

ORDINANCE NO. 7870

AN ORDINANCE ESTABLISHING A NEW CHAPTER 6-15, "DISPOSABLE BAG FEE," B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. A new Chapter 6-15, "Disposable Bag Fee," B.R.C. 1981 is added as follows:

**Title 6 Health, Safety and Sanitation**

**Chapter 6-15 Disposable Bag Fee**

**6-15-1**

- (a) **Purpose:** It is the purpose of this chapter to protect the public health and safety and implement the city's Climate Action Plan, Zero Waste Master Plan and the Boulder Valley Comprehensive Plan.
- (b) **Findings:** The City Council finds as follows:
- (1) The city, through its policies, programs, and laws, supports efforts to reduce the amount of waste that must be land-filled and pursue "zero waste" as a long term goal by emphasizing waste prevention efforts;
  - (2) That the use of single-use disposable bags has severe impacts on the environment on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation;
  - (3) Despite recycling and voluntary solutions to control pollution from disposable carryout bags, many disposable single-use bags ultimately are disposed of in landfills, litter the environment, block storm drains and endanger wildlife;
  - (4) Boulder consumers use approximately 14.3 million disposable bags from food stores each year; and
  - (5) The city's taxpayers bear the costs associated with the effects of disposable bags on the solid waste stream, drainage, litter and wildlife.
- (c) **Intent:** The disposable bag fee is necessary to address the environmental problems associated with disposable bags and to relieve city taxpayers of the costs imposed upon the city associated with the use of disposable bags. The City Council intends that the requirements of this chapter will assist in offsetting the costs associated with using disposable bags to pay for the mitigation, educational, replacement, and administrative efforts of the city.

## 6-15-2 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

“Disposable Bag” means a bag that is not a Reusable Bag.

“Disposable Bag” does not include:

- (a) Bags used by consumers inside stores to:
  - (1) Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;
  - (2) Contain or wrap frozen foods, meat, or fish;
  - (3) Contain or wrap flowers, potted plants, or other items where dampness may be a problem;
  - (4) Contain unwrapped prepared foods or bakery goods; or
  - (5) A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recyclable paper bag or reusable bag.
- (b) Bags provided by pharmacists to contain prescription drugs.
- (c) Newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold in packages containing multiple bags for uses such as food storage, garbage, pet waste, or yard waste bags.

“Food Store” means a retail establishment or business located within Boulder city limits in a permanent building, operating year round, that is a full-line, self-service market and which sells a line of staple foodstuffs, meats, produce or dairy products or other perishable items.

“Food Store” does not include:

- (a) Temporary vending establishment for fruits, vegetables, packaged meats and dairy;
- (b) Vendors at farmer’s markets or other temporary events;
- (c) Businesses at which foodstuffs are an incidental part of the business. Food sales will be considered to be “incidental” if such sales comprise no more than 2 percent of the business’s gross sales in the city as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.

“Recycled Paper Bag” means a paper bag that is 100 percent recyclable and contains at least 40 percent post-consumer recycled content.

“Reusable Bag” means a bag that is:

- (a) Designed and manufactured to withstand repeated uses over a period of time;

- (b) Is made from a material that can be cleaned and disinfected regularly;
- (c) That is at least 2.25 mil thick if made from plastic;
- (d) Has a minimum lifetime of 75 uses; and
- (e) Has the capability of carrying a minimum of 18 pounds.

“Disposable Bag Fee” means a city fee imposed and required to be paid by each consumer making a purchase from a Food Store for each Disposable Bag used during the purchase assessed for the purpose of mitigating the impacts of Disposable Bags.

**6-15-3 Disposable Bag Fee Requirements.**

- (a) For each Disposable Bag provided to a customer, Food Stores shall collect from customers, and customers shall pay, at the time of purchase, a Disposable Bag Fee of \$0.10.
- (b) Food Stores shall record the number of Disposable Bags provided and the total amount of Disposable Bag Fees charged on the customer transaction receipt.
- (c) A Food Store shall not refund to the customer any part of the Disposable Bag Fee, nor shall the Food Store advertise or state to customers that any part of the Disposable Bag Fee will be refunded to the customer.
- (d) A Food Store shall not exempt any customer from any part of the Disposable Bag Fee for any reason except as stated in section 6-15-7, “Exemptions,” B.R.C. 1981.

