

Bill No. 24-24
Concerning: Taxation – Paper Carryout
Bags and Prohibition on
Plastic Carryout Bags
(“Bring Your Own Bag”)
Revised: 2/11/2025 Draft No. 11
Introduced: October 15, 2024
Enacted: February 11, 2025
Executive: February 24, 2025
Effective: January 1, 2026
Sunset Date: None
Ch. 2, Laws of Mont. Co. 2025

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President Stewart
Co-Sponsors: Councilmembers Sayles, Glass, Fani-González, Council Vice-President Jawando, and
Councilmember Katz

AN ACT to:

- (1) prohibit plastic carryout bags provided by a retail establishment in the County, with certain exceptions;
- (2) require a tax on paper carryout bags at the point of sale with certain exceptions;
- (3) require a tax on plastic carryout bag, if provided within a municipality;
- (4) exempt recipients of food assistance programs from the carryout bag tax;
- (4) remove a certain threshold for when taxes must be remitted to the County;
- (5) modify the reporting requirements for remittance of the carryout bag tax;
- (6) clarify that certain conduct by a retailer is prohibited; and
- (7) generally amend County law related to the excise tax on carryout bags.

By amending

Montgomery County Code
Chapter 52, Taxation
Sections 52-77, 52-78, and 52-79

By adding

Montgomery County Code
Chapter 48, Solid Waste (Trash)
Article IX. Plastic Carryout Bag Reduction
Sections 48-65, 48-66, 48-67, and 48-68

Chapter 52, Taxation
Section 52-78A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 52-77, 52-78, and 52-79 are amended and Article IX of Chapter 48 (Sections 48-65, 48-66, 48-67, and 48-68) and Section 52-78A are added as follows:

ARTICLE IX. Plastic Carryout Bag Reduction.

48-65. Short Title.

This Article may be known and cited as the “Bring Your Own Bag.”

48-66. Definitions.

For the purposes of this section the following words have this meaning:

Department means the Department of Environmental Protection.

Director means the Director of the Department or the Director’s designee.

Plastic carryout bag means a plastic bag provided by a retail establishment to a customer at the point of sale, pickup, or delivery, including delivery by a third party to carry the purchased items and is not a reusable carryout bag.

Plastic carryout bag does not include:

- (1) a plastic bag provided by a pharmacist that contains a prescription drug;
- (2) any newspaper bag or bag intended for garbage, pet waste, or yard waste;
- (3) a bag provided at the point of sale at a seasonal event, such as [[a]]:
 - (A) an occasional farmers market[[,]];
 - (B) a full-time retail operation located on a farm;
 - (C) a street fair[[,]]; or
 - (D) a yard sale;
- (4) a bag used to package bulk items, including fruit, vegetables, nuts, grains, candy, ice, or small hardware items;
- (5) a bag that contains hanging garments or dry-cleaned clothes, including suits, jackets, or dresses;

(6) a bag or plastic bag sleeve used to contain or wrap a perishable item, including meat or fish, or unwrapped prepared foods or bakery goods; [[or]]

(7) a bag used to take live fish, insects, mollusks, crustaceans, or amphibians away from the retail establishment[.]; or

(8) a bag used to package items for the purpose of charitable distribution. *Point of sale* means the physical [[or virtual]] place where a customer executes payment for goods or services or receives goods or services.

Restaurant has the same meaning stated in Section 52-77.

Retail establishment has the meaning stated in Section 52-77.

Reusable carryout bag means a reusable carryout bag with stitched handles specifically designed and manufactured for multiple reuses and is made of:

(1) cloth or other washable fabric; or

(2) a durable material suitable for multiple re-use that is not made of plastic film.

[[*Retail establishment* has the meaning stated in Section 52-77.]]

48-67. Plastic carryout bag – prohibited.

A retail establishment must not provide a plastic carryout bag to a customer, or a third party, for the purpose of carrying away or delivering goods or other materials from the point of sale.

48-68. Penalty and enforcement.

(a) *Civil citation.* A retail establishment in violation of this Section is subject to a Class [[A]] B civil citation, if:

(1) an enforcement officer witnesses one or more plastic carryout bags provided to a customer at a single point of sale.

(2) The distribution of one or more bags in connection with a single transaction constitutes a single violation.

