

The State of Texas
House of Representatives

P.O. Box 2910
Austin, Texas 78768
Tel: 512-463-0880
1-800-734-9515
Fax: 512-463-2188



Representing
Hunt, Hopkins, and
Van Zandt Counties

RECEIVED
MAR 04 2014
OPINION COMMITTEE

Dan Flynn
State Representative • District 2

FILE # ML-47529-14
I.D. # 47529

RQ-1189-GA

February 27, 2014

Office of the Attorney General
Attention: Opinion Committee
209 W. 14th Street
Austin, TX 78701

RE: Opinion request regarding bans on plastic bags and Sec. 361.0961, Health and Safety Code

Dear General Abbott:

At least nine cities in Texas have enacted bans on plastic bags and adopted fees on replacement bags in recent years (links to ordinances set forth below). This appears to be in contravention of state law.

Specifically, Section 361.0961 of the Texas Health and Safety Code provides that "a local government or other political subdivision may not adopt an ordinance, rule, or regulation to: (1) 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... or (3) assess a fee or deposit on the sale or use of a container or package". I enclose a copy of the statute.

I would like your opinion on the legality of these ordinances in light of the prohibition in Section 361.0961 of the Health and Safety Code.

Respectfully yours,

A handwritten signature in black ink that reads "Dan Flynn".

Dan Flynn
State Representative, HD-2

HEALTH AND SAFETY CODE

Sec. 361.0961. RESTRICTIONS ON AUTHORITY OF LOCAL GOVERNMENT OR OTHER POLITICAL SUBDIVISION. (a) A local government or other political subdivision may not adopt an ordinance, rule, or regulation to:

(1) 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;

(2) prohibit or restrict the processing of solid waste by a solid waste facility, except for a solid waste facility owned by the local government, permitted by the commission for that purpose in a manner not authorized by state law; or

(3) assess a fee or deposit on the sale or use of a container or package.

(b) This section does not prevent a local government or other political subdivision from complying with federal or state law or regulation. A local government or other political subdivision may take any action otherwise prohibited by this section in order to comply with federal requirements or to avoid federal or state penalties or fines.

(c) This section does not limit the authority of a local government to enact zoning ordinances.

Added by Acts 1993, 73rd Leg., ch. 1045, Sec. 12, eff. Sept. 1, 1993.

Sec. 361.003. DEFINITIONS.

(35) This subdivision is effective on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "**solid waste**" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

(31) "Rubbish" means nonputrescible solid waste, excluding ashes, that consists of:

(A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

Links to city ordinances:

Austin [http://www.amlegal.com/nxt/gateway.dll/Texas/austin/title15utilityregulations/chapter15-6solidwasteservices?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:austin_tx\\$anc=JD_Chapter15-6,Article7](http://www.amlegal.com/nxt/gateway.dll/Texas/austin/title15utilityregulations/chapter15-6solidwasteservices?f=templates$fn=default.htm$3.0$vid=amlegal:austin_tx$anc=JD_Chapter15-6,Article7)

Brownsville

<http://library.municode.com/index.aspx?clientID=10297&stateID=43&statename=Texas>

Fort Stockton http://www.commandpackaging.com/pdf/fortstockton_bagordinance.pdf

Freer

http://www.ci.freer.tx.us/index.php?option=com_content&view=article&id=356:ordinance-2012-05-plastic-bags&catid=122:ordinances&Itemid=63

Kermit <http://www.cawrecycles.org/files/Kermit%20TX%20Ord%2013-05%20Plastic%20Bag%20Ban.pdf>

Laguna Vista http://www.uniflexbags.com/assets/baglaws/texas_laguna_vista.pdf

Laredo

<http://www.esd.cityoflaredo.com/ESDWeb/news/Plastic%20Checkout%20Bag%20Prohibition%20Ordinance12808.pdf>

South Padre Island http://www.spectrumbags.com/images/Ord_10-38_-_Plastic_Bag_Ban_-_1-19-11.pdf

Sunset Valley

[http://www.amlegal.com/nxt/gateway.dll/Texas/sunsetvalley_tx/cityofsunsetvalleytexascodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sunsetvalley_tx](http://www.amlegal.com/nxt/gateway.dll/Texas/sunsetvalley_tx/cityofsunsetvalleytexascodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:sunsetvalley_tx)