



# FAQ on Single-Use Plastic Bags and Straws

SEPTEMBER 2020

Last updated by LOC Attorneys May 2023

## FOREWORD

In June of 2019, the Oregon Legislative Assembly and Oregon Gov. Kate Brown enacted into law House Bill (HB) 2509.<sup>1</sup> This law, effective **Jan. 1, 2020**, regulates checkout bags throughout the state. The state also recently enacted Senate Bill (SB) 90,<sup>2</sup> effective **June 13, 2019**, which regulates single-use plastic straws. This publication provides answers to commonly asked questions about these new laws.

The COVID-19 state of emergency has presented new challenges for grocers, shoppers, and the cities and counties tasked with enforcing these regulations. While no actions have been taken at the state level to suspend the plastic bag ban, the Oregon Department of Environmental Quality (“DEQ”) has suggested that local governments temporarily refrain from penalizing grocers from using plastic bags. The LOC likewise encourages cities to take these circumstances of COVID-19 into consideration when reviewing these laws. Updated Bag Guidance, effective through June 30, 2021 can be found at <https://www.oregon.gov/deq/mm/Documents/BagGuidance.pdf>.

## DISCLAIMER

This document answers the questions mostly commonly asked about the state’s regulation of plastic bags and straws. It is not intended to provide an exhaustive legal analysis on the topic, nor is it intended to be a substitute for legal advice.

---

<sup>1</sup> Since the original publication, HB 2509 has been assigned to ORS 616.892, but for the remainder of this FAQ will be referenced by HB 2509.

<sup>2</sup> Since the original publication, SB 90 has been assigned to ORS 459A.757, but for the remainder of this FAQ will be referenced by SB 90.

# FAQ on Single-Use Plastic Bags and Straws

## **A. Who is Impacted by these Laws?**

These laws impact every restaurant, retail store, and local government in Oregon, in these ways:

Restaurants	Retail Stores	Local Governments
<p><b>1. Bag Ban</b> For all restaurants, the use of certain bags now is prohibited. Failure to comply can result in a \$250/day fine for these establishments. <i>See Part B.</i></p> <p><b>2. Required 5-Cent Charge</b> Restaurants must charge at least 5 cents for <u>reusable</u> plastic checkout bags, unless an exception applies. Failure to comply can result in a \$250/day fine. <i>See Part C.</i></p>	<p><b>1. Bag Ban</b> For all retail stores, the use of certain bags now is prohibited. Failure to comply can result in a \$250/day fine for these establishments. <i>See Part B.</i></p> <p><b>2. Required 5-Cent Charge</b> Retail stores must charge at least 5 cents for certain other bags, unless an exception applies. Failure to comply can result in a \$250/day fine. <i>See Part C.</i></p>	<p><b>1. Partial Preemption</b> Local laws that prohibit or limit the use of bags by restaurants or retail stores <u>that are not the same as state law</u> now are preempted. LOC suggests that cities either amend or repeal any non-identical local laws, except for as follows:</p> <p><b>2. Permitted Local Laws</b> Local laws may modify the state law in two ways. First, a local law may increase or decrease the \$250/day fine. Second, a local law may increase the 5-cent charge that is required on certain bags.</p>
<p><b>3. Plastic Straw Law</b> Restaurants, as well as some retail stores, also must comply with SB 90, a law regulating single-use plastic straws. Failure to comply results in a \$25/day fine, up to \$300/year.</p> <p>SB 90 preempts new local laws entirely, unlike HB 2509.</p> <p><i>See Part F.</i></p>	<p><b>3. Required Reporting</b> Retail stores that primarily sell groceries must provide the State with information by Sept. 15, 2024, on the amount collected from the 5-cent charge and the use of certain bags by customers. <i>See Part D.</i></p> <p><b>4. Plastic Straw Law</b> <i>See Part F.</i></p>	<p><b>3. Enforcement</b> Local law enforcement may issue citations under this law. <i>See Part E for all of the above.</i></p> <p><b>4. Plastic Straw Law</b> <i>See Part F.</i></p>

## **B. What Bags are Banned by HB 2509?**

By its terms, HB 2509 applies only to bags that are (1) “single-use” and (2) used for checkout.<sup>3</sup>

### **The term “single-use checkout bag” includes:**

- Any paper bag that is less than 40% post-consumer recycled fiber; and
- Any plastic bag that is not a reusable plastic bag;
- ...only if this paper or plastic bag is used for checkout. Any bag that is not used for this purpose is not covered by this law. For example, bags commonly used for the following are not covered:
  - Bulk items (small hardware, fruits and vegetables, greeting cards, etc.);
  - Fresh or frozen food, meat, or fish;
  - Fresh flowers or plants;
  - Specialty bags for garments, laundry, or dry cleaning;
  - Prescription drugs or newspapers;

In sum, the ban applies to the following:

Non-recyclable bags...	Non-reusable plastic bags ...
...that are used for checkout at retail stores or takeout/leftovers at restaurants.	

