



**Government of the District of Columbia
Department of the Environment
Natural Resources Administration
Stormwater Management Division**

REGULATIONS ON RETAIL ESTABLISHMENT CARRYOUT BAGS

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1000 PURPOSE

The purpose of this chapter is to implement the provisions of the Anacostia River Clean Up and Protection Act of 2009, effective September 23, 2009 (D.C. Law 18-55; D.C. Official Code § 2-1226.51 *et seq.*).

1001 DISPOSABLE CARRYOUT BAG FEE REQUIREMENT

- 1001.1 Except as provided in Section 1006, a retail establishment shall charge each customer making a purchase from the establishment a fee of five cents (\$0.05) for each disposable carryout bag provided to the customer with the purchase.
- 1001.2 The fee imposed by Section 1001.1 shall be charged to a customer making a purchase whether the purchase is in person, through the internet, by telephone, by facsimile, electronically, or by any other means.
- 1001.3 The retail establishment shall indicate on the customer transaction receipt the number of disposable carryout bags provided, and the total amount of the fee charged.

1002 DISPOSABLE CARRYOUT BAG MATERIAL AND LABELING REQUIREMENTS

- 1002.1 Starting on April 1, 2010, each disposable carryout bag provided by a retail establishment shall meet the following requirements:
- (a) All paper and plastic disposable carryout bags provided shall be one hundred percent (100%) recyclable;
 - (b) All paper and plastic disposable carryout bags shall display in a highly visible manner the phrase “Please Recycle This Bag”, or a substantially similar phrase. The lettering of the phrase shall meet the following requirements:
 - (1) The lettering of the phrase shall be at least one half of an inch (0.5”) in height or at least seventy-five percent (75%) of the width of the front panel of the bag;
 - (2) The lettering of the recycling statement shall appear on the exterior of either the front or back panel of the bag, and not on a gusset or the base of the bag; and
 - (3) The lettering of the recycling statement shall be in a boldface font.
 - (c) A disposable carryout bag made of paper shall contain a minimum of forty

percent (40%) post-consumer recycled content; and

- (d) A disposable carryout bag made of plastic shall be made of high-density polyethylene film marked with the SPI resin identification code 2, or low-density polyethylene film marked with the SPI resin identification code 4.

1002.2 A disposable carryout bag shall meet the requirements of this section, even if the bag is biodegradable or compostable.

1002.3 A disposable carryout bag made of both plastic and paper shall meet the paper carryout bag requirements of this section for the paper components of the bag, and shall meet the plastic carryout requirements of this section for the plastic components of the bag.

1003 RETAIL ESTABLISHMENTS SUBJECT TO CARRYOUT BAG REQUIREMENTS

1003.1 For the purposes of this chapter, the term “retail establishment” means:

- (a) Any business required to have a Public Health: Food Establishment Retail endorsement to a basic business license pursuant to D.C. Official Code § 47-2827; and
- (b) Any business required to have an off-premises retailer’s license, class A or B, pursuant to D.C. Official Code § 25-112.

1003.2 Such retail establishments include, but are not limited to, the following types of business:

- (a) Bakeries;
- (b) Delicatessens;
- (c) Grocery stores;
- (d) Convenience stores that sell food;
- (e) Restaurants (subject to the exception set forth in section 1006);
- (f) Food vendors;
- (g) Street vendors that sell food;
- (h) Liquor stores; and

- (i) Any business that sells food items, whether or not the principal purpose of the business is to sell food items, including a department store or electronics store that has a Public Health: Food Establishment Retail endorsement to its basic business license.

1004 APPLICATION OF CARRYOUT BAG REQUIREMENTS TO RETAIL ESTABLISHMENTS SELLING BOTH FOOD AND NON-FOOD ITEMS

1004.1 The disposable carryout bag fee, and material and labeling requirements of this chapter, shall apply to a disposable carryout bag provided with the purchase of any item from a retail establishment subject to this chapter, even if the item is a non-food item.

1005 APPLICATION OF CARRYOUT BAG REQUIREMENTS TO RESTAURANTS

1005.1 A restaurant with seating, as described in D.C. Official Code § 47-2827(e)(2), shall comply with the fee, and material and labeling requirements of Sections 1001 and 1002, for each of the following disposable carryout bags provided to a customer to take food away from the restaurant:

- (a) A plastic carryout bag;
- (b) A paper carryout bag, if:
 - (1) The bag includes a non-food item, whether or not the bag also contains a food item; and
 - (2) The restaurant directly charges the customer for the non-food item.