(b) Notice of violation. A penalty under subsection (a) may not be imposed unless a retail establishment:

(1) is first issued a written notice of violation; and

(2) fails to correct the violation within 7 days after receipt of the written notice.

(c) Enforcement. The Department must enforce the provisions under this Section and may coordinate with other departments to address violations, as needed.

(d) The [[Office of the County Attorney]] County may [[file an action in Circuit Court]] seek injunctive or other appropriate relief from any court with jurisdiction against a retail establishment for any repeated violations of this [[Section]] Article.

48-69. Regulations.

The County Executive may adopt and establish regulations to implement and enforce this [[Section]] Article.

ARTICLE IX. Carryout Bag Tax.

52-77. Definitions.

In this Article, the following terms have the following meanings:

Department means the Department of Finance.

Director means the Director of the Department of Finance.

Food assistance program means any federal, state, or local program that provides monetary benefit to low-income individuals and families used at a store to purchase food. Food assistance program include Supplemental Nutrition Assistance Program (SNAP) or Women, Infants, and Children Program (WIC).

Paper carryout bag means a paper bag provided by a retail establishment to a customer at the point of sale, pickup, or delivery. Paper carryout bag does not include:

- (1) a paper bag provided by a pharmacist that contains a prescription drug;
- (2) a bag used to take live fish, insects, mollusks, or crustaceans away from a retail establishment;
- (3) a paper bag that a restaurant gives a customer to take prepared or leftover food or drink from a restaurant;
- (4) a paper bag containing prepared food provided at the drive-through window of a restaurant;
- (5) a paper bag provided at a mobile food truck that contains prepared food;
[[or]]
- (6) a paper bag provided for food delivery that is collected by a third party delivery service to carry the purchased item[.];
- (7) any paper bag intended for garbage, pet waste, or yard waste;
- (8) a bag used to package bulk items, including fruit, vegetables, nuts, grains, candy, ice, or small hardware items;
- (9) a bag that contains hanging garments or dry-cleaned clothes, including suits, jackets, or dresses;
- (10) a bag or paper bag sleeve used to contain or wrap a perishable item, including meat or fish, or unwrapped prepared foods or bakery goods;
- (11) a bag used to package items for the purpose of charitable food distribution; or
- (12) a bag provided at the point of sale at seasonal event, such as:
 - (A) an occasional farmer's market;
 - (B) a full-time retail operation located on a farm;
 - (C) a street fair; or

(D) a yard sale.

Point of sale has the same meaning as stated under Chapter 48-66.

[*Carryout bag* means a paper or plastic bag, non-reusable, provided by a retail establishment to a customer at the point of sale, pickup, or delivery, to carry purchased items. *Carryout bag* does not include:

- (1) a bag provided by a pharmacist that contains a prescription drug;
- (2) any newspaper bag or bag intended for initial use as a dry cleaning, garbage, pet waste, or yard waste bag;
- (3) a bag provided at the point of sale at a seasonal event, such as a farmers market, street fair, or yard sale, or by an occasional retailer;
- (4) a paper bag that a restaurant gives a customer to take prepared or leftover food or drink from the restaurant; or
- (5) a bag used to package a bulk item or to contain or wrap a perishable item.

Occasional retailer means a retail establishment that engages in the retail sale of goods no more than 6 days in any calendar year.]

Restaurant means any lunchroom, café, or other establishment located in a permanent building for the accommodation of the public, equipped with a kitchen containing facilities and utensils for preparing and serving meals to the public, and outfitted with or without a public dining area. A *restaurant* does not include any area of a supermarket, department store, or other retail establishment beyond the kitchen and public dining area.

Retail establishment means any person engaged in the retail sale of goods. *Retail establishment* includes any supermarket, convenience store, shop, service station, mobile food truck, or restaurant, and any other sales outlet where a customer can buy goods.

52-78. Tax imposed – Countywide and municipalities.

(a) A tax in the amount of ~~[5 cents]~~ 10 cents is levied and imposed on each customer for each paper carryout bag that a retail establishment provides or sells to the customer.

(b) Applicability to municipalities. Unless a municipality adopts County law or enacts an ordinance that prohibits single-use plastic carryout bag as required under Section 48-67, it must levy and impose a 10-cent tax on each customer for each plastic carryout bag provided by a retail establishment. A retail establishment in a municipality is required to collect, exempt, remit, report, and adhere to all the requirements under this Chapter for a single-use plastic carryout bag as it would for a paper carryout bag.

