

## Rosenson, Valerie

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**From:** Toma, Michael  
**Sent:** Wednesday, February 28, 2018 4:34 PM  
**To:** Lee, Benjamin  
**Cc:** Emmett, Kathryn; Rosenson, Valerie  
**Subject:** Shopping Bag Ordinance

Representative Lee:

After having conducted additional research, we wish to augment the opinion we gave below. We continue to believe that the City is authorized to impose a ban on the use of plastic bags, as has been done in Westport, pursuant to the City's statutory environmental protection powers. We do not believe, however, that there is statutory authority for the City to impose a tax relating to the use of paper bags, as has been done in some municipalities outside Connecticut. In Connecticut, municipalities are only authorized to impose taxes on subjects or objects which may be lawfully taxed, and there are no state statutes which authorize the taxing of checkout bags.

Some municipalities outside Connecticut have imposed a fee upon the use of paper bags, which fee is paid by the customer to the retail establishment, and which is retained by the establishment. Several courts have concluded that because they are not received by the municipality, such fees are not taxes and therefore no express taxing authorization is necessary. None of these are Connecticut decisions. We are unsure whether such a fee would pass legal muster in Connecticut. We note that there is no express statutory authority in Connecticut for a municipality to use a fee in such a manner. There is an argument that can be made that the authority for such a fee can be implied from the City's environmental protection powers, given the objective of discouraging the use of paper bags. But, there are also counterarguments that can be made, such as, the fee is a defacto tax without statutory authorization, and, the fee constitutes an improper intrusion into the marketplace. As far as we are aware, a legal challenge to such a fee would be a case of first impression in Connecticut.

Michael Toma

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**From:** Toma, Michael  
**Sent:** Wednesday, January 03, 2018 6:48 PM  
**To:** Lee, Benjamin  
**Cc:** Rosenson, Valerie; Isidro, Judith  
**Subject:** Shopping Bag Ordinance

Representative Lee:

You asked for an opinion on whether the City has the authority to regulate shopping bags by type, and whether the City can compel a local business to assess a tax or fee for using certain types of bags. I believe the answer to both questions is yes. I have attached two research reports from the State of Connecticut Office of Legislative Research. Several municipalities nationwide have enacted such ordinances. In Connecticut, it appears that only Westport has done so. Westport relied on its general regulatory and police and environmental protection powers, found in state statute at C.G.S. 7-148. I do note that if environmental protection is the primary basis for the ordinance, there should be scientific evidence in the minutes of the Board's deliberations that the type of bag being encouraged is indeed more environmentally friendly than the alternative. As pointed out in one of the attached reports, a ban in Oakland was enjoined by a judge because it was unclear on the record before it whether paper bags are more or less environmentally friendly than plastic bags. Representative Zelinsky has inquired whether the Westport ordinance could be used as a template for the Board, and I think that doing so would be appropriate.

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