1005.2 A retail establishment where food is prepared and sold only for consumption off the premises, such as a delicatessen without seating or a carry-out establishment, that does not qualify as a restaurant under D.C. Official Code § 47-2827(e)(2), shall comply with the fee, and material and labeling requirements of Sections 1001 and 1002, for all paper and plastic disposable carryout bags provided to a customer with his or her purchase.

1006 CARRYOUT BAGS NOT SUBJECT TO THIS CHAPTER

1006.1 For the purposes of this Chapter, the term “disposable carryout bag” shall not include:

- (a) A bag used by a customer inside stores to package bulk items, such as fruit, vegetables, nuts, grains, or candy;

- (b) A bag used by a customer inside a store to contain or wrap frozen foods, meat, or fish, whether or not the items are prepackaged;
- (c) A bag used by a customer inside a store to contain or wrap flowers, potted plants, or other items where dampness may be a problem;
- (d) A bag used by a customer inside a store to contain unwrapped prepared foods or bakery goods;
- (e) A bag used by a customer by a pharmacist to contain prescription drugs;
- (f) A newspaper bag, door-hanger bag, laundry-dry cleaning bag, or bags sold in a package intended for use as garbage, pet waste, or yard waste bags;
- (g) A bag provided to a customer by the retail establishment for the purpose of transporting a partially consumed bottle of wine, as required by D.C. Official Code § 25-113(b)(5)(C);
- (h) A paper carryout bag provided to a customer to take food away from a restaurant with seating, as described in D.C. Official Code § 47-2827(e)(2), if the bag contains only:
 - (1) Food items; or
 - (2) Food and non-food items that the restaurant does not directly charge the customer for; and
- (i) A reusable carryout bag, as defined in Section 1099.

1007 RETENTION AND REMITTANCE OF THE CARRYOUT BAG FEE

1007.1 Except as provided in Section 1008, a retail establishment shall retain one cent (\$0.01) of each fee of five cents (\$0.05) charged pursuant to section 1001 and shall remit the remaining four cents (\$0.04) of each fee of five cents (\$0.05) charged pursuant to section 1001 to the Office of Tax and Revenue.

1008 CARRYOUT BAG CREDIT PROGRAM

1008.1 If a retail establishment participates in the voluntary Carryout Bag Credit Program, the establishment may retain an additional one cent (\$0.01), for a total of two cents (\$0.02), from each fee of five cents (\$0.05) charged pursuant to Section 1001. The remaining three cents (\$0.03) of each fee of five cents (\$0.05) charged pursuant to Section 1001, shall be remitted to the Office of Tax and

- 1008.2 The voluntary Carryout Bag Credit Program means a program under which the retail establishment:
- (a) Credits the customer at least five cents (\$0.05) for each carryout bag provided by the customer for packaging his or her purchases, regardless of whether the bag is paper, plastic, or reusable;
 - (b) Prominently advertises its participation in, and the substance of, the Carryout Bag Credit Program at each of its checkout registers;
 - (c) Reflects the total credit amount on the receipt of the customer who provides his or her own bag or bags; and
 - (d) Registers its participation in the Carryout Bag Credit Program with the District Department of the Environment.
- 1008.3 A retail establishment shall not be required, as a prerequisite to participating in the Carryout Bag Credit Program, to provide a credit to a customer for any portion of the customer's purchase for which the customer declines the use of a carryout bag.
- 1008.4 The retail establishment shall credit a customer a total number of five cent (\$0.05) credits that reasonably relate the amount of goods purchased to the number of carryout bags reasonably required to carry the purchased goods.
- 1008.5 A credit provided to a customer pursuant to a Carryout Bag Credit Program shall not reduce the amount of fees due to the Office of Tax and Revenue under Sections 1007.1 and 1008.1.
- 1008.6 A retail establishment that withdraws from the Carryout Bag Credit Program shall provide notice to the District Department of the Environment of its withdrawal at least ten (10) business days before its withdrawal.

