017/100517.pdf> [<https://perma.cc/9E43-MYNJ>].

Carolina,<sup>103</sup> and a presentation in opposition of the ban by Novolex—a packaging company headquartered in Hartsville, South Carolina.<sup>104</sup>

In addition to Novolex, opponents of Beaufort County's ban on single-use plastic bags included the American Plastic Bag Alliance (APBA) and the South Carolina Retail Association, (SCRA).<sup>105</sup> Opponents both implicitly suggested and expressly stated that a ban on single-use plastic bags would be an ineffective policy which would create costly systems that would not solve the problem of plastic pollution.<sup>106</sup> Because SCRA represents a variety of chain and independent merchants, from restaurants to hardware stores, in every county in the state, the association also provided perspectives from retailers subject to the proposed regulations.<sup>107</sup> SCARA claimed that, due to anticipation of public backlash, several association members feared speaking out against a ban on single-use plastic bags.<sup>108</sup> SCARA noted that retailers felt that opposing the ban on plastic bags created an unwinnable public relations situation.<sup>109</sup> Such public relations concerns suggest why more retailers did not go directly to the county council to express their opinions on the ban.<sup>110</sup>

As an example of a bag ban that created adverse economic conditions for retailers, SCARA described how one retailer on the Outer Banks of North Carolina, reported a \$50,000 increase in annual operation costs after the Outer

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103. Statement from Noah Schillerstrom, Coastal Program Dir., Audubon S.C., to the Beaufort Cty. Council Nat. Res. Comm. (Oct. 5, 2017) (representing 1,000 members in Beaufort County and more than 12,000 members across the state of South Carolina), <https://beaufortcountysc.gov/council/committees/natural-resources/agendas/2017/100517.pdf> [<https://perma.cc/9E43-MYNJ>].

104. Phil Rozenski, Sen. Dir. of Sustainability, Novolex, Presentation to Beaufort County Council Natural Resources Committee (Oct. 5, 2017), <https://beaufortcountysc.gov/council/committees/natural-resources/agendas/2017/100517.pdf> [<https://perma.cc/9E43-MYNJ>]. Although Novolex is headquartered in South Carolina, the company does not have any plastic bag manufacturing facilities in the state. City of Charleston, *supra* note 69.

105. Letter from Lindsey Kueffner, Exec. Dir., S.C. Retail Ass'n, to Brian Flewelling, Chairman, Beaufort Cty. Council (Sept. 15, 2017), <https://beaufortcountysc.gov/council/committees/natural-resources/agendas/2017/092517.pdf> [<https://perma.cc/4WXF-PDZ5>]; Letter from Matthew Seaholm, Exec. Dir. American Progressive Bag All., to Brian Flewelling, Chairman, Beaufort Cty. Council (Sept. 15, 2017).

106. *See, e.g.*, Rozenski, *supra* note 104.

107. *See* Kueffner, *supra* note 105.

108. *Id.*

109. *Id.*

110. *But see* Press Release, Spencer Wetmore, the City of Folly Beach, S.C., City of Folly Beach First in State to Ban Plastic Bags, Balloons and Styrofoam Products on Beach (Oct. 18, 2016) (quoting Lewis Dodson, President of the Folly Association of Businesses, in support of the City's ban on single-use plastic bags and Styrofoam saying "Folly Beach's businesses are committed to protecting these assets and being good stewards of the ocean"), <https://www.cityoffollybeach.com/wp-content/uploads/2016/10/Folly-Beach-Announcement-on-Ban-.pdf> [<https://perma.cc/JGE2-6VHM>].



Banks adopted a single-use plastic bag ban in 2009.<sup>111</sup> On average, paper bags cost retailers eight times more than plastic bags, causing businesses to shift the cost to consumers.<sup>112</sup> Novolex estimated that a ban on single-use bags in Beaufort County would translate to a collective \$1.8 million per-year cost to retailers and consumers.<sup>113</sup>

Conversely, proponents of Beaufort County's single-use plastic bag ban explained how, while a ban may initially increase costs to retailers and consumers, an increase in customers bringing reusable bags may eventually decrease the bag costs that retailers incur, which they then may pass along as savings for customers.<sup>114</sup> The Coastal Conservation League estimated in the first year of the plastic bag ban, the average customer would incur a cost of around \$7.70, attributing that cost to the purchase of reusable bags.<sup>115</sup> However, the Coastal Conservation League noted that alleviation of costs could come through local organizations receiving donations of either plastic bags or reusable bags to give away.<sup>116</sup>

In addition to information related to a plastic bag ban's impact on businesses and consumers, opponents of the ban made data driven points attacking the basic concept that a ban on single-use plastic bags would even benefit the environment. Following the Outer Banks' adoption of a plastic bag ban, the North Carolina Department of Natural Resources documented an increase in numbers of bags recovered in beach cleans in 2010 and 2011.<sup>117</sup> In conjunction with the example of the limited impact a plastic bag ban had in decreasing the littering of the Outer Banks, opponents argued that a plastic bag ban may actually result in an increase in the amount of material by volume

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111. Kueffner, *supra* note 105.

112. *Id.* But see Kokal, *supra* note 96 (stating in response to the Beaufort County bag ban, Harris Teeter did not plan to implement a bag charging program, and also noting Kroger stores did not plan to charge for paper bags or increase prices to cover bag costs).

113. Rozenski, *supra* note 104.

114. See E-mail from Rikki Parker, S. Coast Office Project Manager of the Coastal Conservation League, to Brian Flewelling, Chairman, Beaufort Cty. Council (Sept. 28, 2017, 04:46 EST) (on file with author) (noting studies on San Francisco's bag ban show an increase in cost to retailers due to new demand for paper bags for the first two to three years, followed by a slight increase in retail profits from the ban in the long term).

115. *Id.*

116. *Id.*

117. Kueffner, *supra* note 105 (utilizing a table from N.C. DNR data to show 223 bags recovered in 2008, 3 in 2009, 175 in 2010, and 336 in 2011). But see MICHAEL THOMAS, REDUCING WASTE WITH REUSABLE BAG BANS IN THE BAY AREA: AN IMPACT ANALYSIS 69 (2015), [https://scholarworks.sjsu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1412&context=etd\\_projects](https://scholarworks.sjsu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1412&context=etd_projects) [<https://perma.cc/UV83-YYA6>] (finding plastic bag litter declined by 89% in storm drains, 73% in creeks and rivers, and 59% in neighborhoods a year after the city of San Jose implemented the Bring Your Own Bag Ordinance).

in waste streams.<sup>118</sup> For example, in Austin, Texas, and California, where bans exclude bags made of thicker plastics, retailers have simply switched to the thicker non-woven plastic bags, and the volume of plastic bag waste by volume in the waste streams has increased.<sup>119</sup>

