



2018 SEP 20 PM 2:11
OFFICE OF THE
SECRETARY

MURIEL BOWSER
MAYOR

SEP 20 2018

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is the "Retail Establishment Carryout Bags Requirements and Schedule of Fines Approval Resolution of 2018." The proposed resolution would approve the schedule of fines for violations related to the retail carryout bag law administered by the Department of Energy and Environment.


I urge the Council to take prompt and favorable action on the "Retail Establishment Carryout Bags Requirements and Schedule of Fines Approval Resolution of 2018."

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel E. Bowser".

Muriel E. Bowser

Enclosures


Chairman Phil Mendelson
at the request of the Mayor

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson, at the request of the Mayor, introduced the following resolution,
which was referred to the Committee on _____.

To approve the final rule amending the schedule of fines related to retail establishment carryout
bags.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
resolution may be cited as the "Retail Establishment Carryout Bags Requirements and Schedule
of Fines Approval Resolution of 2018".

Sec. 2. Pursuant to Section 104(a)(1) of the Department of Consumer and Regulatory
Affairs Civil Infractions Act of 1985 ("Act"), effective October 5, 1985 (D.C. Law 6-42; D.C.
Official Code § 2-1801.04(a)(1)) and the Anacostia River Clean Up and Protection Amendment
Act of 2012, effective October 23, 2012 (D.C. Law 19-188; 59 DCR 10151), the Mayor
transmitted to the Council proposed rules to amend the regulations and adopt a schedule of fines
for violations related to retail establishment carryout bags. The proposed rules were published in
the *D.C. Register* on April 20, 2018 at 65 DCR 4458. The Council approves the final rules as
submitted.

Sec. 3. Fiscal impact.

1 The Council adopts the fiscal impact statement provided by the Chief Financial Officer as
2 the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule
3 Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

4 Sec. 4. The Secretary to the Council shall transmit a copy of this resolution, upon its
5 adoption, to the Mayor, the Director of Department of Energy and Environment, and the
6 Administrator of the Office of Documents and Administrative Issuances.

7 Sec. 5. Effective date.

8 This resolution shall take effect immediately.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Bag Law Amendments

The Director of the Department of Energy and Environment (“DOEE”), in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.01 *et seq.* (2013 Repl. & 2017 Supp.)), the Anacostia River Clean Up and Protection Act of 2009 (the “Act”), effective September 23, 2009 (D.C. Law 18-55; D.C. Official Code § 8-102.01. (2013 Repl. & 2017 Supp.)), Mayor’s Order 2006-61, dated June 14, 2006, and Mayor’s Order 2010-27, dated February 1, 2010, hereby gives notice of the amendment to Chapter 40 (Department of the Environment (DDOE) Infractions) of Title 16 (Consumers, Commercial Practices, and Civil Infractions) and Chapter 10 (Retail Establishment Carryout Bags) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking aligns the existing regulations with statutory amendments from the Fiscal Year 2017 Budget Support Act of 2016, effective October 8, 2017 (D.C. Law 21-160; 63 DCR 10775) and the Anacostia River Clean Up and Protection Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-188; 59 DCR 10151). This rulemaking also amends material and labelling requirements at the request of the regulated community and recycling industry and clarifies the requirements for grocery stores with seating and self-checkout aisles.

A Notice of Proposed Rulemaking was published in the D.C. Register on April 20, 2018 (65 DCR 4458; Notice ID 0068402). The comment period ended on May 21, 2018, and no comments were received. No substantive changes have been made since publication of the proposed rulemaking.

Pursuant to § 104(a)(1) of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.04(a)(1) (2012 Repl.)), the proposed rules will be submitted to the Council of the District of Columbia for review and approval. The rule will become effective upon Council approval, or thirty (30) days after submission if the Council has not disapproved the proposed rulemaking, and publication of the final rules in the *D.C. Register*.

Chapter 10, RETAIL ESTABLISHMENT CARRYOUT BAGS, of Title 21, DCMR, WATER AND SANITATION, is amended as follows:

Section 1001, DISPOSABLE CARRYOUT BAG FEE REQUIREMENTS, is amended as follows:

By adding Subsection 1001.4 to read:

1001.4 The retail establishment shall account for all bags provided, whether the transaction is completed by a representative of the establishment or at a self-checkout kiosk.

Section 1002, DISPOSABLE CARRYOUT BAG MATERIAL AND LABELING REQUIREMENTS, is amended as follows:

By amending Subsection 1002.1 to read:

1002.1 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 disposable carryout bags shall display in a highly visible manner the phrase "Please Recycle This Bag," or a substantially similar phrase;
- (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.

Section 1005, APPLICATION OF CARRYOUT BAG REQUIREMENTS TO RESTAURANTS, is amended as follows:

By amending Subsection 1005.1 to read:

1005.1 A restaurant with seating, where food or refreshments are served to transient customers to be eaten on the premises where sold, shall comply with the fee, material, and labeling requirements of Sections 1001 and 1002 for each of the following types of 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; and,

- (c) A paper carryout bag if the restaurant is classified as a Retail Food Establishment pursuant to D.C. Official Code § 47-2827(j).

Section 1006, CARRYOUT BAGS NOT SUBJECT TO THIS CHAPTER, is amended as follows:

By amending Subsection 1006.1 to read:

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), unless the entity also holds a license as a Retail Food Establishment pursuant to D.C. Official Code § 47-2827(j); and
- (i) A reusable carryout bag as defined in Section 1099.

