

**CITY OF EDINA**  
**PLASTIC BAG WORKING GROUP REPORT & RECOMMENDATIONS**  
**DECEMBER 2022**

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## INTRODUCTION & EXECUTIVE SUMMARY

Thousands of plastic bags are used in the United States every second. Most curbside collection programs don't accept plastic bags, and only 10% or less are recycled.<sup>1</sup> Plastic bag production and pollution pose a threat to our land, water, and air on a local, regional, and global scale.

Concerned about the serious and growing environmental impacts of plastic waste, in 2017 the Edina Energy and Environment Commission delivered a report to the Edina City Council on the advisability of regulating the use of single use plastic bags (SUPB) in the City. Although the Council initially postponed action on the 2017 EEC report, it approved the creation of a Plastic Bag Working Group (PBWG) — composed of members of the EEC and City residents — in early 2021. The charge of the PBWG is to build on the initial EEC report from 2017, evaluate the pros and cons of plastic bag policy options, and make a recommendation to Council in early 2023.

### **PBWG Recommendation: Establish a small fee for all merchant carryout bags.**

The PBWG recommends the City of Edina adopt an ordinance requiring businesses charge a minimum \$0.05 bag fee for all merchant carryout bags (paper, compostable, plastic of all thicknesses, and reusable) and coordinate a comprehensive outreach campaign to educate businesses and patrons about the new requirement. This non-taxable fee would be collected and retained by merchants to be used at their discretion. The recommendation complies with a 2017 state statute preempting an outright ban on plastic bags.<sup>2</sup>

This recommendation is informed by Edina and Twin Cities metro business feedback and the research outlined in this report. It also meets the following goals and is consistent with the City Council's approval in December 2021 of the Edina Climate Action Plan (CAP):

- **Reduce the use of fossil fuels and greenhouse gas emissions.** The City is committed to supporting the Hennepin County and State of Minnesota greenhouse gas emission goals. These goals are to be compatible with the 2015 Paris Agreement and shall target a reduction in City operations and community-wide emissions of 45% below 2019 levels by 2030 and achieve net zero emissions by 2050.<sup>3</sup>
- **Meet City goals as defined in the Climate Action Plan.<sup>4</sup>**
  - Strategy WM 1: Decrease total per capita municipal solid waste handled, 5% by 2030.
  - Action WM 1-5 Eliminate petroleum-based, single-use products through phasing out the use of single-use plastics, including plastic bags, by 2025.
- **Reduce negative impacts on health and the environment.** All merchant carry out bags, regardless of composition, produce pollution that affects our air, land, and water resources. Reducing our reliance on single-use bags is one way we strive to lessen those negative effects and the impacts of climate change.

- **Inspire merchant and consumer behavior change.** Behavior change is difficult but not impossible. Offering and implementing effective strategies that assist both customers and merchants in making successful, long-lasting change is essential.

The remainder of this report explains the rationale and supporting research for the PBWG recommendation. It is organized in four parts:

First, the report examines the adverse environmental impacts of all plastic bags, as well as the impacts of other bags such as paper bags, compostable bags, and reusable bags.

Second, the report summarizes the actions taken by other governmental entities in Minnesota and elsewhere to address this issue.

Third, the report identifies several actions that may help to address this issue and discusses which actions are viable for our City.

Finally, the report explains our recommendation to establish a merchant carryout bag fee along with supporting efforts and tactics for reaching CAP goals.

## **1. THE ENVIRONMENTAL IMPACT OF MERCHANT CARRYOUT BAGS**

### **Plastic Bags Harm Both Our Land, Water, and Air Resources**

Plastic doesn't biodegrade. Instead, it breaks up into smaller pieces called microplastics. These tiny plastic pieces less than 5 mm in size accumulate in the environment and have devastating consequences on wildlife and the natural environment. Microplastics are mistaken for food and ingested by fish and other wildlife, and plastic pollution is a pervasive issue for many communities along the river.<sup>5</sup> While plastic bag litter is not an overwhelming issue for the City of Edina, the City is part of both the Nile Mile Creek and Minnehaha Creek watersheds; those creeks ultimately flow into the Mississippi River, and plastic waste and other litter that travels through storm drains will ultimately end up in there.

As the second longest river in North America, the Mississippi River is an essential inland waterway for commerce, contributing \$400 billion a year to the U.S. economy. It also provides drinking water to more than 20 million people in 50 cities in 10 states and provides habitat for a wide range of plant and animal species.<sup>6</sup> As it makes its 2,320-mile-long journey from headwaters in northern Minnesota to the Gulf of Mexico, it is a major conduit for plastic waste — both solid and in the form of microplastics — and other litter to reach the ocean. Every year oceans take in an estimated 5 million to 13 million tons of plastic from land-based sources, and on our current trajectory there will be more plastic than fish (by weight) in the oceans by 2050, pushing some marine species to the brink of extinction.<sup>7</sup>

As destructive as microplastics are to our coastal areas and oceans, emerging research suggests that terrestrial microplastic pollution is an even greater issue. Plastics in landfills, including bags, can take up to 1,000 years to decompose. In doing so, they leach potentially toxic substances into soil, sediments, and freshwater causing harm to both wildlife and humans.<sup>8</sup>

Plastic bags are made from fossil fuels, specifically ethylene from natural gas, and fossil fuel extraction, transportation and refining is greenhouse gas intensive. According to a May 2019 report released by the Center for International Environmental Law, it is estimated that “12.5 to 13.5 million metric tons of carbon dioxide equivalent are emitted per year while extracting and transporting natural gas to create feedstocks for plastics in the United States.”<sup>9</sup> Although other merchant carry out bags, such as paper and compostable bags, do not use fossil fuels for their production, they still emit greenhouse gases in some quantity — or even more than plastic bags — during the various phases of their life cycle. Therefore, the PBWG recognizes the need to consider all types of merchant carryout bags in a bag ordinance, not only plastic, when striving to reduce greenhouse gas emissions.

### **Plastic Bags Are Rarely Recycled and Interfere with Recycling Equipment**

As mentioned in the opening paragraph of this report, less than 10% of plastic bags are recycled. A major reason for this low recycling rate is that plastic bags are not accepted in curbside recycling programs in the Twin Cities and in most programs around the country. Plastic — in its numerous types and forms — is expensive to collect and sort and it degrades after just a few uses.<sup>10</sup> However, a powerful and persuasive effort by the plastics industry coupled with years of public service announcements around the benefits of recycling lead many people to still try to include plastic bags and other soiled items in their regular recycling cans — a practice known as “wish-cycling.”