## **C. What Bags are Okay under HB 2509?**

Restaurants and retail stores may provide checkout customers with the following alternatives. Some of these bags require a minimum fee of 5 cents. The fee is “minimum” because restaurants and retail stores may charge more than 5 cents per bag if they wish. Similarly, local governments may increase these fees as they apply to bags (but cannot create new fees).

### **1. Recyclable Paper Bags (Free for restaurants / 5¢ for retail stores)**

Paper bags that contain “at least 40% post-consumer recycled fiber” may still be provided. Restaurants may offer these bags for free. However, retail stores must charge at least 5 cents for each of these bags purchased by a customer, with some exceptions:

- Retail stores *may* offer these bags for free to customers who use the following:
  - An “electronic benefits transfer card” from the Oregon Department of Human Services (DHS); or
  - A Women, Infants, and Children Program (WIC) voucher.

---

<sup>3</sup> For restaurants, “checkout bag” translates to a bag used for takeout or leftover dine-in food.

## **2. Reusable Plastic Bags (5¢ for both restaurants and retail stores)**

Plastic bags that qualify as reusable may be provided at retail stores and restaurants. By law, a plastic bag is reusable if the bag:

- Is made with handles;
- Is made from durable plastic at least 4 mils thick; and
- Is specifically designed for multiple uses.

These plastic bags are similar to the reusable fabric bags (below) commonly seen in stores today.

Retail stores and restaurants must charge customers at least 5 cents for each of these bags purchased by a customer, with some exceptions:

- Restaurants and retail stores *may* offer these bags for free to customers who use the following:
  - An “electronic benefits transfer card” from the DHS; and
  - WIC vouchers (applicable only to retail stores)

## **3. Reusable Fabric Bags (Free for restaurants / 5¢ for retail stores)**

Particularly at retail stores, fabric bags may be provided as an option to customers. The definition for fabric bags parallels the definition of reusable plastic checkout bags. A reusable fabric bag:

- Is made with handles;
- Is made from fabric;
- Is specifically designed for multiple uses.

Lawmakers did not contemplate restaurants providing these bags to customers (though restaurants could at no cost to customers). However, retail stores must charge at least 5 cents for each of these bags purchased by a customer, with some exceptions:

- Retail stores *may* offer these bags for free to customers who use the following:
  - An “electronic benefits transfer card” from the Department of Human Services (DHS); or
  - A Women, Infants, and Children Program (WIC) voucher.
- Retail stores *may* provide these bags to customers for free as part of a promotion, though retail stores may not hold more than 12 promotion events (one per month) in a given year.

## **D. What are the Reporting Requirements under HB 2509?**

By Sept. 15, 2024, retail stores that primarily sell groceries must provide the Oregon Department of Environmental Quality (DEQ) with information on: **(1)** the collection of bag fees, and **(2)** customer usage of recycled paper, reusable plastic, and reusable fabric bags. HB 2509 does not specify how this information must be gathered. For more information, contact the DEQ.

## **E. What does HB 2509 mean for Cities?**

HB 2509 partially preempts cities from regulating plastic, paper, or fabric bags within their jurisdictions. Cities may modify two portions of the regulatory framework provided by HB 2509. The state relies on, but does not require, cities to enforce HB 2509 by issuing citations.

### **1. Partial Preemption**

HB 2509 prohibits **(1)** the adoption or **(2)** enforcement of any local provision that limits or bans the use of bags. On its face, this language provides that cities with existing plastic bag ordinances are not in violation of HB 2509 as long as these ordinances are not enforced. In the long-run, however, keeping these ordinances on the books likely will confuse city staff and the public. These ordinances also could be re-adopted accidentally if a city were to recodify its charter or code; adopting the ordinance *would* violate HB 2509. Therefore, the LOC recommends that cities either repeal existing plastic bag regulations or amend the ordinance in accordance with HB 2509.

HB 2509 permits cities to regulate the use of paper and plastic bags within its city limits, but only if the cities adopt a local version of HB 2509. For cities, the purpose of doing this would be to then modify one or two provisions under HB 2509.