Section 1012, PENALTIES FOR VIOLATIONS, is amended to read as follows:

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 Department of Energy and Environment (Director) determines that a violation of this chapter covered by subsection 1012.1 has occurred, the Director may issue one or both of the following:
- (a) A warning notice to the retail establishment; and
 - (b) A notice of infraction that shall also impose a fine against the retail establishment.
- 1012.3 No more than one (1) penalty shall be imposed upon a retail establishment within a seven (7) calendar day period.
- 1012.4 A recipient may request a hearing pursuant to instructions contained in the notice of infraction.
- 1012.5 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.*).

Chapter 40, DEPARTMENT OF THE ENVIRONMENT (DDOE) INFRACTIONS, of Title 16, DCMR, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, is amended as follows:

Section 4011, FOOD SERVICE WARE INFRACTIONS, is amended to read as follows:

- 4011 FOOD SERVICE WARE AND RETAIL ESTABLISHMENT CARRYOUT BAGS INFRACTIONS**
- 4011.1 [RESERVED]
- 4011.2 [RESERVED]
- 4011.3 [RESERVED]
- 4011.4 Violation of the following provision shall be a Class 4 infraction:
- (a) 21 DCMR § 2301.1 (selling or providing food or beverage in expanded polystyrene food service products);
 - (b) 21 DCMR § 2302.1 (selling or providing food or beverage in products which are not recyclable or compostable);
 - (c) 21 DCMR § 1001.1 (failing to charge the fee of five cents (\$0.05) for each disposable carry-out bag provided);

- (d) 21 DCMR § 1002.1 (failing to comply with material and labelling requirements); and
- (e) 21 DCMR § 1011.1 (sale or distribution of non-compliant disposable carryout bags).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: Alana Intrieri
Executive Director
Office of Policy and Legislative Affairs

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: August 23, 2018

SUBJECT: Legal Sufficiency Review of the “Retail Establishment Carryout Bags Requirements and Schedule of Fines Approval Resolution of 2018” (AE-18-418)

This is to Certify that this Office has reviewed the above-referenced legislation and that we have found it to be legally sufficient.

If you have any questions in this regard, please do not hesitate to call me at 724-5524.

A handwritten signature in black ink, appearing to read "JMR/a. Parker". The signature is written in a cursive, flowing style.

Janet M. Robins

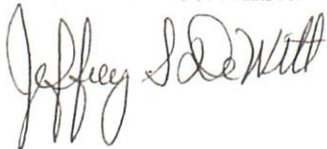
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: August 30, 2018

SUBJECT: Fiscal Impact Statement – Retail Establishment Carryout Bags
Requirements and Schedule of Fines Approval Resolution of 2018

REFERENCE: Draft Bill as shared with the Office of Revenue Analysis on August 10,
2018

Conclusion

Funds are sufficient in the fiscal year 2018 budget and the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the proposed resolution.

Background

The District requires all retail establishments offer customers disposable carryout bags that are recyclable and made of certain materials and to charge a customer five cents for each disposable carryout bag provided to the customer no matter how the purchase was made.¹ Current rules² also provide specific parameters for the wording that must be displayed on disposable carryout bags to indicate that they are recyclable.

The approval resolution's underlying regulations expand a retail establishment's oversight responsibility to include purchases made at self-checkout kiosks. The regulations also eliminate the specificity of how the recycling notification on the bags must be printed and displayed and eliminates this requirement altogether for plastic bags.

The regulations also expand the restaurants subject to the disposable carryout paper bag requirements to include restaurants holding a retail food establishment license, such as bakeries, delis, or groceries.

¹ Anacostia River Clean Up and Protection Act of 2009, effective September 23, 2009 (D.C. Law 18-55; D.C. Official Code § 8-102.01 et seq.).

² Retail Establishment Carryout Bags, adopted August 13, 2010 (21 DCMR § 10 et seq.).

The Honorable Phil Mendelson

FIS: "Retail Establishment Carryout Bags Requirements and Schedule of Fines Approval Resolution of 2018,"
Draft Bill as shared with the Office of Revenue Analysis on August 10, 2018

The regulations remove prescribed fine amounts of \$100 for a first offense, \$200 for a second offense, and \$500 for subsequent offenses in a calendar year and makes bag law violations a Class 4 infraction.³ Class 4 infractions carry penalties of \$100 for a first offense, \$200 for a second offense, \$400 for a third offense, and \$800 for subsequent offenses.⁴ The changes remove a requirement that a warning notice be issued for a first violation of the carryout bag rules.

Financial Plan Impact

Funds are sufficient in the fiscal year 2018 budget and the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the proposed resolution. The Department of Energy and Environment's (DOEE) Natural Resources Administration enforces the carryout bag rules. The Natural Resources Administration can enforce these changes to the carryout bag rules with its existing staff and resources.

Over the last four years, DOEE issued approximately forty-five violations annually, generating less than \$4,000 in revenue annually. We do not expect any significant changes in the number of violations issued or revenues because of the rule changes approved through this proposed resolution. Fine revenues are deposited into the Anacostia River Clean Up and Protection Fund⁵ to help fund enforcement of the carryout bag laws and education and preservation of the District's waterways.

³ Food Service Ware Infractions, effective March 25, 2016 (16 DCMR § 4011).

⁴ Fine Amounts, effective July 31, 2017 (16 DCMR § 3201).

⁵ D.C. Official Code § 8-102.05.