Republic, the City of Edina’s curbside recycling partner, states that “wish cycled ” items, including plastic bags and films, make up an average of 22% of the materials set out by consumers for recycling.<sup>11</sup> Plastic films like bags, bubble wrap, zip locks, newspaper and bread bags, outer wrapping, and produce bags cause wrapping and fouling of recycling and sorting equipment, which leads to unscheduled maintenance and line stoppage while repairs are made. Along with the costs of the downtime, which can run in the thousands of dollars annually, recycling facilities incur costs associated with running longer to process materials and a safety risk that comes along with repair work.

When plastic waste isn’t recycled, it ends up in waterways, landfills or incinerators, or as litter. The City of Edina has a contract with Waste Management which requires waste be brought to Hennepin Energy Recovery Center (HERC), a trash-to-energy incinerator. HERC, which operates adjacent to low-income communities of color and other incinerators like it, produce toxic air pollutants that have demonstrated links to asthma, lung disease, high blood pressure, and heart disease.<sup>12</sup> The PBWG argues strongly that plastic bag use in Edina is an environmental justice

issue for us and our neighbors in Minneapolis. We are interconnected; the actions we take have an impact beyond the boundaries of our City.

### **Evaluating the Environmental Impact of All Single-Use, Reusable Bags (Plastic, Paper, and Compostable) – Through Life Cycle Analysis**

While it might seem sufficient to focus on SUPBs alone, we know that even the most well-intentioned actions can have unintended, and sometimes negative, consequences. Edina businesses use many thousands of paper and plastic bags each month. The PBWG learned that two major grocery stores, Jerry's and Lunds/Byerlys at 50th and France use a significant number of paper and plastic bags each month, with big spikes during the holiday season. Jerry's averages 35,000 paper bags and 25,000 plastic bags each month, with a 10% increase during the November-December holiday period; Lunds/Byerlys averages 60,000 paper bags and 25,000 plastic bags per month, with an increase to 250,000 paper bags and 75,000 plastic bags during the November-December holiday period. Because the total number of paper and plastic bags used throughout Edina and other communities each year is so significant, it is important to consider Life Cycle Assessments (LCA) on plastic, paper, and reusable bags to evaluate their full environmental impact.

LCAs explore the environmental impacts throughout all stages of the product's life: from material extraction, manufacturing, transportation, utilization, recycling, and disposal. While results from these studies can vary depending on the location, parameters, or report sponsor, the most frequently cited LCAs have determined that creation, recycling, and disposal of paper *and* plastic, reusable and compostable bags all require significant resources and energy. Favoring one type of merchant bag over another does not necessarily result in the least impact on the environment.

Having examined several studies, the PBWG believes that a 2020 meta-analysis report from the United Nations which examined seven LCAs published in English since 2010 is an excellent resource for understanding the complexities associated with single use bags.

For example, paper bags that end up in landfills cause emissions of methane with high climate change effect, while plastic bags are relatively inert. Paper bags contribute less to the impacts of littering but in most cases have a larger impact on the climate, eutrophication and acidification, compared to SUPBs, unless the paper bags are reused multiple times, and/or are incinerated rather than deposited in landfills. On the other hand, incineration of used plastic bags affects the climate through emissions of fossil carbon dioxide (CO<sub>2</sub>), while the CO<sub>2</sub> emitted from incineration of paper bags is part of the natural carbon cycle.<sup>13</sup>

The UN report concluded that: "reducing environmental impacts of bags is not just about choosing, banning, recommending or prescribing specific materials or bags, but also about

changing consumer behavior to increase the reuse rate and to avoid littering. The shopping bag that has the least impact on the environment is the bag the consumer already has at home.”<sup>14</sup>

Environmental impact category in the life cycle of the bags						
	Climate change	Acidification	Eutrophication	Photochemical ozone	Land use change	Littering Potential
Conditions or other observations	<ul style="list-style-type: none"> <li>In the majority of reviewed studies, PE based plastic bags were found to have the lowest climate impact.</li> <li>Single use PE bags from recycled or bio-based materials were found to have a lower climate impact than their fossil PE alternative.</li> <li>Durable PP and reusable PE bags need to be reused 10-20 and 5-10 times, respectively before they can compete on the basis of climate change with single-use bags. This is due to their higher weight and the related material consumption.</li> <li>Paper bags can be better for the climate if produced in integrated mills using renewable energy and if bags are reused and recycled or incinerated. Forestry can affect the carbon stocks above and below ground. This effect can be considerable, potentially leading to a high climate impact or a climate benefit, depending on the forest management.</li> <li>Cotton bags need to be reused 50-150 times followed by incineration or recycling before their climate impact is comparable to single-use plastic bags.</li> </ul>	<ul style="list-style-type: none"> <li>While all reviewed studies assessed climate impact, the assessment for other impacts such as acidification, eutrophication and ozone related impacts varied between studies.</li> <li>For the studies that assessed acidification, eutrophication and ozone related impacts, fossil PE-based alternatives (HDPE/LDPE) were found to be the best option. There is no clear 'worse' alternative, though the studies point towards bio-based alternatives.</li> <li>Bio-based LDPE was found to perform worse than fossil LDPE.</li> <li>For durable and reusable LDPE and PP bags, as well as cotton and paper bags the same findings as for climate change apply: whether they can compete with the single use alternatives depends on the number of reuses.</li> <li>Starch-based bags were found to have no environmental benefit compared to conventional single use bags.</li> </ul>			<ul style="list-style-type: none"> <li>Though not assessed in detail, it is important to consider that bio-based and paper bags require a certain amount of land for feedstock cultivation.</li> <li>In addition to land use, there is also the possibility of land use change which can lead to impacts on biodiversity, etc.</li> </ul>	<ul style="list-style-type: none"> <li>There are several impacts of littering: visual impacts, physical impacts on animals, and the impacts of microplastics.</li> <li>The assessment of littering potential in LCA is still under development. A minority of the reviewed studies addresses impacts of littering and even these account for visual impacts only.</li> <li>Littering potential is a challenge for non-degradable bags (fossil- and bio-based) and for bags labeled as degradable.</li> <li>Bio-degradable plastics should not just be left in the environment, handling in managed sites is needed.</li> <li>The degradation rate depends on the local conditions. Exposure to UV light, availability of oxygen, temperature, and humidity influence the degradation process of degradable plastics, paper and cotton.</li> <li>Oxo-degradable plastics seem to only partially fragment, i.e. they leave residues behind.</li> </ul>

Figure 1: Environmental Impact Category in the Life Cycle of the Bags.