1009 TAX STATUS OF FEES RETAINED BY RETAIL ESTABLISHMENT

- 1009.1 The fees retained by a retail establishment under this Chapter shall not be classified as revenue and shall be tax-exempt for the purposes of Chapters 18, 20, and 27B of Title 47 of the District of Columbia Official Code.
- 1009.2 The fees retained by the retail establishment under this section shall be excluded from the definition of a retail sale under D.C. Official Code § 47-2001(n)(2) and from the definition of gross receipts under D.C. Official Code § 47-2761(5).

1009.3 The fees to be remitted to the District under Sections 1007.1 and 1008.1 shall be added to other tax payments in determining whether the electronic payment requirement under D.C. Official Code § 47-4402(c) applies.

1010 PROHIBITION ON CERTAIN FEE-RELATED PRACTICES

1010.1 A retail establishment shall not assume or absorb, or refund to the customer, the disposable carryout bag fee.

1010.2 A retail establishment shall not advertise or hold out or state to the public or to a customer, directly or indirectly, that the reimbursement of the disposable carryout bag fee or any part of the fee to be collected by the retail establishment will be assumed or absorbed by the retail establishment or refunded to the customer.

1011 PROHIBITION ON SALE AND DISTRIBUTION OF CERTAIN DISPOSABLE CARRYOUT BAGS

1011.1 Disposable carryout bags made of plastic that is not one hundred percent (100%) recyclable shall not be sold or distributed, retail or wholesale, in the District.

1011.2 The prohibition set forth in this section applies to all disposable carryout bags sold or distributed, retail or wholesale, to or by any establishment in the District, whether or not the establishment is a retail establishment.

1012 PENALTIES FOR VIOLATIONS

1012.1 Violation of any of the requirements of this chapter, except for Sections 1007, 1008.1, 1008.5, and 1009, shall subject a retail establishment to the penalties set forth in this Chapter.

1012.2 If the Director of the District Department of the Environment (“Director”) determines that a violation of this chapter covered by subsection 1012.1 has occurred, the Director shall issue a warning notice to the retail establishment for the initial violation.

1012.3 If the Director determines that an additional violation of this chapter has occurred after a warning notice has been issued for an initial violation, the Director shall issue a notice of infraction and shall impose a penalty against the retail establishment.

1012.4 The penalty imposed by the Director shall not exceed the following, for each violation that occurs after the issuance of the warning notice:

- (a) One hundred dollars (\$100) for the first violation in a calendar year;
- (b) Two hundred dollars (\$200) for the second violation in a calendar year;
and
- (c) Five hundred dollars (\$500) for the third and each subsequent violation in a calendar year.

1012.5 No more than one (1) penalty shall be imposed upon a retail establishment within a seven (7) calendar day period.

1012.6 A retail establishment shall have fifteen (15) calendar days after the date that a notice of infraction is issued to pay the penalty.

1012.7 The penalty shall double after fifteen (15) calendar days if the retail establishment:

- (a) Does not pay the penalty; or
- (b) Fails to respond to a notice of infraction by either denying or objecting in writing to the infraction or penalty.

1012.8 A recipient may request a hearing pursuant to instructions contained in the notice of infraction.

1012.9 Hearings or adjudications of violations under this Chapter shall be conducted pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §§ 2-1831.01 *et seq.*).

1099 DEFINITIONS

When used in this Chapter, the following words and phrases shall have the meanings ascribed:

100 percent (100%) recyclable - capable of being collected, separated, and recovered from the solid waste stream through the District's recycling programs, and either used again or reused in the manufacture or assembly of another package or product.

Act - means the Anacostia River Clean Up and Protection Act of 2009, effective September 23, 2009 (D.C. Law 18- 0055; D.C. Official Code § 2-1226.51 *et seq.*).

Disposable carryout bag - a bag of any material, commonly plastic or kraft paper, which is provided to a customer at the point of sale to carry purchases.

Post-consumer recycled content - any material that has completed its use as a consumer item and that would otherwise have been disposed of as municipal solid waste, but that has instead been reused or reconstituted as a product or raw material.

Reusable carryout bag - a bag with handles that is specifically designed and manufactured for multiple reuse and is made of cloth, fiber, other machine-washable fabric, or durable plastic that is at least two and one-quarter millimeters (2.25 mm) thick.