(c) Except as provided in Section 52-78A, [Each] each retail establishment that provides a paper carryout bag, and if a plastic single-use carryout bag is provided within [[in]] a municipality, to a customer must collect the amount of the tax imposed under [[subsection]] subsections (a) and (b) when the customer makes any payment for goods in person, [[through the Internet,]] by telephone, by facsimile, or by any other means. The retail establishment must hold the taxes required to be collected under this Section in trust for the County until remitted as required under Section 52-79.

[[c)] (d) Each retail establishment may retain ~~[1 cent]~~ 5 cents from each ~~[5-cent]~~ 10-cent tax that the retail establishment collects to cover the administrative expense of collecting and remitting the tax to the County.

[[d)] (e) A retail establishment must indicate on the customer's transaction receipt:

(1) the number of paper carryout bags that the retail establishment provided to the customer; and

(2) the total amount of tax levied under this Section unless a food assistance benefit is used for payment then the receipt must indicate the carryout bag tax is exempt.

~~[(e)]~~ (f) A retail establishment must post a notice at the public entrance to the retail establishment or at each point of sale that reads: [[advises customers to bring reusable carryout bags or to skip the bag and that all]] “All carryout bags provided by the retailer are subject to a charge. A customer who brings their own reusable carryout bag or who does not use a carryout bag will not be subject to a charge.” The notice must be posted in English and Spanish. The Department of Environment Protection must post an example of a notice in English and Spanish on the County website.

52-78A. Recipients of food assistance program – exemption.

A retail establishment must not charge or collect a tax for a paper carryout bag provided to a customer for items purchased using a food assistance program.

52-79. Remittance.

(a) [Except as provided in subsection (b), on or before the 25th of each month, each] Each retail establishment must remit the full amount of the tax collected for all paper carryout bags provided to a customer during the previous [month] quarter, less the amount retained under Section 52-78(c).

(b) Quarterly remittance – required. A retail establishment is [only] required to remit the taxes under subsection (a) to the Director every quarter in accordance with the remittance schedule posted by the Department on its website [when the cumulative taxes collected under Section 52-78(a) since the previous remittance, if any, exceeds \$100].

(c) Reporting. Each remittance must be accompanied by a report of all transactions that involve paper bags subject to the tax. The report must be on a form supplied by the Director and must contain:

(1) the number of paper bags supplied or provided to customers[,];

(A) for which a tax was collected; and

(B) for which a tax was not collected;

(2) the amount of tax required by this Section to be collected;

(3) for an owner of more than one retail establishment must identify the remittance for each location by name and address; and

(4) any other information the Director requires to [assure] ensure that the proper tax has been remitted to the County.

(d) (1) If the retail establishment does not file a required report by the deadline established under subsection (a), the Director may estimate the amount of tax due. The Director may base the estimate on a reasonable projection of paper carryout bags, or where applicable plastic carryout bags, supplied or provided and may consider taxes reported by other retail establishments.

(2) The Director may send a notice of the estimated tax due, including interest and penalty, to the retail establishment's last known address. The retail establishment must pay the estimated tax, including any interest and penalty assessed by the Director, within 10 days after the notice is sent.

* * *

Sec. 52-81. Prohibited conduct.

A retail establishment must not:

(a) neglect or refuse to collect or remit the tax levied under this Article;

(b) file an incomplete, false, or fraudulent report to the Director;

(c) neglect or refuse to keep complete and accurate records; [or]

(d) refuse to allow the Director to inspect and audit the retail establishment's records[.]; or

(e) misrepresent, advertise, hold out, collect, or state to the public or to a customer [[, directly or indirectly,]] an amount that exceeds the allowable tax established under Section 52-78(a).

Sec. 2. Effective date.

The prohibition on the use of plastic bag of Section 48-67, added under Section 1 of this Act, must take effect on [[July 1, 2025]] January 1, 2026. The amendments made in Section 1 must apply to any paper carryout bag tax, and where applicable any plastic carryout bag tax, that would be due or is paid after this Act becomes effective on [[July 1, 2025]] January 1, 2026.

Approved:



February 11, 2025

Kate Stewart, President, County Council

Date

Approved:



February 24, 2025

Marc Elrich, County Executive

Date

This is a correct copy of Council action.



February 24, 2025

Sara R. Tenenbaum, Clerk of the Council

Date