Source: UN Environmental Programme Report "Single-use Plastic Bags and Their Alternatives: Recommendations from Life Cycle Assessments" (2020)

## 2. ACTIONS TAKEN BY GOVERNMENT ENTITIES IN MINNESOTA AND ELSEWHERE

While the City of Edina has not yet implemented a specific action addressing merchant carryout bags, the CAP calls for an elimination of petroleum-based, single-use products through phasing out the use of single-use plastics, including plastic bags, by 2025. Additionally, the Energy and Environment section of the City’s 2018 Comprehensive Plan, which was formally adopted by the City Council in August 2020, calls for not only intention around environmental sustainability but demonstrated action and results, including learning about environmental best practices and integrating those into action plans and educating the community about the environment and sustainability.<sup>15</sup> Targeting a reduction in merchant carry out bags through a City ordinance addresses these goals in same way that the green-to-go-packaging ordinance does.

Although the City has committed to phasing out SUPBs, Minnesota is one of 18 states that, as of 2021, have passed preemptive legislation restricting SUPB regulation. In contrast, eight states have banned plastic bags (Appendix B). As a result of the Minnesota state law preempting a ban, the PBWG requested the City of Edina’s attorneys address the impact of state preemption on several policy options we were considering to address plastic bags. The feasibility and legality of these options are discussed in Section 3 of this report, and the attorneys’ memorandum can be found in Appendix A.

In Minnesota, Minneapolis and Duluth have taken action to regulate bags. In Minneapolis, there is a \$0.05 fee on paper and plastic carryout bags and in Duluth there is a \$0.05 on plastic carryout bags.16 17

The PBWG consulted several Edina and Minneapolis merchants for feedback on bag regulation. Minneapolis merchants noted that most customers were fine with the five-cent fee for a bag, and in some cases would opt not to get a bag. There have not been any significant barriers for merchants to implement the ordinance. Because customers expect to be charged a fee at all stores in Minneapolis from chain grocery stores to locally owned retailers, most do not have a problem with it. Owners of businesses in Edina noted that while they might prefer a voluntary program, they understood the rationale behind an ordinance aimed at reducing single-use bags. Specific merchant feedback can be found in Appendix C.

Overwhelmingly, the towns and cities where SUPB bans or fees are in effect are located on the coasts or near large inland bodies of water. Proponents frequently cite litter and water resource protection in their rationale in support of regulation. That said, having encountered unintended consequences, some municipalities that previously enacted only SUPB bans or a hybrid ban on plastic bags with a fee for other merchant carryout bags (paper or compostable) are now exploring mandated fees for all merchant carryout bags. According to plasticbaglaws.org, best practices for bag regulation laws are those that have a fee mandated for all carryout bags as this addresses all bag types and is most effective at changing consumer and business behavior.18

The cities of Chicago and Evanston, both located along Lake Michigan in Illinois, recently evaluated the effectiveness of their efforts to address plastic bags.

A 2021 report “Skipping the Bag: The Intended and Unintended Consequences of Disposable Bag Regulation” explores two regulations in Chicago: a ban on plastic bags (which went into effect in 2015) and then, after the ban was repealed in 2017, a \$0.07 tax on all disposable bags (paper and plastic of all thicknesses). The tax went into effect one month after the repeal. The authors’ analysis indicates that the tax was significantly more effective than the ban at reducing disposable bag use: during the first year of the tax, Chicagoans reduced their disposable bag usage from 2.3 bags per trip to 1.8 bags per trip —a nearly 28% difference.19



More recently, the City of Evanston has decided to evaluate its ban on plastic bags. The current ordinance, approved in 2014, prohibits stores 10,000 square feet or larger from distributing disposable plastic bags to customers. However, as of June 2022, the City is exploring an option to replace that ordinance with a \$0.10 tax on all point-of-sale bags, including paper and reusable ones. According to Alison Leipsiger, Evanston’s Policy Coordinator, and Brian Zimmerman, the city’s Solid Waste Coordinator: “Bag taxes have been shown to curb behavior while allowing enough flexibility for individuals who do, at the moment, need a plastic bag. This proposed bag tax will help generate a greater behavior change, as was seen in Chicago after implementing a bag tax, will address more point-of-sale types of bags, and expand the number of participating retailers.”20

Several other cities have seen compelling results after enacting similar bag regulation legislation, including San Jose, CA (reusable bag use increased from 4% to 62% and bag litter decreased 59% on streets, 60% in creeks and rivers, and 89% in storm drains)21; Washington, D.C. (60% reduction in single-use carryout bag consumption in the first year)22, and Seattle, WA (48% reduction of plastic bags in residential waste and 76% reduction of plastic bags in commercial waste).23

On a global scale, according to a 2021 report from the UN, 77 countries have passed some sort of full or partial ban on plastic bags. See Figure 2. More recently both China and Canada have announced plans to significantly reduce single-use plastics. By the end of 2022, all non-degradable bags will be banned in China, and the manufacture and import of single-use plastics will be banned in Canada.24 25

