



Guidance for NYACS Member Retailers on Resumption of the New York State Plastic Bag Ban October 19, 2020

OCTOBER 2020

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On October 19, 2020, the Department of Environmental Conservation will resume enforcing New York State's law banning single-use plastic bags.



The law was supposed to take effect on March 1, but was delayed by a lawsuit brought by a plastic bag manufacturer and several NYC bodega owners.

On August 20, the court upheld the law's constitutionality.

DEC chose October 19 as the date to resume enforcing the law.

New York's
PLASTIC BAG BAN
IS IN EFFECT

KEEP BAGS:

 AT HOME	 AT WORK	 IN YOUR PURSE	 IN THE CAR	 IN YOUR BACKPACK
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BYO BAG

#BYOBAGNY  Department of Environmental Conservation on.ny.gov/byobagny

**As of October 19, you may
no longer distribute
plastic carryout bags
to customers**

Prepared Food Exemption

Both the law and the DEC regulations originally said food establishments licensed by the Health Department (restaurants) would be exempt from the plastic bag ban, while those licensed by the Department of Ag & Markets (convenience stores) would not.

After revisiting this policy at NYACS' request, DEC conceded that convenience stores with food service WILL be allowed to continue giving plastic bags to customers for takeout food.

Prepared Food Exemption

Thankfully, DEC staff saw the wisdom of treating all food establishments the same – permitting plastic bags that are “used solely to contain food sliced or prepared to order.”

However, keep in mind that the entire C-store is not exempt from the plastic bag ban just because it sells prepared-to-order food.

And you are not allowed to place a sandwich, a soda, and potato chips in a plastic bag at the checkout counter.

These Plastic Bags Are Still Allowed

➔ “Bags used solely to contain or wrap uncooked meat, seafood, poultry, other unwrapped or non-prepackaged food, flower, plant, or other item for the purpose of separating it from other items to avoid contamination, prevent damage from moisture, or for sanitary, public health, or environmental protection purposes.”

and...

These Plastic Bags Are Still Allowed

→ Bags used by a customer solely to package bulk items such as produce, grains, candy, nuts and bolts, and live bait

→ Newspaper delivery sleeves



→ “Bags sold in bulk quantities to a consumer at the point of sale that were specifically prepackaged in a manner to allow for bulk sale (for example, in individual pre-sealed boxes)”

and...

These Plastic Bags Are Still Allowed

→ Bags sold as trash bags

→ Bags sold as food storage bags

→ Garment bags

→ Bags provided by a pharmacy to carry prescription drugs





Paper Bag Tax in Certain Localities

Under the law, cities and counties are allowed to “opt into” requiring stores to collect a paper bag tax of 5 cents per bag on all paper bags they give to customers. They call it a fee, but it’s really a tax.

Stores in those municipalities must track, report and remit this paper bag tax revenue to the Tax Department using Schedule E, which you can access at this link:

https://www.tax.ny.gov/pdf/current_forms/st/st810_13.pdf

and...



Paper Bag Tax in Certain Localities

In addition to the three original localities charging the 5-cent paper bag tax (**Suffolk County, Tompkins County, and New York City**), two new localities followed suit effective June 1, 2020 – the **City of Troy** and the **City of White Plains**.

Meanwhile, **Albany County** has just approved a 5-cent paper bag tax to take effect December 1, 2020. The county originally enacted the tax pre-pandemic, but a technical snafu resulted in it never taking effect, and they just got around to re-doing it.

Can I charge my own paper bag fee?

Yes.

Retailers are allowed to charge customers their own fee for paper bags if they wish – 5 cents, 10 cents, a dollar, any amount determined by the retailer, and retain the revenue.



Retailers who do charge a fee are doing so to recoup some of the higher cost of paper bags and/or protect their limited supply of paper bags by diverting customers to reusables.

Can I charge my own paper bag fee?

Yes.

In “opt-in” cities and counties, you are permitted to charge your own fee *on top* of the mandatory 5¢ government-imposed paper bag tax.

** However, that can get tricky programming your POS system to print all that on a receipt, and explaining it to customers at the counter.*

Can I charge my own paper bag fee?

Yes.

In “opt-in” localities, the mandatory 5-cent paper bag tax is not subject to sales tax.

But where retailers elect to charge their customers a paper bag fee, the state Tax Department bulletin linked here says such fees are subject to sales tax:

<https://www.tax.ny.gov/pdf/publications/sales/pub718b.pdf>

** As a practical matter, an 8 or 8.5% sales tax on a 5-cent fee is less than a penny. But it could conceivably increase the total sales tax by a penny as part of a larger transaction.*

Must I Carry Reusable Bags?

Yes. Under the law, all stores must “make reusable bags available to customers within the store for purchase or at no charge.”

If you do charge, you choose the price – 5 cents per bag, \$1.00, \$7.50, whatever.

You need to make sure your reusable bags meet the detailed DEC definition and durability standards shown on the next slide.

What is a Reusable Bag?

DEC says "reusable bag" means a bag that:

- 1) Is either “made of cloth or other machine washable fabric, or a durable, non-plastic bag with handles that is specifically designed and manufactured for multiple reuse;” and
- 2) Has at least one strap or handle that does not stretch and is fastened to the bag in such a manner that it allows the bag to meet the following strength and durability standards:

Minimum lifespan of 125 uses, with a use equal to the ability to carry a minimum of 22 pounds over a distance of at least 175 feet.

What About SNAP & WIC Customers?

The law says SNAP and WIC customers are exempt from paying the mandatory 5-cent tax on paper bags imposed by counties and cities that have opted in.



** If you voluntarily apply your own paper bag fee, you are not required to exempt SNAP and WIC customers from that fee. But you may want to do so anyway as a matter of company policy, in the interests of consistency and community relations.*

What if I Have Plastic Bags Left Over?

DEC says there is no grace period.

DEC recommends any plastic bags still in stock as of October 19 “be donated to non-profit organizations, such as a local food bank or food pantry.”

In other words, retail stores should not put those bags into circulation, they should give them to another entity that will put them into circulation.

If the bags cannot be donated, DEC recommends they be “responsibly recycled via film plastic recycling” by placing them in a plastic bag recycling bin at a supermarket or other larger store.

What If a Customer Brings Their Own Bag?

That's the goal!

If a customer brings their own bag into the store with them, they're allowed to use it – even if it's an old film plastic bag, or a flimsy reusable bag that doesn't meet the DEC durability standards.

You may not charge customers a fee to use any bag they bring with them.



Where Can I Find More information?

The DEC has posted information for retailers on the bag waste reduction law at the link below.

It includes posters and social media graphics you can use to remind your customers about the new law.

www.dec.ny.gov/chemical/117781.html

If you have any questions...



**Contact Jim Calvin at NYACS
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