

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Energy and Environment



MEMORANDUM

TO: Tommy Wells
Director, Department of Energy and Environment

FROM: Steve Saari
Associate Director, Watershed Protection Division

DATE: August 30, 2019

SUBJECT: Guidance and clarification on paper bag fee exemptions in food courts with public seating

This memorandum provides guidance on Department enforcement and clarifies that the paper bag fee exemption for restaurants with seating applies to restaurants, delicatessens, and other retail food establishments located in food courts and similar properties with public seating areas designated for consuming food and beverages purchased on the property.

Chapter 10, RETAIL ESTABLISHMENT CARRYOUT BAGS, of Title 21, DCMR, WATER AND SANITATION, Section 1006, CARRYOUT BAGS NOT SUBJECT TO THIS CHAPTER, provides for the following exemption to the bag fee:

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).¹

Restaurants and delicatessens in food courts and similar properties are still required to comply with the bag fee if a plastic bag is provided to the customer, and all other requirements as outlined under Section 1005, APPLICATION OF CARRYOUT BAG REQUIREMENTS TO RESTAURANTS.²

Essential Function of Food Courts and Similar Properties as Restaurants with Seating

Restaurants, delicatessens, and other retail food establishments located in food courts and similar properties with public seating areas designated for consuming food and beverages purchased onsite function comparably as stand-alone restaurants with seating. While the specific seating design at each property varies, most retail food establishments in food courts and similar properties are located steps away from seating and waste collection infrastructure, meant to be

¹ 21 DCMR § 1006.1(h).

² 21 DCMR § 1005.

used by customers purchasing food and beverages at the establishment and consumed onsite. The Department is aware that establishments often pay rent or fees to the property owner or manager to have their business located at the food court and given access to the seating and waste infrastructure provided within. For these reasons, the Department will apply the paper bag fee exemption for restaurants with seating to restaurants, delicatessens, and other retail food establishments located in food courts and similar properties.

Department Enforcement Policy on Paper Bags Provided to Customers in Food Courts and Similar Properties

Previously, the Department has not applied the exemption for restaurants with seating to fast food establishments in food courts, unless the business has its own private seating area. However, Department inspectors regularly inspect food courts in the District for bag law compliance and have encountered instances where establishments at the same property have different policies for charging for paper bags, leading to confusion on the part of establishment owners and operators. Department inspectors have also encountered instances where restaurant and delicatessen owners in food courts have proposed switching from paper bags back to plastic if the bag fee is required for paper, due to the increased cost of paper bags. The Department recognizes this goes against the original intent of the *Anacostia River Clean Up and Protection Act of 2009*, and as such will apply the paper bag fee exemption for restaurants with seating to restaurants, delicatessens, and other retail food establishments located in food courts and similar properties. Although these businesses do not have designated seating areas, they are selling food to be consumed on the premises, much like a restaurant with seating. Therefore, the Department is changing its interpretation of the regulations to exempt businesses in food courts that are licensed as either a Restaurant or a Delicatessen by the Department of Consumer and Regulatory Affairs (DCRA).

Examples of Items Subject and Not Subject to the Bag Fee

The Department has created the following list of examples to provide clarity when a bag fee must and may not be charged at a food court or similar property; this list is not meant to be taken as exhaustive.

Example 1: A fast food establishment at a food court provides a customer with their meal in a paper bag. The cashier does not charge a five-cent fee for the paper bag.

Answer: This is the correct action under this memorandum's guidance.

Example 2: A newsstand that sells snacks at a food court provides a paper bag to a customer who only purchased a magazine (non-food item). The cashier does not charge a five-cent fee for the paper bag.

Answer: This is a violation of the Act. A business in a food court that is not licensed as either a Restaurant or a Delicatessen does not fall under the exemption for restaurants with seating.

Further, for exempt establishments that also sell non-food items (such as a coffee shop that also sells travel mugs) the establishment must charge a bag fee for a paper bag that includes a non-food item that the customer pays for, whether or not the bag also contains a food item, per the requirements of 21 DCMR § 1006.1(h).

Example 1: A fast-casual establishment at a food court provides a customer with their meal in a plastic bag. The cashier charges a five-cent fee for the plastic bag.

Answer: This is the correct action under this memorandum's guidance.