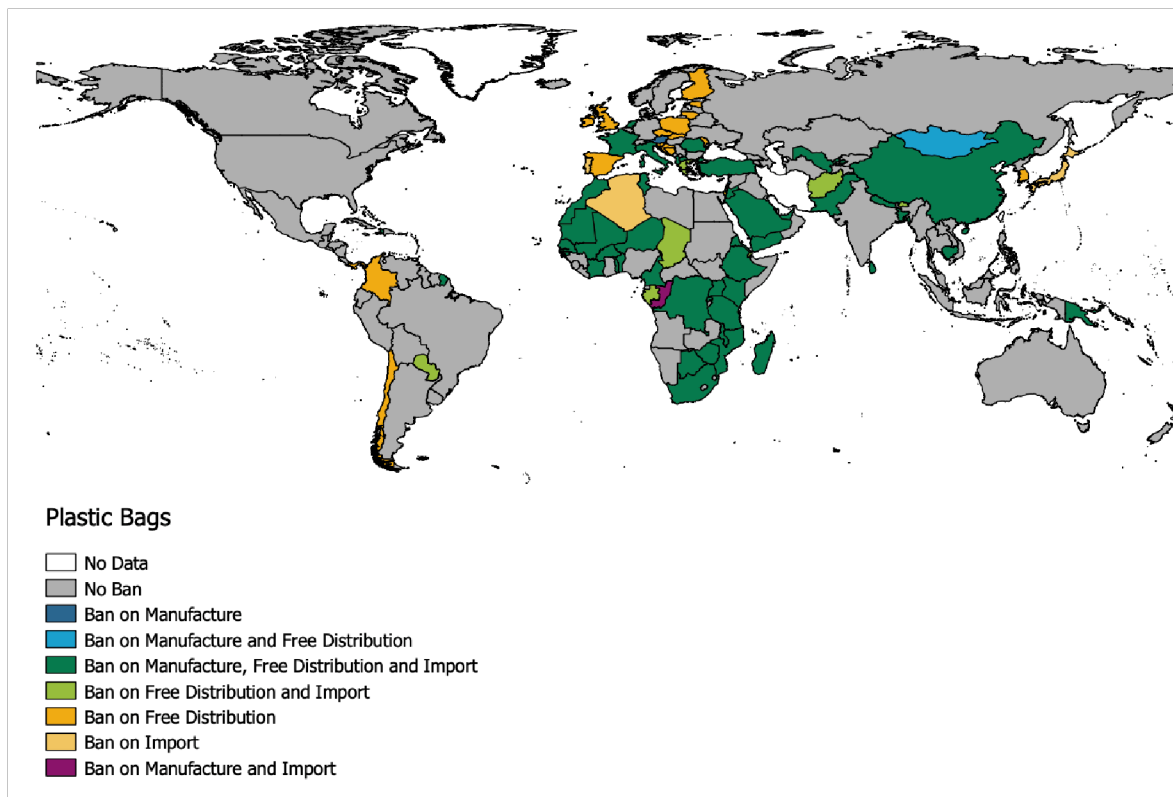


Figure 2: Global Overview of Countries with Manufacture, Free Distribution, and Importation of Plastic Bags. Source: UN Environmental Programme Report “Legal Limits on Single Use Plastics and Microplastics: A Global Review of National Laws and Regulations (2021)”

### 3. STRATEGIES FOR REDUCING MERCHANT CARRYOUT BAGS

When it’s easy to access new bags, regardless of their composition, consumers are not likely to change their behavior. And yet we know a reduction in consumption of materials that frequently get discarded, like single-use paper, plastic, and reusable bags, means less energy being used to make those materials. In fact, the greatest environmental benefit occurs when we displace the need to extract virgin materials for production or the need to produce new products at all.<sup>26</sup>

The Minnesota Waste Management Act established criteria for managing solid waste. The waste management hierarchy prioritizes waste reduction and reuse before all other waste

management strategies. Placing a fee on all carry out merchant bags is consistent with the goals of the waste hierarchy and the goals of bag legislation.27

The PBWG evaluated the following strategies as possible options to reduce single use bag consumption, taking into consideration the preemptive legislation at the State level as well as the goals set out in the City CAP adopted in December 2021. These strategies are not mutually exclusive. No single action will fix our existing environmental challenges; we need action at multiple levels. The strategies include:

- 1. A ban on single-use plastic bags.** As noted earlier, eight states currently have some sort of plastic bag ban in effect. Although Minnesota state law currently prohibits local government bans on single use plastic or paper bags, the PBWG believes it is worthwhile to include language in any ordinance that would allow for a complete ban on SUPB and maintain a fee for other types of merchant carryout bags, such as paper, should the state law change sometime in the future.
- 2. A fee for all merchant carryout bags.** Charging a modest fee for merchant carryout bags is an effective way to lessen reliance on them — a concept known as loss aversion in cognitive psychology, decision theory, and behavioral economics; the painful experience of loss is more effective at changing habits than a positive gain. People are less eager to pay for something they see as valueless, and data from cities across the U.S. and internationally support this claim. 28 29
- 3. Ban on single-use plastic bags and fee for other merchant carryout bags.** Known as “second generation” bag laws, this strategy combines both banning thin plastic bags and placing fees on all other carryout bags (paper, reusable, compostable). After straight plastic bag bans failed to result in the desired consumer behavioral change (customers bringing in their own bags), cities kept the ban on thin plastic bags and added a fee to all other carryout bags.
- 4. Educational “bring your own bag” campaigns, credits, and incentives.** Educational initiatives aimed at voluntary reduction of disposable bags can drive customer behavior by raising awareness of the environmental, equity, and economic impacts associated with merchant carryout bags. While voluntary “bring your own bag” initiatives have an important role in educating, promoting, and encouraging the reduction of single use bags, they are not as effective in reducing single use bags as a fee. Some stores already have programs in place, and these should continue to be pursued and expanded alongside other reduction actions.

The PBWG also sees an opportunity for a “borrow a bag” or “boomerang bag” initiative modeled after the Don’t Waste Durham initiative which aims to make free and equitable access to reusable bags a city-wide norm.<sup>30</sup>

- 5. A recycling bag program to decrease use of bags.** Some towns and cities require businesses and/or bag manufacturers to provide customers with options for plastic bag recycling. Recycling requirements can be standalone or coupled with a bag ban or fee to increase the effectiveness of merchant carryout bag reduction options. Recycling programs still come with costs associated with energy and resources used to manufacture and transport bags. Also, as noted earlier, only about 10% of plastic bags in circulation are actually recycled. Proper disposal and recycling of SUPBs is important, and there are ways to make customers more aware of opportunities through programs like [plasticfilmrecycling.org](http://plasticfilmrecycling.org), TerraCycle, Ridwell, and Hennepin County Green Recycling. However, the PBWG suggests that greater emphasis be spent on lessening consumption of merchant carryout bags in the first place.