**6-15-4 Retention, Remittance, and Transfer of the Disposable Bag Fee.**

- (a) A Food Store may retain 40 percent of each Disposable Bag Fee collected, which is the “Retained Percent.”
- (b) The Retained Percent may only be used by the Food Store to:
  - (1) Provide educational information about the Disposable Bag Fee to customers;
  - (2) Provide the signage required by section 6-15-5, “Required Signage for Food Stores,” B.R.C. 1981;
  - (3) Train staff in the implementation and administration of the fee;
  - (4) Improve or alter infrastructure to allow for the implementation, collection, administration of the fee;
  - (5) Collect, account for and remit the fee to the city;
  - (6) Develop and display informational signage to inform consumers about the fee, encourage the use of reusable bags or promote recycling of plastic bags; and
  - (7) Improve infrastructure to increase plastic bag recycling.

- (c) The Retained Percent shall not be classified as revenue for the purposes of calculating sales tax.
- (d) The amount of the Disposable Bag Fee collected by a Food Store in excess of the Retained Percent shall be paid to the city and shall be used only as set forth in subsection (g) to mitigate the effects of Disposable Bags in Boulder.
- (e) A Food Store shall pay and the city shall collect all Disposable Bag Fees. The city shall provide the necessary forms for Food Stores to file with the city, to demonstrate compliance with the provisions of this ordinance.
  - (1) If payment of any amount to the city is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due as described in section 6-15-8, "Audits and Violations," B.R.C. 1981.
- (f) The Disposable Bag Fee shall be administered by the city manager. The city manager is authorized to adopt interpretive rules pursuant to chapter 1-4, "Rulemaking," B.R.C. 1981, to implement this chapter, prescribe forms and provide methods of payment and collection and otherwise implement requirements of this chapter.
- (g) Funds from the Disposable Bag Fee shall be used only for the expenditures that are intended to mitigate the effects of Disposable Bags, including without limitation the following:
  - (1) Administrative costs associated with developing and implementing the Disposable Bag Fee.
  - (2) Activities of the city to:
    - (A) Provide reusable carryout bags to residents and visitors;
    - (B) Educate residents, businesses, and visitors about the impact of Disposable Bags on the city's environmental health, the importance of reducing the number of single-use carryout bags entering the waste stream, and the expenses associated with mitigating the affects of single-use bags on the city's drainage system, transportation system, wildlife and environment;
    - (C) Fund programs and infrastructure that allow the Boulder community to reduce waste associated with Disposable Bags;
    - (D) Purchase and install equipment designed to minimize bag pollution, including, recycling containers, and waste receptacles associated with Disposable Bags;
    - (E) Fund community cleanup events and other activities that reduce trash associated with Disposable Bags;
    - (F) Mitigate the effects of Disposable Bags on the city's drainage system, transportation system, wildlife and environment;

- (G) Maintain a public website that educates residents on the progress of waste reduction efforts associated with Disposable Bags; and
  - (H) Fund the administration of the Disposable Bag Fee program.
- (h) No Disposable Bag Fees collected in accordance with this ordinance shall be used only for general government purposes.
- (i) Disposable Bag Fees collected in accordance with this chapter shall be continually available for the uses and purposes set forth in subsection (g) of this section without regard to fiscal year limitation. No Disposable Bag Fee funds shall be used for any purpose not authorized in this chapter.

**6-15-5 Required Signage for Food Stores.**

Every Food Store subject to the collection of the Disposable Bag Fee shall display a sign in a location outside or inside of the business, viewable by customers, alerting customers to the city of Boulder's Disposable Bag Fee.