Proponents of the ban did acknowledge that in some cities, such as Chicago, the implementation of single-use plastic bag bans that allow retailers to distribute bags made of thicker plastic has led to a similar number of bags distributed to consumers and an even larger amount of plastic by volume in the waste stream.<sup>120</sup> However, grocers in the Town of Folly Beach and the Town of Isle of Palms, which also have ordinances allowing for bags made of thicker plastics, have opted not to offer the thicker bags.<sup>121</sup> Proponents of the Beaufort County single-use plastic ban also noted the allowance for thicker plastic bags is based on the fact that thicker bags are slightly less difficult for the machinery in recycling centers to process.<sup>122</sup> Additionally, thicker plastic bags are less likely to be subject to wind dispersal and, therefore, less likely to pollute ecosystems.<sup>123</sup> One resident conceded Beaufort County's plastic bag ban alone would not eliminate the problem of plastics pollution; however, the resident also recognized the ban was a start by stating that "Rome was not built in a day."<sup>124</sup>

To challenge the environmental rationale of making bags out of material other than film plastic, opponents noted that plastic bag production consumes 70% less energy to manufacture than paper bags and requires only 4% of the water needed to make paper bags.<sup>125</sup> Novolex quoted a professor from the University of Oregon saying, "There are really good things about plastic bags—they produce less greenhouse gas, they use less water, and they use fewer chemicals compared to paper or cotton."<sup>126</sup> Using these statements,

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118. Kueffner, *supra* note 105.

119. Seaholm, *supra* note 105.

120. *Id.*

121. Parker, *supra* note 114.

122. *Id.*

123. CTY. COUNCIL OF BEAUFORT CTY. NAT. RES. COMM., PLASTIC BAG FACT SHEET (2017) [hereinafter CTY. COUNCIL OF BEAUFORT CTY. NAT. RES. COMM.], <https://www.beaufortcountysc.gov/council/committees/natural-resources/agendas/2017/082217.pdf> [<https://perma.cc/3NVJ-ZRDV>].

124. Letter from Dr. A. Lanny Kraus to Beaufort Cty. Council (Oct. 5, 2017), <https://beaufortcountysc.gov/council/committees/natural-resources/agendas/2017/100517.pdf> [<https://perma.cc/PZ8F-59FW>] (Dr. Kraus is a retired Professor of Laboratory Animal Medicine, comparative pathologist, and zoo veterinarian).

125. Kueffner, *supra* note 105.

126. Rozenski, *supra* note 104 (quoting Dr. David Tyler, Uni. of O.R.). Dr. David Tyler is a professor in the Department of Chemistry and Biochemistry at the University of Oregon. *Think Out Loud: To Ban Plastic Bags or Not, Statewide*, OR. PUB. RADIO (Mar. 12, 2019), <https://www.opb.org/radio/programs/thinkoutloud/segment/talking-business-hazel-hall-to-ban->

statistics, and similar ones, opponents of Beaufort County's ordinance attempted to rebut the argument that a ban on plastic bags would lead to greater environmental protection.<sup>127</sup>

As noted by SCRA, the use of plastic bags creates complex environmental problems.<sup>128</sup> While proponents of Beaufort County's bag ban would agree, they would also note that the insights of opponents do not address a complex environmental concern and one of the main motivators behind public support of plastics bans—the health of marine life.<sup>129</sup> At one of the Beaufort County Council's Natural Resource Committee work sessions, Dr. Lanny Kraus, a member of the Beaufort County community and a retired zoo veterinarian, attested to how plastic bags in marine environments kill mammals, sea turtles, and birds and negatively impact shellfish.<sup>130</sup> Dr. Kraus said he had autopsied several species of dolphins, seals, sea turtles, marine-feeding birds, and other wildlife to find that the ingestion of plastic bags caused their deaths.<sup>131</sup> The South Carolina Audubon Society shared that plastic trash is found in 90% of seabirds' digestive systems and has continuously been a factor in declining sea bird populations worldwide; South Carolinian Audubon Society volunteers have witnessed evidence of the decline from finding dead seabirds along the state's shores.<sup>132</sup> While the Coastal Conservation League conceded plastic bags do not contribute to ocean pollution as much as fishing gear does,<sup>133</sup> the organization pointed to an ocean cleanup report which ranked single-use plastic bags as the fifth most common type of litter that volunteers found during the 2016 worldwide beach clean.<sup>134</sup> When exposed to sunlight and saltwater, plastic bags break down into microplastics, which release

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or-not-to-ban/ (last visited Jan. 18, 2020). Dr. Tyler notes determining whether plastic bags are good policy depends on the policy goals. *Id.* If a government is seeking to reduce contribution to greenhouse gases and overall waste production, then a policy that would decrease the use of plastic bags but increase the use of paper bags would not be effective policy. *Id.* However, if a government is more concerned with plastic pollution's direct impact on marine ecosystems, then a policy that leads to a decrease in use of plastic bags to an increased use in paper or reusable bags would lend to policy goals. *Id.* He says life cycle analysis done by him and his students show reusable totes made of recycled plastic as the best option for consumers to use for an overall positive environmental impact. *Id.*

127. Kueffner, *supra* note 105.

128. *Id.*

129. CTY. COUNCIL OF BEAUFORT CTY. NAT. RES. COMM., *supra* note 123.

130. Kraus, *supra* note 124.

131. *Id.*

132. Schillerstrom, *supra* note 103.

133. See Parker, *supra* note 114. But see SURFRIDER FOUND. & UCLA'S FRANK G. WELLS ENVTL. LAW CLINIC., *supra* note 6, at 2 (estimating plastic accounts for between 60-90 percent of marine litter from land-based sources, and litter from land based sources accounts 60-80 percent of all marine litter).

134. Parker, *supra* note 114.

chemicals into the environment and are ingested by marine life.<sup>135</sup> Because microplastics lead to detrimental impacts on marine ecosystems, the Port Royal Sound Foundation, an organization committed to maintaining water quality and marine life in Port Royal Sound, expressed support for Beaufort County in any efforts to reduce plastic in marine waters.<sup>136</sup> Overall, supporters of the ban invoked a spirit of necessity to combat the plastics pollution problem, specifically to protect Beaufort's world-renowned marine environment, from the marshes and rivers to the bays and sounds.<sup>137</sup>

While proponents of Beaufort County's ban on single-use plastic bags bolstered the ordinance as an important policy of stewardship for the county's environment, opponents of the ban, arguing that it contributed to more environmental problems than solutions, offered other policies for implementation. Their approaches included supporting efforts to educate consumers on the effects of plastic bag litter as well as increasing the ability to recycle plastic bags responsibly through methods like in-store bag recycling.<sup>138</sup> However, a member of the Coastal Conservation League informed the Beaufort County Council of a study that indicates educational efforts and voluntary initiatives, which some localities offer as alternatives to plastic bag bans, do not reduce pollution as effectively as prescriptive and penalizing policies.<sup>139</sup>

Taking into consideration all of the voices that gave input on the proposed ordinance, from local zoologists to plastics industry lobbyists, the Beaufort County Council decided to move forward with the drafting, passing, and implementation of the plastic bag ban.<sup>140</sup> However, the ordinance does not silence any position on how the county should regulate single-use plastic bags, but instead provides for a continuing dialogue on the ordinance's community impact. Specifically, Beaufort County codified an obligation to evaluate the bag ban every three years, which demonstrates the County's commitment to remain aware of the concerns of its citizens as well as a willingness to reconsider arguments from not only those who support or oppose the

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135. CTY. COUNCIL OF BEAUFORT CTY. NAT. RES. COMM., *supra* note 123.

136. Port Royal Sound Found., *supra* note 102.

137. *E.g.*, Kraus, *supra* note 124.

138. *See, e.g.*, Rozenski, *supra* note 104; Kueffner, *supra* note 105.

139. Parker, *supra* note 114 (noting in 2009, Santa Clara, California pursued an educational campaign on the impacts plastic bag pollution complete with radio and television ads, published pamphlets, and the distribution of almost 20,000 free reusable bags, which resulted in only a 2% increase in reusable bag use); *see also* CHARLESTON CITY COUNCIL, ENVIRONMENTALLY RESPONSIBLE PACKAGING AND PRODUCTS (2018), [https://www.charleston-sc.gov/DocumentCenter/View/19988/City-Council-112718?bidId=\[https://perma.cc/J86Y-JJDY\]](https://www.charleston-sc.gov/DocumentCenter/View/19988/City-Council-112718?bidId=[https://perma.cc/J86Y-JJDY]) (noting educational campaigns in South Carolina have not been enough to prevent single use plastic bags from littering Charleston).

140. BEAUFORT COUNTY, SC., CODE § 6-38-161to -66 (2019).

regulation but also those who have yet to take a position.<sup>141</sup> The meticulous efforts that the Beaufort County Council took to craft a plastic bag banning ordinance is just one example of how local governments in South Carolina exercise the power vested in them through the Home Rule Act to respond to community issues and concerns.

#### IV. A SURVEY OF ORDINANCES

Beaufort County passed its plastic bag banning ordinance using municipality–county efforts to create uniformity of the restrictions for the local governments.<sup>142</sup> When deciding whether to adopt the ban, the towns of Port Royal, Bluffton, and Hilton Head Island, and the City of Beaufort, each considered the same information presented to the Beaufort County Council.<sup>143</sup> Other local governments with ordinances banning single-use plastic bags engaged in similar actions, such as studying how other municipalities addressed plastic bag use and asking local citizens for their opinions on the matter.<sup>144</sup> The City of Charleston, for example, held seven public hearings before enacting a final version of its ban.<sup>145</sup> Arguments from both supporters and opponents of the bans on single-use plastic bags in the other local communities reflected the same considerations that Beaufort County evaluated when drafting its ordinance.<sup>146</sup>

Similarities in the information that each local government evaluated in addition to the localities' geographical proximity to one another likely contributed to the similarities of the bans. For example, the definitions of “reusable bag” and “single-use plastic bag” do not vary greatly from ordinance to ordinance.<sup>147</sup> Of the current bans on single-use plastic bags in South Carolina, the North Myrtle Beach Code is the only one to completely

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141. *See id.* § 6-38-166(b).

142. *Id.* § 6-38-166.

143. Justin Jarrett, *In the Bag*, HILTON HEAD MONTHLY (Oct. 1, 2018), <https://www.hiltonheadmonthly.com/news/hilton-head/5412-in-the-bag> [<https://perma.cc/J86Y-JJDY>].

144. Caroline Bradner, *Charleston Plastics*, COASTAL CONSERVATION LEAGUE, <https://www.coastalconservationleague.org/charleston-plastics/> [<https://perma.cc/FST8-WUBD>] (providing that the Town of Mount Pleasant, the City of Charleston, and the Town of James Island, each decided to pass bans on single-use plastic bags after months and years of considering public input); *see also* PLASTIC BAG MINIMIZATION COMM., SURVEY ON PLASTIC BAG OPINIONS (2016), <https://www.charleston-sc.gov/DocumentCenter/View/14402/Survey-Report-for-City-of-CHS-website?bidId=> [<https://perma.cc/2786-6R6E>] (summarizing the responses of 222 businesses and 4,733 citizens from Berkeley, Charleston, and Dorchester Counties to a survey on opinions on methods of reducing plastic bag pollution).

145. City of Charleston, *supra* note 69.

146. *Compare supra* Section III.B, *with* City of Charleston, *supra* note 69.

147. *See infra* Table 1 (showing a comprehensive comparison of current plastic bag regulations in South Carolina).

exclude film plastic bags from the definition of “reusable bag.”<sup>148</sup> Other ordinances define plastic bags thicker than either 2.25 or 4.0 mil as reusable.<sup>149</sup> Further, most plastic bag ordinances in other municipalities and counties prohibit business establishments from distributing single-use plastic bags.<sup>150</sup> Additionally, most of the ordinances have penalties structures that are similar to those in the Beaufort County ordinance, with a violator receiving a warning and then different levels of fines for first, second, and subsequent violations within a twelve-month period.<sup>151</sup>

However, the amounts of fines vary, as do the enforcement provisions in the regulations and penalties sections.<sup>152</sup> Also, comparing the single-use bag bans among the state’s local governments becomes more complex when considering exemptions.<sup>153</sup> Definitions and exemptions become more multifaceted in the provisions which regulate other single-use containers, such as Styrofoam cases and disposable food service ware.<sup>154</sup> Thus while a comparison of the single-use plastic bag banning ordinances demonstrates commonalities, significant differences arise, likely from independent ordinance drafting and varying concerns among local governments. Some lawmakers and businesses have described the assortment of local bans on plastic as a “patchwork quilt of rules that differ from town to town.”<sup>155</sup> To protect consumers, commerce, and retailers from the inconsistencies resulting from that “patchwork,” members of the General Assembly have recently introduced bills which would preempt local bans on plastic bags.<sup>156</sup>

## V. PROPOSED LEGISLATION

Despite the recent efforts of legislators to prohibit local bans on single-use plastics, local governments continue to adopt and implement such restrictions.<sup>157</sup> For example, a bill that would prohibit bans on single-use plastics, but would grandfather in existing ordinances, failed in the 2017–2018

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148. NORTH MYRTLE BEACH, S.C., CODE OF ORDINANCES art. VIII, § 12-111 (2019).

149. See, e.g., CAMDEN, S.C., CODE OF ORDINANCES, tit. IX, § 103.02(b) (including bags made from recyclable plastic with a minimum thickness of 2.25 mils in the definition of reusable carryout bag); CHARLESTON, S.C., CODE, art. V, §§ 14-53 (2019) (including bags made from recyclable plastic with a minimum thickness of 4.0 mils in the definition of reusable carryout bag). The term “mil” is used to describe thickness in thousandths of an inch. See *Mil: What Does Mil Mean?*, *supra* note 76.

150. See *infra* Table 1.

151. See *infra* Table 1.

152. See *infra* Table 1.

153. See *infra* Table 1.

154. See *infra* Table 1.

155. Barton & Wilks, *supra* note 21.

156. *Id.*

157. Adcox, *supra* note 64.

legislative session. Within the next year, fifteen different governments across the state enacted plastic bag bans.<sup>158</sup> In response, the most recent version of a bill to prohibit bans on single-use plastics, Senate Bill 394 (S. 394), would preempt future local bans on single-use plastics and supersede existing ones.<sup>159</sup> The Senate Labor, Commerce and Industry Committee passed the bill by a 12–3 vote,<sup>160</sup> and the bill ended the session on the Senate’s contested calendar.<sup>161</sup>

Supporters emphasize the importance of the bill’s feature not to grandfather existing ordinances to establish a statewide consistency in regulation.<sup>162</sup> S. 394 would require the General Assembly to adopt “any regulation regarding the use, disposition, sale, or imposition of any prohibition, restriction, fee imposition, or taxation of auxiliary containers.”<sup>163</sup> The bill would not provide for any statewide prohibition, restriction, fee imposition, or taxation on single-use plastics, and the bill would not mandate the General Assembly to pass any legislation regulating the distribution of single-use plastics.<sup>164</sup> However, the bill would allow a county or municipality to impose a fine of up to \$1,000 on those who violate an ordinance pertaining to single-use containers, such as plastic bags, on property owned or maintained by the political subdivision.<sup>165</sup>

Although legislators in the House introduced a bill that would ban the distribution of single-use plastics, the bill has stalled in the House Committee of Labor, Commerce, and Industry.<sup>166</sup> Similar bills for statewide bans on single-use plastics have failed.<sup>167</sup>

## VI. A QUESTION OF POWER

Current debates on whether to prohibit local plastic bag bans in South Carolina have raised the questions of just how much power local governments have and how the General Assembly may curb that power. For example, in a discussion about the challenges that these bans present, Senator Wes Climer stated, “[a]s a state, once Home Rule was passed, it was passed without giving real definition to the size of the municipal sandbox . . . what you’re seeing now is this game of whack-a-mole, where everyone’s sort of testing those

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158. *Id.*

159. S. 394, 2018–2019 Gen. Assemb., 123rd Sess. (S.C. 2019).

160. Adcox, *supra* note 64.

161. S. 394, 2018–2019 Gen. Assemb., 123rd Sess. (S.C. 2019).

162. Adcox, *supra* note 64.

163. S. 394, 2018–2019 Gen. Assemb., 123rd Sess. (S.C. 2019).

164. *Id.*

165. *Id.*

166. H.R. 3371, 2018–2019 Gen. Assemb., 123rd Sess. (S.C. 2019).

167. See Adcox, *supra* note 64.

limits.”<sup>168</sup> In January 2018, during a briefing on House Bill 3529—another bill which would preempt local governments from placing restrictions on plastic bags—Folly Beach Mayor Tim Goodwin told lawmakers that the bill would remove a town or city’s ability to address local pollution problems. Mr. Goodwin noted, “The home rule aspect is the biggest slippery slope I see in this bill.”<sup>169</sup>

Commentators have broadly discussed the degree to which the General Assembly may restrain local authority, not only in the context of plastic bag bans but also in the context of preemptive laws regarding firearms, employee benefits, and minimum wage.<sup>170</sup> Sections of the current code for firearms,<sup>171</sup> employee benefits,<sup>172</sup> minimum wage,<sup>173</sup> immigration,<sup>174</sup> and war monuments and memorials,<sup>175</sup> use express language to curtail the ability of South Carolina’s political subdivisions from exercising power over those areas. In the 123rd Session of the South Carolina General Assembly, in addition to the proposed bill to prohibit governments from restricting the distribution of single-use plastics, other proposed bills would prohibit local governments from regulating nicotine product ingredients and short-term rentals.<sup>176</sup> The

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168. Barton & Wilks, *supra* note 21.

169. Caitlin Byrd & Chloe Johnson, *Folly Beach Mayor Tells South Carolina Lawmakers Plastic Bag Ban Is a Home Rule Issue*, POST & COURIER (Jan. 10, 2018), [https://www.postandcourier.com/politics/folly-beach-mayor-tells-south-carolina-lawmakers-plastic-bag-ban/article\\_32dac218-f61a-11e7-b6a9-abe353ee697b.html](https://www.postandcourier.com/politics/folly-beach-mayor-tells-south-carolina-lawmakers-plastic-bag-ban/article_32dac218-f61a-11e7-b6a9-abe353ee697b.html) [<https://perma.cc/RG2M-SHV6>].

170. *See, e.g.*, Maurides *supra* note 30, at 978; Badger, *supra* note 9.

171. S.C. CODE ANN. § 23-31-520 (Supp. 2017) (prohibiting any governing body of any county, municipality, or other political subdivision of the state from promulgating regulations regarding ownership, transfer, or possession of firearm or ammunition, or discharge of firearms on a landowner’s own property and “this article denies any county, municipality, or political subdivision the power to confiscate a firearm or ammunition unless incident to an arrest”).

172. S.C. CODE ANN. § 41-1-25(B) (Supp. 2017) (“A political subdivision of this State may not establish, mandate, or otherwise require an employee benefit”).

173. S.C. CODE ANN. § 6-1-130(B) (2004) (“A political subdivision of this State may not establish, mandate, or otherwise require a minimum wage rate that exceeds the federal minimum wage rate . . .”).

174. S.C. CODE ANN. § 6-1-170(C) (Supp. 2018) (preempting any ordinance, regulation, or policy of political subdivisions limiting people employed by the political subdivision from communicating with appropriate state or federal officials about the immigration status of a person).

175. S.C. CODE ANN. § 10-1-165(A)–(B) (Supp. 2018) (providing monuments and memorials on public property may only be removed or renamed by an act passed by two-thirds vote on the third reading of the bill in each branch of the General Assembly).

176. H.R. 3274, 2018-2019 Gen. Assemb., 123rd Sess. (S.C. 2019) (“Political subdivisions of this State may not enact any laws, ordinances, or rules pertaining to ingredients, flavors, or licensing of cigarettes, electronic cigarettes, tobacco products, or alternative nicotine products”); H.R. 4516 2018-2019 Gen. Assemb., 123rd Sess. (S.C. 2019) (“[A] governing body of a municipality, county, or other political subdivision of the State may not enact or enforce an



122nd Session included a failed attempt to prohibit local governments from adopting antidiscrimination ordinances.<sup>177</sup> While express preemption is not a novel legal concept, the national trend toward states passing preemptive laws without passing legislation to replace the defuncted ordinances has raised concern among commentators.<sup>178</sup> Scholars have described the trend as a “new wave of preemption” characterized by “reactive state legislation” to local efforts.<sup>179</sup>

Yet, in South Carolina, the ongoing trend of limiting local authority seems to fit within the general Home Rule framework of the state. The language of the Home Rule Act is unambiguous: all counties and municipalities of South Carolina have the power to “enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State.”<sup>180</sup> Drafters of S. 394 intend to preclude local regulation of single-use plastics, leaving no room for even narrow tailoring or careful drafting. Therefore, if South Carolina enacts S. 394, any local ordinance banning single-use plastic bags would fail under step one of the South Carolina Supreme Court’s validity test.<sup>181</sup> Moreover, the use of express preemption would leave local governments with the tool of finding the use of “auxiliary containers” on publicly owned or maintained land as the only option for regulating single-use plastics.

Although a court would likely uphold the constitutionality of a statute resulting from S. 394, considering the constitutional issues a local government may attempt to raise in the face of a power-stripping statute illuminates the current sense of frustration with the state of Home Rule in South Carolina. For example, although prohibiting local governments from regulating the distribution of single-use plastic bags without passing a statewide regulation seems to contravene the intent of the Home Rule Act,<sup>182</sup> a court would likely find that nothing in Article VIII makes the legislature’s preemption of regulatory authority of political subdivisions unconstitutional.<sup>183</sup>

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ordinance, resolution, or regulation that prohibits the rental of a residential dwelling to a short-term guest . . .”).

177. Maurides, *supra* note 30, at 1000–01.

178. See, e.g., David A. Graham, *Red State, Blue City*, ATLANTIC (Mar. 2017), <https://www.theatlantic.com/magazine/archive/2017/03/red-state-blue-city/513857> [<https://perma.cc/3BJB-YBSN>]; see also Badger, *supra* note 9; Jenny Jarvie, *The South’s New Divide: Blue Cities and Red States*, L.A. TIMES (Apr. 20, 2016, 3:09 PM), <http://www.latimes.com/nation/la-na-south-culture-wars-20160420-story.html> [<https://perma.cc/ZP3Y-575R>].

179. Sarah Fox, *Home Rule in an Era of Local Environmental Innovation*, 44 ECOLOGY L.Q. 575, 612 (2017); Nestor, *supra* note 44.

180. S.C. CODE ANN. § 4-9-25 (1986); S.C. CODE ANN. § 5-7-30 (2004).

181. See *supra* Section II.A.

182. See *supra* note 32 and accompanying text.

183. See S.C. CONST. art. VIII.

At least one authority has suggested that a court deliberating on whether the state receives deference on pollution control strategies, like banning plastic bag bans, may view the “public trust” as a canon, guarding against the undermining of trust resources to produce an outcome that would best protect those trust resources.<sup>184</sup> If a court extended the public trust doctrine beyond issues of the right of the public to use state-owned waters to an implied duty of the legislature to maintain natural resources for the benefit of the people, the court could possibly interpret S. 394 as the unconstitutional undermining of the efforts of local governments to protect trust resources. However, such an application is unlikely because courts presume that legislative acts are constitutional “unless [their] repugnance to the constitution is clear and beyond a reasonable doubt,” meaning there is a general presumption of validity of legislation which may only be overcome by a clear showing the act violates a provision of the constitution.<sup>185</sup> Because S. 394 would enable a local government to issue fines for the use of auxiliary containers on publicly owned or maintained lands, a statute resulting from the bill would not clearly violate the public trust doctrine. Yet, the fine for the use of plastic bags in publicly owned spaces will likely not be enough to address the various challenges counties seek to solve through the local bans on plastic bags.

When considering local bag bans, county and municipality leaders have observed that the awareness campaigns and fines on littering have inadequately protected natural resources and the environment; thus, the provisions in S. 394 which increase fine maximums will not resolve the environmental issues that local governments and their citizens face.<sup>186</sup> Litter enforcement alone is not enough due to passive littering from overfilled garbage and the unprotected transportation of materials.<sup>187</sup> Consequently, S. 394, or similar legislation, would restrict local governments to the implementation of policies that they have already found ineffective.

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184. Fox, *supra* note 179, at 620 (such a construction would give weight to the local interest in conserving the quality of local waterways and surrounding areas). South Carolina holds title to property below the high water mark for both navigable streams and tidal lands in trust for the benefit of the public, unless the state has not specifically granted private ownership to lands below the high water mark. *Sierra Club v. Kiawah Resort Assocs.*, 318 S.C. 119, 128, 456 S.E.2d 397, 402 (1995) (citing *State v. Hardee*, 259 S.C. 535, 543, 193 S.E.2d 497, 501 (S.C. 1972)).

185. *Doe v. State*, 421 S.C. 490, 501, 808 S.E.2d 807, 813 (2017) (quoting *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999)).

186. *Barton & Wilks*, *supra* note 21.

187. *City of Charleston*, *supra* note 69.

## VII. CONCLUSION

Proponents of S. 394, or similar prohibitions on the regulation of auxiliary containers, may argue that the bill contemplates the statewide negative consequences to which local decision-makers are blind, such as a need to prevent consumer confusion, support state industry, and uphold uniform business regulations. Yet, each of these reasons has substantive counterpoints. Local governments with single-use plastic bag regulations have made substantial efforts to receive input from consumers when crafting the ordinances and then led extensive public education campaigns following the adoption of the ordinances.<sup>188</sup> Although major packaging companies such as Novolex and Sonoco contribute significantly to the state's economy,<sup>189</sup> localities have put bag bans in place in part to preserve the quality of the tourism and seafood industries.<sup>190</sup> Senator Chip Campsen, Isle of Palms, has noted that the private sector generated support for the bans and that the Folly Beach bag ban originated in the business community.<sup>191</sup> Additional conflicting statements exist as to whether retail establishments support or oppose the bag bans.<sup>192</sup>

Further, the burgeoning trend of plastic bag bans around the state demonstrates localities have identified a regulatory gap which they have filled by exercising the police power granted to them under the Home Rule Act. As Table 1 indicates, although regulatory differences do exist among the ordinances, strong parallels in both the intent behind the regulations and the regulations themselves are also clear. While prohibiting local governments from regulating plastic bags does create regulatory conformity, without replacing the existing local regulations, the General Assembly undercuts the autonomy of local governments to respond to problems in the absence of effective statewide solutions.

Although the General Assembly has the authority to limit local governments to solving local problems under the Home Rule Act, legislation suppressing the popular will—as demonstrated by extensive local research<sup>193</sup>—seems counterintuitive to the democratic notion of majority rule with minority rights. Reactionary, preemptive exercises of authority by the General Assembly jeopardize the Home Rule Act that South Carolinians

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188. *See, e.g., Jarrett, supra* note 143 (noting Beaufort County's coordinated effort with municipalities on making the public aware of the impacts of the single-use bag ordinance).

189. Barton & Wilks, *supra* note 21.

190. *See Toloken, supra* note 16.

191. Byrd & Johnson, *supra* note 169.

192. *Compare* Kueffner, *supra* note 105 (indicating the South Carolina retail association does not support bans on single use bags), *with* Wetmore, *supra* note 110 (noting the Folly Association of Businesses' support of the City of Folly Beach's ban on single-use plastic bags).

193. *Compare supra* Section III.B, *with* City of Charleston, *supra* note 69.

voted for, shifting the power from county seats and giving it back to the capitol. Local governments can generate creative approaches democracy, community building, and policy innovation. If state lawmakers cannot decide how to resolve an issue and its resulting impacts, like plastic bags littering the state, then they should allow local governments that struggle with the issue to adopt and implement their own solutions.

Table 1: Comparison of Plastic Bag Banning Ordinances in South Carolina	
County or Municipality	County
Beaufort County <sup>194</sup>	Beaufort
Purpose and Intent	To improve the environment.
Single-Use Plastic Bag	A bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases, which is made predominantly of plastic derived from either petroleum or a biologically based source. “Single-use plastic carryout bag” includes compostable and biodegradable bags but does not include reusable carryout bags.
Reusable Bag	(1) Displays language on the bag’s exterior describing the bag’s ability to be reused and recycled; (2) has a handle; handles are not required for carryout bags constructed out of recyclable paper with a height of less than 14 inches and width of less than eight inches; and (3) is constructed out of: cloth, other washable fabric, or other durable materials, whether woven or non-woven; or recyclable plastic, with a minimum thickness of 2.25 mil.
Single-Use Plastic Bag Regulations	No person may provide single-use plastic carryout bags at any county facility, county-sponsored event, or any event held on county property. No business establishment within the unincorporated county limits may provide single use plastic carryout bags to its customers. Business establishments within the county limits are strongly encouraged to provide prominently displayed signage advising customers of the benefit of reducing, reusing and recycling and promoting the use of reusable carryout bags and recyclable paper carryout bags by customers.
Other Regulations?	None.

194. BEAUFORT COUNTY, S.C., CODE §§ 6-38-161 to -66 (2019).

Plastic Bag Exceptions or Exemptions	Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste; bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities; bags of any type that the customer bring to the store for their own use for carrying away from the store goods that are not placed in a bag provided by the store; and bags used by a customer inside a business establishment to: contain bulk items, such as produce, nuts, grains, candy, or small hardware items; contain or wrap frozen foods, meat, or fish, whether or not prepackaged; contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or contain unwrapped prepared foods or bakery goods.												
Penalties	<p>Any business establishment that violates or fails to comply with the ban after a written warning notice has been issued for that violation shall be deemed guilty of a misdemeanor. Penalty for the misdemeanor will not to exceed \$100 for a first violation; \$200 for a second violation within any 12-month period; and \$500 for each additional violation within any 12-month period. Each day that a violation continues constitutes a separate offense.</p> <p>Repeated violations by a person who owns, manages, operates, is a business agent of, or otherwise controls a business establishment may result in the suspension or revocation of the business license issued to the premises on which the violations occurred. A business license applicant must pay all of the fine for violations of the ordinance before a business license is issued or renewed.</p> <p>Violation of this chapter is a public nuisance, which may be abated by restraining order, preliminary and permanent injunction, or other means provided for by law, and action may be taken to recover the costs of the nuisance abatement.</p>												
<table border="1"> <thead> <tr> <th>The City of Beaufort<sup>195</sup></th><th>Beaufort</th></tr> </thead> <tbody> <tr> <td>Purpose and Intent</td><td>To improve the environment.</td></tr> <tr> <td>Single-Use Plastic Bag</td><td>Same as Beaufort County.</td></tr> <tr> <td>Reusable Bag</td><td>Same as Beaufort County.</td></tr> <tr> <td>Single-Use Plastic Bag Regulations</td><td>Same as Beaufort County but uses “city” instead of “county.”</td></tr> <tr> <td>Other Regulations?</td><td>None.</td></tr> </tbody> </table>		The City of Beaufort <sup>195</sup>	Beaufort	Purpose and Intent	To improve the environment.	Single-Use Plastic Bag	Same as Beaufort County.	Reusable Bag	Same as Beaufort County.	Single-Use Plastic Bag Regulations	Same as Beaufort County but uses “city” instead of “county.”	Other Regulations?	None.
The City of Beaufort <sup>195</sup>	Beaufort												
Purpose and Intent	To improve the environment.												
Single-Use Plastic Bag	Same as Beaufort County.												
Reusable Bag	Same as Beaufort County.												
Single-Use Plastic Bag Regulations	Same as Beaufort County but uses “city” instead of “county.”												
Other Regulations?	None.												

195. CITY OF BEAUFORT, S.C., CODE §§ 6.6001–.6006 (2019).

Plastic Bag Exceptions or Exemptions	Same as Beaufort County.	
Penalties	Same as Beaufort County.	
The Town of Bluffton <sup>196</sup>		Beaufort
Purpose and Intent	To improve the environment.	
Single-Use Plastic Bag	Same as Beaufort County.	
Reusable Bag	Same as Beaufort County.	
Single-Use Plastic Bag Regulations	Similar to Beaufort County but uses “town” instead of “county.” Also encourages business establishments provide or make available reusable carryout bags or recyclable paper bags.	
Other Regulations?	None.	
Plastic Bag Exceptions or Exemptions	Same as Beaufort County.	
Penalties	Same as Beaufort County.	
The City of Beaufort <sup>197</sup>		Beaufort
Purpose and Intent	To improve the environment.	
Single-Use Plastic Bag	Same as Beaufort County.	
Reusable Bag	Same as Beaufort County.	
Single-Use Plastic Bag Regulations	Same as Beaufort County but uses “town” instead of “county.”	
Other Regulations?	None.	
Plastic Bag Exceptions or Exemptions	Same as Beaufort County.	
Penalties	Same as Beaufort County.	

196. THE CODE OF ORDINANCES FOR THE TOWN OF BLUFFTON, S.C., art. VI, §§ 12-151 to -155 (2019).

197. CITY OF BEAUFORT, S.C., CODE §§ 6.6001–.6006 (2019).

The Town of Hilton Head <sup>198</sup>		Beaufort
Purpose and Intent	To improve the environment.	
Single-Use Plastic Bag	Same as Beaufort County.	
Reusable Bag	Same as Beaufort County.	
Single-Use Plastic Bag Regulations	Same as Beaufort County but uses “town” instead of “county.”	
Other Regulations?	None.	
Plastic Bag Exceptions or Exemptions	Same as Beaufort County.	
Penalties	Same as Beaufort County.	
The Town of Port Royal <sup>199</sup>		Beaufort
Purpose and Intent	To improve the environment.	
Single-Use Plastic Bag	Same as Beaufort County.	
Reusable Bag	Same as Beaufort County.	
Single-Use Plastic Bag Regulations	Same as Beaufort County.	
Other Regulations?	None.	
Plastic Bag Exceptions or Exemptions	Same as Beaufort County.	
Penalties	Same as Beaufort County.	
The City of Charleston <sup>200</sup>		Charleston
Purpose and Intent	To protect the City of Charleston’s natural environment, its economy, and the health of its citizens.	

198. THE MUN. CODE OF THE TOWN OF HILTON HEAD ISLAND, S.C., § 9-4-10 to -50 (2019).

199. CODE OF ORDINANCES OF THE TOWN OF PORT ROYAL, S.C., art. IV, § 10.9 (2019).

200. CODE OF THE CITY OF CHARLESTON, S.C., art. V, §§ 14-53 to -58 (2019).

Single-Use Plastic Bag	Same as the first sentence of Beaufort County's definition.
Reusable Bag	Similar to Beaufort County, but if the bag is made out of recyclable plastic the minimum thickness is 4.0 mils. Also, to fit the definition bags must have handles, be capable of being cleaned and disinfected, and have a minimum lifetime of 125 uses, meaning the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet.
Single-Use Plastic Bag Regulations	Same as Beaufort County but uses "city" instead of "county."
Other Regulations?	Yes, the ordinance also regulates the distribution of polystyrene/plastic foam products.
Plastic Bag Exceptions or Exemptions	Similar to Charleston County. Individual businesses may submit a request for an exemption from the ordinance to the City's Director of Public Service, or the Director's designee.
Penalties	Similar to Beaufort County. The differences are the ordinance specifies the livability and tourism department has primary responsibility for enforcement of the article and the amount of the fines. Maximum fines for violations after a written warning within a 12-month period are \$200 for a first violation, \$350 for a second violation, and \$500 for each additional violation.
Charleston County <sup>201</sup>	
Purpose and Intent	To ban the use of single use plastic carryout bags for distribution and use, ban the use and distribution of plastic straws, and ban the distribution of polystyrene/plastic foam products.
Single-Use Plastic Bag	A plastic bag, made predominantly from light weight plastic derived from petroleum or other biologically based sources, provided by a business establishment to a customer at the point of sale for the purpose of carrying, transporting, and storing the purchased goods or products.
Reusable Bag	Similar to Beaufort County, but if the bag is made of recyclable plastic, the minimum thickness is 4 mil.
Single-Use Plastic Bag Regulations	Same as Beaufort County.
Other Regulations?	Yes, the ordinance regulates the distribution of polystyrene/plastic foam products and the distribution of disposable food service ware.

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201. CHARLESTON COUNTY, S.C., CODE art. V, § 7.5-141 to -146 (2019).



Plastic Bag Exceptions or Exemptions	Similar to Beaufort County. Also exempts bags used by a non-profit organization or other hunger relief charity to distribute food, grocery products, clothing, or other household items and exempts all entities operating in the county during emergency situations. Individual businesses may submit a request for an exemption from the ordinance to the County Planning Commission.
Penalties	Similar to Beaufort County. The difference is the ordinance specifies the county sheriff's office has the primary responsibility of enforcement and any county enforcement official has secondary responsibility.
The City of Folly Beach <sup>202</sup>	
Purpose and Intent	To improve the environment.
Single-Use Plastic Bag	Same as Beaufort County.
Reusable Bag	Same as Beaufort County.
Single-Use Plastic Bag Regulations	Similar to Beaufort County. The ordinance uses "city" instead of "county" and also requires business establishments provide or make available reusable carryout bags or recyclable paper bags.
Other Regulations?	Yes, the ordinance also regulates the distribution of polystyrene/plastic foam products.
Plastic Bag Exceptions or Exemptions	Same as Beaufort County.
Penalties	Same as Beaufort County.
The City of Isle of Palms <sup>203</sup>	
Purpose and Intent	To improve the environment.
Single-Use Plastic Bag	A carryout bag that is not a reusable carryout bag.
Reusable Bag	Same as Beaufort County.
Single-Use Plastic Bag Regulations	Similar to Beaufort County. The ordinance uses "city" instead of "county." The main difference is the ordinance does not have a provision strongly encouraging signage.
Other Regulations?	Yes, the ordinance regulates the distribution of polystyrene/plastic foam products and the distribution of disposable food service ware.

202. FOLLY BEACH, S.C., CODE OF ORDINANCES, §§ 112.01-112.05, 112.99 (2019).

203. THE CODE OF THE CITY OF ISLE OF PALMS, S.C., § 3-4-1 to -9 (2019).

Plastic Bag Exceptions or Exemptions	Similar to Charleston County; however, the ordinance does not provide for businesses to submit individual requests for exemption.
Penalties	Similar to Beaufort County. A main difference is the ordinance specifies the police department has primary responsibility for written warnings and enforcement. The fine amounts for violations within a 12-month period are the same; however, each day a violation continues constitutes a separate offense.
<div> <div>The Town of James Island<sup>204</sup></div> <div>Charleston</div> </div>	
Purpose and Intent	No purpose stated.
Single-Use Plastic Bag	Same as the City of Charleston.
Reusable Bag	Same as the City of Charleston.
Single-Use Plastic Bag Regulations	Similar to Beaufort County. The ordinance uses “city” instead of “county.” The main difference is the ordinance does not have a provision strongly encouraging signage.
Other Regulations?	Yes, the ordinance regulates the distribution of polystyrene/plastic foam products and the distribution of disposable food service ware.
Plastic Bag Exceptions or Exemptions	Similar to Charleston County. Individual businesses may submit a request for an exemption from the ordinance to the Town’s Administrator, or the Administrator’s designee.
Penalties	Similar to the City of Charleston. The difference is a Code Enforcement Officer has the primary responsibility of enforcement.
<div> <div>The Town of Kiawah<sup>205</sup></div> <div>Charleston</div> </div>	
Purpose and Intent	No purpose stated.
Single-Use Plastic Bag	Same as Charleston County.
Reusable Bag	Similar to the City of Charleston, but the ordinance does not elaborate on what constitutes 125 uses.
Single-Use Plastic Bag Regulations	Similar to Beaufort County. The ordinance uses “town” instead of county and also prohibits the possession of single-use plastic carryout bags on the beach.
Other Regulations?	Yes, the ordinance regulates the distribution of polystyrene/plastic foam products and the distribution of disposable food service ware.