#### 4. CONCLUSION AND RECOMMENDATIONS

Our City strives to be a community where all are welcome and we are a productive and collaborative partner to neighboring towns and cities. The PBWG believes that based on the City’s expressed leadership in the area of sustainability, the goals set out in the CAP, the City’s Comprehensive Plan, the recent adoption of the Green-to-Go packaging ordinance, and the PBWG’s 9 month-long effort to research the pros and cons of bag regulation, this is a moment to take action on all merchant carry out bags, regardless of their composition.

Edina’s CAP notes “Continuing to establish policies and operational refinements to advance meaningful landfill diversion and beneficial use of waste streams represents a significant environmental opportunity for Edina.” Because deciding which bag is better for the environment is not as simple as choosing, banning, recommending or prescribing specific materials or bags, we recommend not favoring any one particular type of merchant carryout bag. Rather, we should focus our efforts on reduction of all merchant carryout bags and reuse and proper recycling of those that are in circulation.

It is the PBWG’s recommendation that the City of Edina adopt an ordinance aimed at reducing the number of merchant carryout bags used by customers and businesses. This action will reduce green house gases resource use, waste and litter. Other positive impacts include paving the way for other waste reduction measures, increasing awareness and prompting customers and businesses to take direct action. In addition, Edina further demonstrates its commitment to being a leader in the area of environmental sustainability and justice.

While lessening our consumption of merchant carryout bags will not solve all environmental problems, it is a significant step we can take to protect our environment and minimize impacts to human health. Our recommendations are as follows:

**1. Assess a Modest Fee for all Merchant Carryout Bags to Lessen Reliance on Those Bags and Incentivize a Low-Waste Lifestyle.**

We strongly recommend a minimum \$0.05 bag fee for all merchant carryout bags (paper, compostable, and plastic of all thicknesses), with limited exceptions. The fee would be collected and retained by the retailer, who can apply it to cover the cost of the bags, used for other expenses, such as green-to-go packaging, or a reusable bag program, or donated to charity. The fee would not be taxable.

Although PBWG recognizes the rationale behind some bag exemptions such as prescription drug bags, produce bags, and dry cleaner bags, we believe there should be few exemptions for businesses - as long as a business has a point of sale, there should not be an exemption. We also recommend that the ordinance exempt anyone with a voucher or electronic benefit card issued under the Women, Infants and Children (WIC) or Temporary Assistance to Needy Families (TANF) support programs, or the federal Supplemental Nutrition Assistance Program (SNAP, also known as Basic Food), or a recognized Minnesota food assistance program. For a recommended exemption list compared with Minneapolis please see Appendix E.

We also recommend that enforcement of this ordinance rely on voluntary compliance. Where there is slow or no compliance, merchants will feel social pushback from consumers who expect Edina retailers to abide by ordinances that support the Climate Action Plan and the environmental goals of the community. Similar policies, such as compostable leaf bags and no-smoking policies, have proven to be self-enforcing as customers embrace the change over time. The PBWG appreciates the effect the current economic climate has on some residents and shoppers in Edina and recommends that several months of robust community and business engagement and education precede implementation of a fee for merchant carryout bags.

**2. Create a Robust Education and Outreach Program and Incentives to Develop Low-Waste Habits.**

If we all work to implement changes in our consumption, we can create a ripple effect that has a positive impact reaching beyond our community. Our research and analysis of merchant carryout bag regulation across the U.S. and globally leads us to the conclusion that the City of Edina needs to take steps to drastically reduce consumer and business reliance on merchant carryout bags and plastic packaging of any kind.

We envision a bold, visible promotional and educational campaign to generate awareness before and after the ordinance takes effect with extensions to other CAP initiatives. While City resources will be needed to develop and implement materials related to such a marketing campaign, there are many excellent resources and campaigns already in existence; some of those may be a model for Edina, and volunteers and commissioners should be leveraged to do research and make recommendations to staff. Please see Appendix F for preliminary research and suggestions offered by the PBWG.

Another component in the outreach effort should be the development of programs that allow customers to take and return reusable bags from businesses and other points around the City to create an ongoing cycle of use. Such a “borrow a bag” or “boomerang bag” program would help ease the economic burden that some consumers might experience from a fee on merchant carryout bags. It is worth exploring how merchants that offer these types of programs might be recognized for their efforts. Finally, while we recommend that stores continue with or establish in-store recycling programs that provide opportunities for consumers to return clean plastic bags for recycling, we would prioritize reduction strategies.

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## APPENDIX A

### Memorandum from Dave Kendell and Eric Kvasnicka, Campbell Knutson Attorneys

#### MEMORANDUM

TO: GRACE HANCOCK  
FROM: DAVE KENDALL AND ERIC KVASNICKA  
DATE: JUNE 16, 2022  
RE: PLASTIC BAGS – EDINA

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#### SHORT ANSWERS

1. The City could enact an ordinance mandating a fee imposed by the retailer and paid by the consumer for single-use bags because this does not ban the use of the bags and does not restrict the merchant's options to offer single-use bags.
2. The City could likely require that single-use bags be certified compostable or have a minimum recycled material content because neither of these requirements restricts the ability of the retailer to offer plastic, paper, or reusable bags. The City cannot require the bags to be biodegradable because distributors cannot sell bags labeled biodegradable in Minnesota, so this would function as a ban.
3. The City cannot set a limit on the number of single-use bags retailers may offer annually because this restricts their option to provide customers with plastic and paper bags.
4. The City could likely collect a fee designated for enforcement, but likely cannot collect a fee designated for education or conservation. A fee designated to be collected and retained by retailers is highly likely to be valid.

#### DISCUSSION

##### 1. Single Use Plastic and Paper Bag Fee

Edina could enact an ordinance that establishes fees paid by the consumer and imposed by the retailer for providing a single use paper or plastic bag. Two other cities in Minnesota have enacted similar ordinances after the State Legislature passed Minn. Stat. § 471.9998. Minneapolis passed an ordinance in 2019, although it did not take effect until 2021. It reads, in relevant part, "Retail establishments shall collect a pass-through charge of not less than five (5) cents for each carryout bag provided to customers." Title XI, Section 225.930 (a). It has a number of exceptions, including for those purchasing food using a food assistance program such as WIC, bags used to purchase item in bulk, bags used at carry-out restaurants, and others. *Id.* at

225.920, 225.930 (b). Duluth also passed an ordinance in 2019, although it also did not come into effect until 2021. Duluth’s ordinance reads, in relevant part, “Retail establishments shall collect a pass-through charge of not less than five cents for each carryout bag provided to customers.” Duluth’s ordinance also does not apply to certain types of bags. Notably, although the Minneapolis ordinance requires pass-through charges for plastic, paper, and reusable bags, the Duluth ordinance only requires pass-through charges for plastic bags. Finally, both ordinances specify that the pass-through charge goes directly to the retailer and is not collected by the city.