### **2. Permitted Local Law**

Cities may modify HB 2509 in one (or both) of the following ways:

- First, a city may increase or reduce the \$250/day fine.
  - Cities appear to have wide discretion in changing the fine amount. Daily offenses under HB 2509 are “violations” under state law and a single “violation” in Oregon can carry a fine of up to \$2,000.<sup>4</sup> Cities may also reduce the fine to an amount that is less than \$250 a day.
- Second, cities may increase the 5-cent charge that is required on certain bags. Notably, cities cannot reduce this charge. Cities also cannot impose a fee on bags that are not subject to fees under HB 2509 (for example, recyclable paper bags at restaurants).

### **3. Enforcement**

HB 2509 violations may be enforced by a range of enforcement officers representing divisions of the state, counties, and cities. Each city’s police department may play a role in the enforcement of this law by issuing citations for each violation. However, cities should note:

- No single violation is punishable under both state and local law. A restaurant or retail store can be charged with the local penalty or the penalty specified in HB 2509, but not both.

---

<sup>4</sup> See HB 2509, Section 3(3) (“A restaurant or retail establishment may be charged with a *violation* under *either* the local provision or section 4 of this Act....,” where no maximum fine is set for the violation of a local provision) (emphases added).

## F. What about Plastic Straws (SB 90)?

SB 90, like HB 2509, aims to reduce waste by regulating a single-use product — in this case, straws. That said, many key differences exist between these two laws. *Unlike* HB 2509, SB 90:

- Applies to a different, but overlapping, class of establishments;
- Establishes a different fine;
- Preempts new local regulations completely (not partially); and
- Is enforced by a different class of enforcement officers.

### 1. Who is Covered?

SB 90 applies to **food and beverage providers** and **convenience stores**. These definitions encompass restaurants and many retail stores that offer food or drinks to customers:

<b>Food / Beverage Provider</b>	... means any “business that, for compensation, offers or serves food or beverages to a customer.”
<b>Convenience Store</b>	... means any “business that, for compensation, offers or provides a range of commodities that includes food and beverages.”

### 2. What Straws are Covered?

These establishments cannot offer single-use plastic straws to consumers unless a customer:

- Is at a drive-through window; or
- Specifically requests a single-use plastic straw.

**Limited Exception:** Some establishments may provide single-use plastic straws to customers in a self-serve area of their premises, but only if the establishment is so small that the straws cannot be stored where an employee would serve them.<sup>5</sup>

**Straws that Always are Okay:** Any straw that is (1) reusable or (2) not made from plastic is permitted by this law. This includes straws made of “paper, pasta, sugar cane, wood or bamboo.”

---

<sup>5</sup> This exception applies to most convenience stores, but not larger stores that have a food and beverage side. The exact language of the exception is that a store may make “single-use plastic straws available to consumers in an unattended location, provided that the convenience store may leave the single-use plastic straws in an unattended location only if the convenience store does not have space in which to store the single-use plastic straws in a location where employees of the convenience store provide service to consumers.” SB 90, Section 2(c)(B).

### 3. How is SB 90 Enforced?

SB 90 is enforced in the following way:

<b>The Penalty</b>	An establishment that violates SB 90 is subject to two notices, and then a fine of \$25 for any subsequent violations. Total fines cannot exceed \$300 in one year.
<b>Enforcement</b>	SB 90 is enforced by inspectors with the Oregon Department of Agriculture, the Oregon Health Authority, and county public health departments.

### 4. What about Cities?

SB 90 impacts cities in two ways. First, this law completely preempts cities from adopting new local laws that regulate the use of straws.<sup>6</sup> This is in contrast to the language under HB 2509, which permits at least some new local regulations.

<b>Preemption</b>	<b>Cities Cannot Pass New Local Laws.</b>
SECTION 2. A local government or municipality may not, after the effective date of this 2019 Act, enact an ordinance, resolution, regulation, rule or other law with requirements that differ from the provisions set forth in section 1 of this 2019 Act.	

Second, on a related note, cities are precluded from enforcing this ban. Again, unlike HB 2509, local law enforcement officers play no role in enforcing these regulations because, under SB 90, enforcement is the sole responsibility of state and county inspectors.

<b>No Enforcement</b>	<b>Cities Cannot Enforce SB 90.</b>
“Enforcement officer” means an authorized representative of the Oregon Department of Agriculture who conducts inspections under ORS 616.286 or an authorized representative of the Director of the Oregon Health Authority or of a local government who conducts inspections under ORS 624.010 to 624.121 or 624.310 to 624.430.	

---

### For more information, see the following:

1. DEQ webpage: <https://www.oregon.gov/deq/mm/production/Pages/Bags.aspx>

---

<sup>6</sup> It appears from SB 90 that any *existing* local ordinance on straws are not preempted; it is unclear, however, whether a decision to amend or recodify an existing ordinance would violate SB 90’s preemption clause.