204. JAMES ISLAND, S.C., CODE OF ORDINANCES, tit., § 112.01 (2019).

205. THE MUNICIPAL CODE OF THE TOWN OF KIAWAH ISLAND, SOUTH CAROLINA, § 14-401 to -405.

Plastic Bag Exceptions or Exemptions	Similar to Charleston County. Individual businesses may submit a request for an exemption from the ordinance to the Chairman of the Environmental Committee.
Penalties	Similar to Beaufort County. Significant differences are that there is no written warning, each violation is subject to a maximum \$500 fine, a violation may lead to a maximum imprisonment of 30 days upon conviction, and each day of violation is considered a separate offense.
<div> <div>The Town of Mount Pleasant<sup>206</sup></div> <div>Charleston</div> </div>	
Purpose and Intent	No purpose stated.
Single-Use Plastic Bag	Same as the City of Charleston.
Reusable Bag	Same as the City of Charleston.
Single-Use Plastic Bag Regulations	Same as the City of Isle of Palms but uses “town” instead of “city.”
Other Regulations?	Yes, the ordinance regulates the distribution of polystyrene/plastic foam products and the distribution of disposable food service ware.
Plastic Bag Exceptions or Exemptions	Similar to Charleston County. Individual businesses may submit a request for an exemption from the ordinance to the Public Services Committee.
Penalties	Similar to the City of Charleston. The difference is the Police Department has the primary responsibility of enforcement.
<div> <div>The Town of Sullivan’s Island<sup>207</sup></div> <div>Charleston</div> </div>	
Purpose and Intent	To improve the environment.
Single-Use Plastic Bag	Same as Beaufort County.
Reusable Bag	Same as Beaufort County.
Single-Use Plastic Bag Regulations	Similar to Beaufort County. The ordinance uses “town” instead of county and also prohibits the possession of single-use plastic carryout bags on the beach.
Other Regulations?	Yes, the ordinance regulates the distribution of polystyrene/plastic foam products and the distribution of disposable food service ware.
Plastic Bag Exceptions or Exemptions	Similar to Charleston County. Individual businesses may submit a request for an exemption from the ordinance to the Town Council.

206. MT. PLEASANT, S.C., CODE OF ORDINANCES, tit. V, §§ 53.01-.07 and 53.99 (2019).

207. SULLIVAN’S ISLAND TOWN CODE, § 14-36 (2018).

Penalties	Same as the City of Isle of Palms.	
The Town of Edisto Beach <sup>208</sup>		Colleton
Purpose and Intent	To improve the environment.	
Single-Use Plastic Bag	Same as Beaufort County.	
Reusable Bag	Same as Beaufort County.	
Single-Use Plastic Bag Regulations	Similar to Beaufort County. The ordinance uses “town” instead of “county.” The difference is the ordinance also provides a business may provide or sell reusable carry-out bags, and the ordinance does not include anything encouraging signage.	
Other Regulations?	Yes, the ordinance regulates the distribution of polystyrene/plastic foam products and the distribution of disposable food service ware.	
Plastic Bag Exceptions or Exemptions	Similar to Charleston County. Individual businesses may submit a request for an exemption from the ordinance to the Town Council.	
Penalties	Similar to Beaufort County except for the fining structure. Within a 12-month period, the first violation is considered a warning, the second violation results in a \$50 fine, and each subsequent violation results in a \$100 fine. Each day of violation is considered a separate offense.	
The City of North Myrtle Beach <sup>209</sup>		Horry
Purpose and Intent	No purpose stated.	
Single-Use Plastic Bag	Similar to Beaufort County. The ordinance also provides definition includes bags provided to a customer to transport items provided free of charge, including but not limited to samples and informational materials.	
Reusable Bag	A bag with handles that is specifically designed and manufactured for multiple reuse and made of durable material specifically designed for and provided to consumers with the intention of multiple, long-term use and does not include any film plastic bags.	
Single-Use Plastic Bag Regulations	No retail establishment shall provide to any customer a single-use carryout plastic bag.	
Other Regulations?	None.	

208. CODE OF ORDINANCES, TOWN OF EDISTO BEACH, S.C., art. IV, §§ 38-130 to 137 (2019).

209. CODE OF ORDINANCES, CITY OF NORTH MYRTLE BEACH, S.C., art. VIII, §12-111 to 114 (2019).

Plastic Bag Exceptions or Exemptions	Similar to Beaufort County. The main difference is that for a bag provided to a customer to be exempt, the bag must not have handles.
Penalties	Violations are punishable by a maximum fine of \$500, imprisonment for a period not exceeding 30 days, or both.
The Town of Surfside Beach <sup>210</sup>	
Purpose and Intent	To improve the environment.
Single-Use Plastic Bag	Same as the City of Isle of Palms.
Reusable Bag	Similar to Beaufort County. The difference are that the ordinance does not provide whether bags should have handles and includes bags constructed of biodegradable materials.
Single-Use Plastic Bag Regulations	Similar to the City of Folly Beach but uses “town” instead of “city.”
Other Regulations?	None.
Plastic Bag Exceptions or Exemptions	Similar to Beaufort County. The ordinance does not exempt bags provided by pharmacies and veterinarians. The ordinance does exempt litter bags provided by the town.
Penalties	Same as the City of Isle of Palms.
The City of Camden <sup>211</sup>	
Purpose and Intent	To improve the environment.
Single-Use Plastic Bag	Same as Beaufort County.
Reusable Bag	Same as Beaufort County.
Single-Use Plastic Bag Regulations	Similar to Beaufort County. The ordinance uses “city” instead of “county.” The difference is the ordinance also provides a business may provide or sell reusable carry-out bags.
Other Regulations?	None.

210. THE CODE OF ORDINANCES OF THE TOWN OF SURFSIDE BEACH, S.C., art. IV, §§ 7-180 to -185 (2019).

211. CAMDEN, S.C., CODE OF ORDINANCES, tit. IX, §§ 103.01-04, 103.99 (2019).

Plastic Bag Exceptions or Exemptions	Same as Beaufort County.
Penalties	Similar to Beaufort County. The difference is each day of violation is considered a separate offense.
<div> <div>The Town of Arcadia Lakes<sup>212</sup></div> <div>Richland</div> </div>	
Purpose and Intent	To improve the environment.
Single-Use Plastic Bag	Similar to Beaufort County. The difference is the definition does not include compostable bags.
Reusable Bag	Same as Beaufort County.
Single-Use Plastic Bag Regulations	Similar to Beaufort County. The ordinance uses “town” instead of “county” and also requires business establishments provide or make available reusable carryout bags, recyclable paper bags, or compostable bags.
Other Regulations?	Yes, the ordinance regulates the distribution of polystyrene/plastic foam products.
Plastic Bag Exceptions or Exemptions	Same as Beaufort County.
Penalties	Similar to Beaufort County. The differences are the ordinance specifies the written notice is given by the Town Clerk after consultation with the Town Attorney and each day of violation is considered a separate offense.

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212. THE ARCADIA LAKES TOWN CODE, S.C., art. VI, §§ 6.601-607 (2019).

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