Neither of these ordinances has been subject to a lawsuit, so there is no case law or guidance on whether they would withstand a challenge in court. If challenged, the cities which have these ordinances could argue in court that the ordinance is legal because it does not operate as a ban. They are more akin to a tax, which discourages the use of plastic bags without banning them entirely. Further, the ordinances are compliant with Minn. Stat. 471.9998, subd. 1, which requires merchants to have the option to provide customers with bags, because the merchants have the option to provide bags, or not, under the ordinances. Edina could follow the path of Minneapolis and Duluth by passing an ordinance that places fee on the use of single use plastic and paper bags.

## 2. Requirement for Single Use Bag Material

### a. Certified Compostable or Minimum Recycled Content

Under Minn. Stat. § 325E.046, subd. 2, compostable bags must meet the ASTM Standard for Compostable Plastics. Bags conforming to this standard are currently sold in Minnesota. Some Minnesota municipalities have enacted ordinances on zero-waste packaging. For example, St. Louis Park requires food establishments to use zero-waste packing, which includes reusable containers, single-use recyclable containers, and single-use compostable containers. St. Louis Park City Code §§ 12-202, 12-203. This seems legally analogous to the proposed option for Edina: requiring certified compostable plastic bags or that plastic bag materials have a minimum recycled content. Minn. Stat. § 471.9998, subd. 1 may, however, foreclose this option. Under the statute, merchants must have the option to provide customers with a paper, plastic, or reusable bag. A court is required to effectuate the intent of the legislature by following the plain language meaning of the statute. *City of Waconia v. Dock*, 961 N.W.2d 220, 229 (Minn. 2021). Courts interpret words by their common definition, which can be determined by using a dictionary.

*Perham Hosp. Dist. v. Cnty. Of Otter Tail*, 969 N.W.2d 366, 373 (Minn. 2022). The plain language of Minn. Stat. § 471.9998, subd. 1 suggests that municipalities cannot restrict merchants from offering plastic, paper, or reusable bags. “Plastics” are “any of numerous organic synthetic or processed materials that are mostly thermoplastic or thermosetting polymers of high molecular

weight.”<sup>1</sup> Most compostable plastics are made of polylactic acid.<sup>2</sup> Polylactic acid is a “thermoplastic polymer.”<sup>3</sup> Under these common use definitions, a compostable plastic bag is a plastic bag. Therefore, the City would not be restricting the ability of merchants to offer plastic bags if the City places a requirement on merchants to use certified compostable bags. This analysis applies to single-use plastic bags containing a certain minimum amount of recycled material: the nature of the bag as a paper or plastic bag would not change because it used recycled material. The City could likely enact an Ordinance requiring single-use bags to be certified compostable or made of a minimum amount of recycled material.

#### b. Biodegradability Standard

The City cannot enact a requirement that plastic bags conform to a biodegradability standard. Under Minn. Stat. § 325E.046, subd. 1, manufacturers, distributors, and wholesalers cannot sell plastic bags labeled “biodegradable” or “degradable” unless there is a scientifically based standard developed and the plastic bags conform to that standard. Currently, although there is a widely accepted scientific standard for compostable plastics, there is not a standard for biodegradable plastics. Thus, to require single use plastic bags to meet a minimum biodegradability standard would be to ban the bags, because vendors could not purchase bags to satisfy the requirement.

### 3. Setting a Limit on the Number of Single-Use Plastic and Paper Bags

The City cannot set a limit on the number of single-use plastic and paper bags retailers may provide annually. A court might find that an annual limit does not function as a ban, because it does not eliminate the ability of retailers to offer paper and plastic bags. However, a court also might find that an annual limit does function as a ban at the end of each year when the merchant may no longer offer plastic or paper bags. Minn. Stat. § 471.9998, subd. 2. More importantly, after the annual limit has been exceeded, retailers no longer have the option to provide customers with plastic or paper bags, but instead must offer only reusable bags—directly in violation of Minn. Stat. § 471.9998, subd. 1 (“all merchants . . . shall have the option to provide customers a paper, plastic, or reusable bag”). Although there is no case law on this point, a court is unlikely to find an annual limit on paper and plastic bags to be permissible under the statute.

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<sup>1</sup> *Plastic*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/plastic>.

<sup>2</sup> Robert Sanders, *New Process Makes ‘Biodegradable’ Plastics Truly Compostable*, Berkeley News (Apr. 21, 2021), <https://news.berkeley.edu/2021/04/21/new-process-makes-biodegradable-plastics-truly-compostable/>.

<sup>3</sup> Vidhya Nagarajan et al., *Perspective on Polylactic Acid (PLA) Based Sustainable Materials for Durable Applications: Focus on Toughness and Heat Resistance*, 2016 ACS Sustainable Chemistry & Eng’g 2899, 2899 (May 17, 2016).

#### 4. Designating the Destination of the Fee

##### a. To the City

The City may be able to collect the fee, if the City designates that the fee may only be used by the City for enforcement. Cities may raise funds for specific local improvement projects under their limited taxing power. *First Baptist Church of St. Paul v. City of St. Paul*, 884 N.W.2d 355, 359 (Minn. 2016). When a charge is imposed under a city’s police power, however, the charge is a fee and not a tax. *Id.* “Although broad, a municipality’s police power does not ‘extend[] to permit revenue raising measures.’” *Id.* (quoting *County Joe, Inc., v. City of Eagan*, 560 N.W.2d 681, 686 (Minn. 1997)). To determine whether a charge is a tax or a fee, Minnesota courts look to the primary purpose of the charge—if the charge is to recover the cost of regulation, it is a fee; if the charge is to raise funds, it is a tax. *Id.* “The crucial question is not what power a city exercises when it *uses* the funds collected, but rather what power a city exercises when it *collects* the funds.” *Id.* at 361 (emphasis in original).

In this case, a charge collected by the City would have to fall under the City’s police power and be a fee in order for the ordinance to comply with Minnesota law. If the City does not utilize the money to reimburse the City for enforcement costs, a court would deem the fee a tax and invalidate it on that basis. Therefore, the City likely cannot designate the collected money for education or conservation, as those are revenue-raising measures to benefit the people of the City. If the City designates the funds for enforcement, the collected money is more likely to be deemed a fee for the service the City provides in enforcement.

##### b. To the retailer

A fee that is collected and retained by the retailer is not a charge going to the City. Therefore, it is not a fee paid to the City for services nor is it a tax paid to the City to raise revenues. This avoids the issues discussed in the previous paragraph. Both Duluth and Minneapolis designate the charge collected by the retailer for the single-use bags shall be retained by the retailer to cover their costs. This practice has not been challenged in court and therefore appears to be permissible, unless and until it is challenged.

### CONCLUSION

Edina has the option to pass an ordinance similar to those passed by the cities of Minneapolis and Duluth, subject to the requirements of Minnesota Statute and cases governing city powers to collect fees and taxes.



City/ Town	Populati on (2020)	Effective Date	Ordinance Overview and Rationale	Additional Information
Louisville, CO	21,226	January 1, 2022	All retail stores in Louisville are required to charge \$0.25 cents for every plastic or paper bag used at checkout.	<a href="https://www.louisvilleco.gov/home/showpublisheddocument/30323/637503628614900000">https://www.louisvilleco.gov/home/showpublisheddocument/30323/637503628614900000</a>
Edwardsvi lle, IL	25,332	July 12, 2021	Requires a \$0.10 per bag fee for disposable plastic and paper checkout bags at all retail businesses greater than 7,000 sq. ft. in the City of Edwardsville.	<a href="https://www.cityofedwardsville.com/571/Single-Use-Bag-Fee">https://www.cityofedwardsville.com/571/Single-Use-Bag-Fee</a>
Newton, MA	88,923	January 8, 2020 (for stores 3,500 square feet or larger)  July 8, 2020 (for stores less than 3,500 square feet)	If bags are provided to customers, the bag shall be either recyclable paper bag or a reusable checkout bag (see ordinance for a definition of each)  A retail establishment that provides any type of checkout bag shall sell it for no less than ten cents (\$0.10). All moneys collected pursuant to this ordinance shall be retained by the retail establishment.	<a href="https://www.newtonma.gov/government/health-human-services/inspector-of-weights-measures/plastic-bag-reduction-ordinance">https://www.newtonma.gov/government/health-human-services/inspector-of-weights-measures/plastic-bag-reduction-ordinance</a>
Boulder, CO	108,777	July 1, 2013	\$0.10 fee on all disposable plastic and paper checkout bags at grocery stores in the city. This fee is intended to address the impact of disposable bags in the community and encourage the use of reusable bags.	<a href="https://bouldercolorado.gov/media/5858/download?inline">https://bouldercolorado.gov/media/5858/download?inline</a>

Minneapolis, MN	429,954	October 1, 2021	Retailers must charge a minimum \$0.05 fee per carryout bag. The fee is kept by the retailer and is not a tax. It can be put towards the cost of the bags, used for other expenses, or donated to charity. These fees are not taxable. Unless a transaction is specifically exempt, a retailer must charge the fee to customers, and can't choose to absorb the cost. In general, non-profits are not exempt from the fee.	<a href="https://www2.minneapolis.mn.gov/businessservices/licensespermitsinspections/businesslicenses/bring-your-ownbag/">https://www2.minneapolis.mn.gov/businessservices/licensespermitsinspections/businesslicenses/bring-your-ownbag/</a>
Denver, CO	715,878	July 1, 2021	Encourages shoppers to switch to reusable bags and requires retail stores in Denver to charge \$0.10 for each disposable bag (plastic, paper, or other material including but not limited to compostable material) provided to customers at checkout.	<a href="https://denvergov.org/Government/AgenciesDepartments-Offices/Agencies-Departments-Offices-Directory/Climate-Action-SustainabilityResiliency/ZeroWaste/Bring-YourOwn-Bag-Program">https://denvergov.org/Government/AgenciesDepartments-Offices/Agencies-Departments-Offices-Directory/Climate-Action-SustainabilityResiliency/ZeroWaste/Bring-YourOwn-Bag-Program</a>



## APPENDIX C

### Stakeholder feedback

#### Minneapolis businesses

Two Hardware store.

- Smaller volume store saw the charge as a way to make up for the cost of bags and other expenses.
- Larger store charges for bags around 80% of the time. Not many people get upset.
- Some customers will ask if there is a charge for bags, and will refuse a bag if so.
- Some customers will accept the 5 cent charge for convenience.

Toy Store

- They charge their customers for carry out bags, and are supportive of the initiative.
- Customers do not seem to get upset.
- Some will refuse a bag if they are told of the charge.

Liquor Store — they do not generally charge customers.

Grocery Store

- They charge their customers for carry out bags — not always informing the customer of the charge, because the ordinance has been in effect for a while now.
- Most are fine with the fee, either refusing a bag or accepting the charge.
- They provide a box where customers can both donate used bags and grab a bag with out a charge.

Garden Center

- They charge their customers for carry out bags.
- Some customers get upset when they are told that it's 5 cents for a bag.
- Those who do get “annoyed” will usually refuse a bag, which “while it can be frustrating in the check-out experience, it is ultimately the whole point”.

## **Edina's Green Recognized businesses**

### Clothing store.

As a store, they have gotten rid of plastic bags and sell a reusable bag. Most customers are "pleased with the decision". However, the owner does not favor an ordinance. "I do not like the idea of having the city require businesses to charge for any kind of carry out bag. I think this is one more thing that small business owners would have to ensure is happening and manage".

### Grocery store

They would prefer a voluntary program, similar to what they are currently doing: for those customers who voluntarily bring in their bags, the store donates money to a charity.

### Boutique clothing and gift shop

"We purposely sourced paper bags that are not coated for this very reason that are blank so they can be reused again and again, for gifting, etc."

"If the city were to impose a \$.05 fee for all bags unilaterally to all stores it wouldn't be a huge deal, as customers would come to expect it from everyone."

