

# GUIDANCE ON SINGLE-USE PLASTIC CARRY-OUT BAG BAN

This document describes [38 MRSA §1611](#), a statewide law regulating carry-out bags that includes a ban on point-of-sale single-use plastic bags and a small fee on recycled paper bags and on reusable bags made of plastic. The Department of Environmental Protection will update this guidance document as additional questions are received.



For Questions Regarding the Single-Use Plastic Bag Fee:

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## Question 1: What does the law do, and when does it take effect?

**Answer:** [38 MRSA §1611](#) establishes a statewide ban on single-use plastic carry-out bags used to bag products at the point of sale in retail establishments, effective April 22, 2020. Once the law is in effect, all carry-out bags provided or made available by the retailer at point-of-sale must be either a reusable bag or a recycled paper bag. In addition, retail establishments must charge a fee of at least 5¢ per carry-out bag for recycled paper bags and reusable bags made of plastic.

## Question 2: Who needs to comply with this law?

**Answer:** All retail establishments must comply with this law. "Retail establishment" means a store, a restaurant or a temporary business, such as a farmers' market or fair where merchandise including food, goods, products or clothing is sold.

## Question 3: Who does not need to comply with this law?

**Answer:** Hunger relief organization such as food pantries or soup kitchens that distribute food directly to the consumer at no charge are exempted



from all aspects of this law.

## Question 4: What carry-out bags can be used at point-of-sale when the law goes into effect?

**Answer:** Retail establishments may provide one of the following types of carry-out bag:

1. A "Reusable bag," which means a bag with handles that:
  - (1) Is designed and manufactured to withstand a minimum of 75 repeated uses;
  - (2) Is machine washable or made from a material that can be cleaned and disinfected regularly;
  - (3) If made from plastic is at least 4 mils thick; and
  - (4) Has the capability of carrying a minimum of 18 pounds.
2. A "Recycled paper bag," which means a paper bag that:
  - (1) Is 100% recyclable; and
  - (2) Contains at least 20% post-consumer recycled material if it has a capacity to hold at least 8 pounds.

This means all paper bags that are large or sturdy enough to carry 8 pounds or more must

contain at least 20% recycled content and be 100% recyclable. To be 100% recyclable, paper bags cannot have handles made from a different material, such as plastic string or ribbon. Paper bags that are not designed to hold 8 pounds or more but are intended to carry small or lightweight items need to be 100% recyclable, but do not need to contain post-consumer recycled content.

**Question 5: Who needs to charge a bag fee, and for which types of bag should a fee be charged?**

**Answer:** Retail establishments must charge a fee of at least 5¢ per bag for recycled paper bags and reusable bags that meet all 4 criteria including if made entirely from plastic (at least 4mil thick). Traditional reusable bags may be given away at the retailer's discretion or the retailer may opt to charge a fee of 5¢ or more per bag. See below for the list of acceptable single-use bags that are allowed without a fee.

**Question 6: Who will not need to charge a fee for carry-out bags?**

**Answer:** Stores with less than 2% of retail sales attributed to the sale of food and less than 10,000 square feet of retail area and all

restaurants are exempt from the requirement to charge a fee for recycled paper bags or reusable bags made of plastic but may choose to do so.

**Question 7: How will bag fee funds be used?**

**Answer:** Bag fees may be used at the retail establishment's discretion.

**Question 8: Should Maine sales tax be applied to the bag fee?**

**Answer:** No. The bag fees are not taxable. See 36 M.R.S. § 1752(14)(B)(11).

**Question 9. If customers bring their own bags to a retail establishment, should a fee be collected on those bags?**

**Answer:** No. The bag fee is only imposed on bags provided by a retail establishment, so no fee should be charged on any bags that customers bring in themselves.

**Question 10: Must a bag fee be charged to customers who make purchases with Supplemental Nutrition Assistance Program (SNAP) or Special Supplemental Nutrition Program for Women, Infants and Children (WIC) benefits?**

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Acceptable single-use bags include the following: (1) Bags provided by a pharmacy to a customer for transporting a prescription medication away from the store; (2) Bags without handles used to protect items from being damaged or from damaging or contaminating other purchased items placed in a recycled paper bag or a reusable bag; (3) Bags used by customers inside a retail establishment to package loose items, such as fruits, vegetables, nuts, coffee, grains, bakery goods, candy, greeting cards or small hardware items; to contain or wrap frozen foods, meats or fish; or to contain or wrap flowers or potted plants; (4) Laundry, dry cleaning or garment bags, including bags provided by a hotel to guests to contain wet or dirty clothing or bags provided to protect large garments like suits, jackets or dresses; (5) Newspaper bags; (6) Bags sold in packages containing multiple bags intended to contain garbage, pet waste or yard waste; (7) Bags used to contain live animals, such as fish or insects sold in pet stores; (8) Bags used for vehicle tires; (9) Bags used to transport chemical pesticides, drain cleaning chemicals or other caustic chemicals sold at a retail establishment

**Answer:** Yes, the bag fee must be charged for all customers. There is no exemption provided for customers who make purchases with SNAP or WIC benefits.

**Question 11: Are bags provided by restaurants for take-out meals or to contain leftover meals being taken with customers considered single-use plastic carry-out bags?**

**Answer:** Yes. Restaurants must comply with the requirement to provide only reusable or recycled paper bags, but they are not required to collect the 5¢ fee.

**Question 12: Will retail establishments still be allowed to sell packaged plastic bags, like garbage bags?**

**Answer:** Yes, bags sold in packages containing multiple bags intended to contain garbage, pet waste or yard waste are exempted from this law.

**Question 13: Will retail establishments be able to provide single-use bags for loose, unpackaged goods such as produce, deli, and bakery items?**

**Answer:** Yes, retail establishments may provide or make available these and other exempted types of single-use bag<sup>1</sup> provided they continue to serve as a public plastic bag recycling drop-off.

**Question 14: Do retail establishments still need to collect and recycle plastic bags?**

**Answer:** Effective April 22, 2020, retail establishments that provide or make available exempted types of single-use plastic bag to bag items within the retail establishment will be required by law to:

(1) Locate inside the retail establishment or within 20 feet of the main entrance to the retail establishment a receptacle for collecting any used single-use carry-out bags made of plastic; and

(2) Ensure that single-use carry-out bags made of plastic that are collected by the retail establishment are recycled or delivered to a person engaged in recycling plastics.

Although there is an interim period between September 19, 2019 and April 22, 2020 during which retailers are not required by law to collect and recycle plastic bags, the Department strongly recommends that retailers do not remove plastic bag recycling receptacles unless they are going to phase out use of all single-use plastic bags to bag products within the retail establishment by April 22, 2020. Temporary removal of plastic bag recycling receptacles would be inconvenient and confusing to consumers accustomed to recycling these materials at their local retailer.

**Question 15: Will municipal bag ordinances remain in place when the statewide law passes?**

**Answer:** Effective September 19, 2019, a local government may not adopt a new ordinance regulating single-use carry-out bags at retail establishments, but existing municipal bag ordinances will remain in place until the statewide law goes into effect on April 22, 2020. Effective April 22, 2020, existing municipal ordinances or regulations that violate the statewide law regulating single-use carry-out bags will be void and no longer have force or effect.