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Galveston tries to outwit bag-ban foes

City ordinance that would prohibit plastic sacks facing fierce opposition

By **Harvey Rice** | December 11, 2016 | Updated: December 11, 2016 9:48pm

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Photo: Nick De La Torre, Houston Chronicle

Emma Hubbard, 3, of Lufkin, chases her plastic bag as she plays on the Seawall beach, Thursday, Nov. 29, 2012, in Galveston.

GALVESTON - Reacting to a groundswell of concern about the effect of plastic bags on the environment, Galveston is on the forefront of a statewide controversy over cities' ability to ban plastic bags that are killing turtles, birds and fouling beaches.

A proposed ordinance with unanimous City Council support and strong community backing faces fierce opposition from outside forces, including conservative think tanks and plastic bag manufacturers who have already sent threatening letters.

About 11 cities in Texas ban plastic bags, and several of them are facing lawsuits over the bans. Dallas quickly rescinded a 5-cent tax on plastic bags last year after bag manufacturers filed a lawsuit.

Texas Attorney General Ken Paxton is suing Brownsville for imposing a \$1 per transaction fee at businesses that continue to offer disposable bags, and a lawsuit against Laredo by the Laredo Merchants Association is before the Texas Supreme Court.

State Sen. Bob Hall, R-Edgewood, a self-described tea party activist, has introduced Senate Bill 103 to prevent municipalities from banning or taxing plastic bags.

Advocates say the bags are an annoying eyesore that clog sewers and are found drifting in the ocean, contributing to the "great Pacific garbage patch," a conglomeration of plastic the size of Texas in the middle of the Pacific Ocean. Ranchers complain that cattle eat the bags and die, a problem that led Fort Stockton in West Texas to approve a ban.

After suffering state-wide bans in Hawaii and California, plastic bag manufacturers and their allies are taking a stand in Texas.

Nelson, Mullins, Riley & Scarborough LLP, a law firm based in Columbia, S.C., sent a warning letter that council members were given at a recent workshop where they discussed a draft of the bag-ban ordinance.



"It didn't faze me," said Councilman Craig Brown, who urged the city attorney to draft the ordinance.

The other council members appeared to be unaffected by the threat, voicing their unanimous support for the idea.

Brown said he expected the council to vote on the ordinance by the middle of next year. Once it takes effect, retailers will have a year to phase out plastic bags.

Custodians of the Gulf

A concerted attempt to organize support for reusable bags began in 2013 when a group of Galveston residents met and dubbed the campaign "Bring the Bag," said Joanie Steinhouse, who heads the Galveston office of the Turtle Island Restoration Network. Word of the effort reached Robert Lynch, president of the Harris & Eliza Kempner Fund, which made \$20,000 available for purchasing reusable bags for small businesses affected by the new ordinance once it's approved.

Lynch saw nationwide plastic bag bans in his international travels, even in Rwanda, a small country in Africa. "If Rwanda can do this, why can't Galveston?" he asked.

"One of the major reasons we need to outlaw the bags is a lot of them are floating out on the water and thus killing a lot of marine life out there," Lynch said. "We are the custodians of our beach and our Gulf."

Not all businesses support the ban, but it has the backing of the influential Galveston Hotel and Lodging Association. "As business operators we typically don't like this type of business regulation," said Steve Cunningham, association president and manager of the Hotel Galvez. "But being on the Gulf, this one is necessary because of the damage to the wildlife and the environment."

City Attorney Don Glywasky drafted the Galveston ordinance to avoid the legal pitfalls encountered by cities such as Laredo. The Laredo bag ban was challenged under the 1993 Solid Waste Disposal law that bars local governments from adopting regulations to "prohibit or restrict, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law."

Glywasky believes Galveston is unique. "I don't really see that this is a solid waste management issue," he said. "If we can cut down on some of the plastic bags that go into the marine environment, that is not something for the purpose of solid waste, it is for the protection of the marine environment on which we depend."

That argument drew no sympathy from an influential conservative organization, the Texas Public Policy Foundation. James Quintero, director of the foundation's Center for Local Governance and Think Local Liberty, said Galveston's proposed ordinance conflicts with state law.

"Our position would be that Galveston's ordinance, no matter what the stated reason would be, is still prohibiting containers," said Bryan Mathew, policy analyst for Texas Public Policy Foundation. "In our view, a lot of local governments have been attempting to regulate out of bounds by hiding under the term of local control."

'California-ized'

Mathew called anything that smacks of what Gov. Greg Abbott lamented were attempts to make Texas more like California "out of bounds."

"Texas is being California-ized and you may not even be noticing it," Abbott said last year during remarks at a Public Policy Foundation gathering, where he warned of "a patchwork quilt of bans and rules and regulations that is eroding the Texas model."

That erosion would include anything that hinders "people from being able to sell and buy with minimal government regulation and a low tax burden," Mathew said.

Mathew saw no contradiction with the traditional conservative support for local control, arguing that local control refers to legislatures, not local governments.

"Utter hogwash," said Zach Trahan, spokesman for Texas Campaign for the Environment. "They made it up this last year to justify their abandonment of local control."

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He said it would be a mistake for the Legislature to impose a solution that might not be right for every city.

On the other side are powerful business organizations like the Texas Retailers Association. "The patchwork of requirements put in place by these bans on a local level make it increasingly difficult for retailers to accurately comply while also not being effective in making a positive environmental impact," association President George Kelemen said in an email. "TRA supports Sen. Hall's legislation as filed."

High court may decide

Scruggs said a coalition of diverse organizations is ready to back legislation strengthening local control, although a bill had not been introduced as of the last week in November.

A Texas Supreme Court decision in the Laredo case also could undermine or strengthen local authority. Laredo argued that its ban was for beautification and clogged sewer drains and had nothing to do with solid waste, but the Fourth Circuit Court of Appeals ruled otherwise in August. The city appealed and the Supreme Court is expected to rule sometime next year.

Galveston officials appear to know exactly what they are getting into.

"I'm proud of Galveston for moving forward on this even though they knew the industry bullies would be after them," said Trahan, the Campaign for the Environment spokesman.



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