### PR firm

"Generally, we are very supportive of an ordinance that would seek to reduce the amount of single-use plastic use across the city of Edina. Belmont Partners would not be affected by this type of ordinance in our business operations, but we have a strong value of sustainability and would love to see less litter and microplastic pollution throughout our community. We're proud to see Edina taking a leading stance on this topic.

"We support a \$.05 fee on all carry-out bags, as it seems to be a largely symbolic fee that is likely to not be cost-prohibitive to most customers, but we would also support nuances or exemptions that would make it easier for businesses to comply (particularly small/local businesses), and/or for lower-income customers to afford the fee."

## **Edina Residents**

- This is the Energy and Environment's third attempt to regulate plastic bags. This initiative has been taken up by three different groups of Energy and Environment Commissioners, illustrating that it is, and has been a prominent environmental issue for many Edina residents.
- Hometown Hero Fartun Ismail, founder of the Somali American Women Action Center (SAWAC), engages many seam stresses in Edina to create reusable tote bags called "Dambiiil". It is important to these Edina residents to fight the impacts of plastic bags because they have "been climate refugees once, and we don't want to be climate refugees again".
- Edina students from both middle school and high school have repeatedly tried to bring the negative impacts of plastic bags to the forefront of Edina policy.

**APPENDIX D**

**Side-by-side merchant carryout bag exemption comparison with City of Minneapolis**

	<b>Minneapolis</b>	<b>Edina (Proposed)</b>	
<b>Types of bags that are exempt:</b>	Produce and bulk goods bags	Produce and bulk goods bags	
	Restaurant carryout bags		
	Dry cleaning bags	Dry cleaning bags	
	Newspaper and door hanger bags	Newspaper and door hanger bags	
	Litter clean up bags	Litter clean up bags	
	Secondhand bags	Secondhand bags	
	Personal belonging bags	Personal belonging bags	
	Flower wrap bags	Flower wrap bags	
	Prescription drug bags	Prescription drug bags	
	Bags brought by a customer	Bags brought by a customer	
	Bags in packages with multiple bags	Bags in packages with multiple bags	
<b>Types of establishments that are exempt:</b>	Those without a point of sale system	Those without a point of sale system	
	Farmers markets		
	Food banks	Food banks	
	Car dealerships & car washes		

	<b>Minneapolis</b>	<b>Edina (Proposed)</b>	
<b>Types of customers that are exempt</b>	Anyone with a voucher or electronic benefit card issued under the Women, Infants and Children (WIC) or Temporary Assistance to Needy Families (TANF) support programs, or the federal Supplemental Nutrition Assistance Program (SNAP, also known as Basic Food), or a recognized Minnesota food assistance program	Anyone with a voucher or electronic benefit card issued under the Women, Infants and Children (WIC) or Temporary Assistance to Needy Families (TANF) support programs, or the federal Supplemental Nutrition Assistance Program (SNAP, also known as Basic Food), or a recognized Minnesota food assistance program	

## APPENDIX E

### Proposed outline for education and outreach

## Implementation Planning for Single Use Bag Fees

Once the single use bag fee is approved by the City Council, a detailed implementation plan and timeline is necessary to make sure that residents, visitors, and retailers all understand the importance of the Single Use Bag Fee and how to comply.

### Examples from other cities:

- [City of Philadelphia](#)
- [City of Denver](#)
- [City of Edwardsville, IL](#)
- [State of New Jersey](#)

### Key Elements of the Implementation Plan

- I. **Timeline** that allows adequate time from ordinance approval to implementation.
- II. **Impacted Businesses** communication via information sessions, mail, and email.
- III. **Direct to Resident** communication via mail, email, social media, and city publications.
- IV. **Website** to include important resources for residents and businesses including approved ordinance, FAQs, communications materials for business use.
- V. **Other Considerations**

- I. **Developing a reasonable Implementation Timeline** is key to a successful rollout. Most timelines are 6-18 months from ordinance approval to full implementation. Example of an implementation timeline from City of Philadelphia:

- A. Approximately 6 months before Ordinance goes into effect. The City of Philadelphia approved a ban in late 2019 and created a timeline to implement the fee in 2020. Though the plan was significantly delayed due to the Coronavirus pandemic, here is the [timeline](#) as implemented in 2021.
- B. This timeline allows for residents and businesses to learn about the new policy in advance of the ban taking effect. It requires that businesses begin posting signage to communicate when the program will begin and exactly what the program entails.

- II. **Communication with Impacted Businesses**

- A. **Info Sessions for Impacted Businesses.** The City of Philadelphia hosted several virtual information sessions for businesses that would be impacted by the new ordinance. It was a forum for businesses to learn more about the coming ban and ask any questions they had regarding the ordinance. The sessions were scheduled after the ordinance was passed, but prior to when it went into affect.

[Example of Virtual Info Session Content](#)  
[Example of Training for Businesses](#)  
[NJ Video](#)

**B. Materials for impacted Businesses.** Provide signage and communication tools to impacted businesses. To assist businesses through this transition, the City of Philadelphia is providing various resources, all of which are available on a new webpage. Resources available include:

1. Signage—in multiple languages—that businesses can download, print, or order.
  - a) Window signs/clings
  - b) Point of Sale signs (at check out)
  - c) “Bring your Bag” signs for parking areas
2. Flyers about the ban.
3. Training materials for employees regarding the fee [Louisville Colorado](#)
4. Virtual business information sessions [available to watch online](#)

### **III. Direct Communication to Residents**

- A. Postcards mailed to city residents
- B. Email communication via City Communications (Newsletters)
- C. Social media notifications (Twitter/Facebook)
- D. Yard signs
- E. Press Releases to local media (TV, newspaper, radio)

### **IV. Website**

- A. In depth rationale for the single use bag fee
- B. Complete Ordinance
- C. Frequently asked questions (FAQs)
- D. Contacts for more information
- E. Resources for businesses
- F. Place to report violations

### **V. Other Considerations**

- A. Distribution of Reusable Bags to Residents and/or Retailers
- B. Bag Exchange Programs. Examples:
  1. Bull City Boomerang Bag
  2. DC Share a Bag
  3. Goatote
- C. Communication to schools
- D. Signage with scannable QR code