**6-15-6 Requirement for Disposable Paper Bags.**

No Food Store shall provide any paper bag that is not a Recycled Paper Bag.

**6-15-7 Exemptions.**

A Food Store may provide a Disposable Bag to a customer at no charge if the customer provides evidence that he or she is a participant in a federal or state Food Assistance Program.

**6-15-8 Audits and Violations.**

- (a) Each Food Store licensed pursuant to the provisions of this chapter shall maintain accurate and complete records of the Disposable Bag Fees collected, the number of Disposable Bags provided to customers, the form and recipients of any notice required pursuant to this chapter, and any underlying records, including any books, accounts, invoices, or other records necessary to verify the accuracy and completeness of such records. It shall be the duty of each Food Store to keep and preserve all such documents and records, including any electronic information, for a period of three years from the end of the calendar year of such records.
- (b) If requested, each Food Store shall make its records available for audit by the city manager during regular business hours for the city to verify compliance with the provisions of this chapter. All such information shall be treated as confidential commercial documents.
- (c) If any person fails, neglects, or refuses to collect the Disposable Bag Fee, or underpays the Disposable Bag Fee, the city manager shall make an estimate of the fees due, based on available information, and shall add thereto penalties, interest, and any additions to the

fees. The manager shall serve upon the delinquent Food Store personally, by electronic mail or by first class mail directed to the last address of the Food Store on file with the city, written notice of such estimated fees, penalties, and interest, constituting a Notice of Final Determination, Assessment, and Demand for Payment, (also referred to as "Notice of Final Determination") due and payable within 20 calendar days after the date of the notice. The Food Store may request a hearing on the assessment as provided in section 6-15-9, "Hearings," B.R.C. 1981.

- (d) If payment of any amount of the Disposable Bag Fee to the city is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due in the amount of:
  - (1) A penalty of ten percent of total due;
  - (2) Interest charge of one percent of total penalty per month.

#### **6-15-9 Hearings.**

- (a) A Food Store may request a hearing on any proposed fee imposed under this title after receiving a Notice of Final Determination, by filing a written request for hearing within 20 calendar days of the date of mailing of the Notice of Final Determination. The request for hearing shall set forth the reasons for and amount of changes in the Notice of Final Determination that the Food Store seeks and such other information as the manager may prescribe.
- (b) The city manager shall conduct the hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except that the manager shall notify the Food Store in writing of the time and place of the hearing at least ten days before it is scheduled, unless the Food Store agrees to a shorter time. The hearing shall be held within 60 days of the date of receipt of the request for a hearing, unless the Food Store agrees to a later date.

#### **6-15-10 Criminal Sanctions.**

- (a) The city attorney, acting on behalf of the people of the city, may prosecute any violation of this title in municipal court in the same manner that other municipal offenses are prosecuted.
- (b) The maximum penalty for a first or second conviction within two years, based on date of violation of this section, is a fine of \$500.00. For a third and each subsequent conviction within two years, based upon the date of the first violation, the general penalty provisions of section 5-2-4, "General Penalties," B.R.C. 1981, shall apply.

Section 3. The provisions of this ordinance relating to the collection of the Disposable Bag Fee and required store signage shall become effective July 1, 2013. All other provisions shall be effective 30 days from the date of passage. The city manager shall develop and

implement the administrative and financial processes for the collection of the fee between the effective date of this ordinance and June 30, 2013.

Section 4. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

Section 5. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 6. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
TITLE ONLY this 2nd day of October, 2012

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

READ ON SECOND READING, AMENDED, ADOPTED, AND ORDERED  
PUBLISHED BY TITLE ONLY this 16th day of October, 2012.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

READ ON THIRD READING, AMENDED, ADOPTED, AND ORDERED  
PUBLISHED BY TITLE ONLY this 1st day of November, 2012.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

READ ON FOURTH READING, PASSED, ADOPTED, AND ORDERED  
PUBLISHED BY TITLE ONLY this 15th day of November, 2012.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk