

DRAFT-FOR DISCUSSION ONLY

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. CB13-0501
COMMITTEE OF REFERENCE:

A BILL

For an ordinance to amend Chapter 48 (Solid Waste) of the Revised Municipal Code to add an Article IX (Disposable Bag Fees) and to make a corresponding amendment to Chapter 24.

WHEREAS, It is the purpose of this article to protect the public health and safety and implement the city's Department of Environmental Health Budget and Peak Performance Goals, its Solid Waste Master Plan, and its 2020 Sustainability Goals; and

WHEREAS, the Department of Environmental Health has determined that the city, through its policies, programs, and laws, supports efforts to reduce the amount of waste that must be land-filled by 32 percent; and

WHEREAS, the use of single-use disposable bags has an impact on the environment on a local and global scale, including litter, solid waste generation, water quality, air quality, greenhouse gases, and harm to wildlife; and

WHEREAS, in spite of recycling and voluntary solutions to control pollution from disposable carryout bags begun in 2007, many disposable single-use bags continue to be disposed of in landfills, to litter the environment, to block storm drains and to endanger wildlife; and

WHEREAS, Denver consumers use approximately 130 million disposable bags from food stores each year; and

WHEREAS, the city's taxpayers bear the costs associated with the effects of disposable bags on the solid waste stream, drainage, litter, and wildlife; and

WHEREAS, a 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; and

WHEREAS, this ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matter of local concern; and

WHEREAS, the City Council intends that the requirements of this article will assist in offsetting the costs associated with using disposable bags to pay for the replacement with reusable bags, mitigation, educational, and administrative efforts.

1 **NOW THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
2 **DENVER**

3 **Section 1.** That Article IX, "Disposable Bag Fees" is hereby added to Chapter 48, "Solid
4 Waste", of the Revised Municipal Code as follows:

5 **ARTICLE IX. DISPOSABLE BAG FEES**

6 **Section 48-120. Definitions.**

7 The following terms used in this article have the following meanings unless the context
8 clearly indicates otherwise:

- 9 (a) "Disposable bag" means a bag that is not a reusable bag.
- 10 (b) "Disposable bag" does not include:
- 11 (1) Bags used by consumers inside stores to:
- 12 (i) Package bulk items, such as fruit, vegetables, nuts, grains, candy, or
- 13 small hardware items;
- 14 (ii) Contain or wrap frozen foods, meat, or fish;
- 15 (iii) Contain or wrap flowers, potted plants, or other items to prevent
- 16 leakage or dampness;
- 17 (iv) Contain unwrapped prepared foods or bakery goods; or
- 18 (v) A non-handled bag used to protect a purchased item from damaging or
- 19 contaminating other purchased items when placed in a recyclable paper bag
- 20 or reusable bag.
- 21 (2) Bags provided by pharmacists to contain prescription drugs.
- 22 (3) Newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold
- 23 in packages containing multiple bags for uses such as food storage, garbage, pet
- 24 waste, or yard waste bags.
- 25 (c) "Disposable bag fee" means a city fee imposed and required to be paid by each
- 26 consumer making a purchase from a food store for each disposable bag used during the
- 27 purchase assessed for the purpose of mitigating the impacts of disposable bags.
- 28 (d) "Food store" means a retail establishment or business with retail space greater than
- 29 1500 square feet, located within Denver city limits in a permanent building, operating year
- 30 round, that is a full-line, self-service market and which receives more than 2% of its revenue
- 31 from sales of staple foodstuffs, meats, produce, dairy products, or other perishable items.
- 32 (e) "Food store" does not include:

(1) Temporary vending establishment for fruits, vegetables, packaged meats, and dairy;

(2) Vendors at farmer's markets or other temporary events; or

(3) 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' annual 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.

(f) "Manager" means manager of the department of environmental health.

(g) "Recycled paper bag" means a paper bag that is 100 percent recyclable and contains at least 40 percent post-consumer recycled content.

(h) "Retained percent" means the amount of the disposable bag fee allowed to be retained by the Food Store.

(i) "Reusable bag" means a bag that is:

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

(2) Is made from a material that can be cleaned and disinfected regularly;

(3) That is at least 2.25 mil thick if made from plastic;

(4) Has a minimum lifetime of 75 uses; and

(5) Has the capability of carrying a minimum of 18 pounds.

Section 48-121. 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 five cents (\$0.05).

(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.

Section 48-122. Retention, remittance, and transfer of the disposable bag fee.

1 (a) A food store may retain, as the retained percent, two cents (\$0.02) of each five
2 cents (\$0.05) disposable bag fee collected up to the maximum amount of its reported costs.
3 Cost reports shall be provided concurrently with collection reports and remittance of
4 collected funds. For the purposes of ascertaining the correctness of reports and remittance
5 and for the purpose of determining the amount of fees due from any food store or for the
6 purpose of estimating the fee due from any food store, the department of environmental
7 health is empowered to examine any books, papers, records or memoranda bearing upon
8 the matters required to be included in the collection, actual costs and expenditures of
9 retained portions, and remittance of the disposable bag fee; and if the food store refuses to
10 cooperate in such examination, the manager of the department of environmental health may
11 issue an administrative citation for the assessment of civil penalties as provided in D.R.M.C.
12 chapter 24.

13
14 (b) The retained percent may be used by the food store for actual, expended costs due
15 to implementation of the disposable bag fee program as may be further specified in rules
16 and regulations, including costs to:

- 17 (1) Collect, account for, and remit the fee to the city;
- 18 (2) Provide the signage required by D.R.M.C. section 48-123, "Required signage
19 for food stores";
- 20 (3) Train staff in the implementation and administration of the fee;
- 21 (4) Improve or alter infrastructure to allow for the implementation, collection,
22 administration of the fee;
- 23 (5) Provide educational information about the disposable bag fee to customers;
- 24 (6) Develop and display informational signage to inform consumers about the fee,
25 encourage the use of reusable bags, provide reusable bags, or promote recycling of
26 plastic bags; and
- 27 (7) Improve infrastructure to increase plastic bag recycling.

28 (c) The retained percent shall not be classified as revenue for the purposes of
29 calculating sales tax.

30 (d) The amount of the disposable bag fee collected by a food store in excess of the
31 retained percent shall be paid to the city and shall be used only as set forth in D.R.M.C. 48-
32 122(h) to mitigate the effects of disposable bags in Denver.

1 (e) A food store shall pay and the city shall collect all disposable bag fees. The city shall
2 provide the necessary forms for food stores to file with the city, to demonstrate compliance
3 with the provisions of this ordinance.

4 (f) If payment of any amount to the city is not received on or before the applicable due
5 date, penalty and interest charges shall be added to the amount due as described in
6 D.R.M.C. section 48-125, "Records and violations,"

7 (g) The disposable bag fee shall be administered by the department of environmental
8 health. The board of environmental health is authorized to adopt interpretive rules and
9 regulations to implement this article, prescribe reports and other forms, and provide
10 methods of payment and collection and otherwise implement requirements of this article.

11 (h) Funds from the disposable bag fee shall be used only for the expenditures that are
12 intended to mitigate the effects of trash associated with disposable bags, including without
13 limitation the following:

14 (1) Food store administrative costs associated with developing and implementing
15 the disposable bag fee.

16 (2) Activities of the city to:

17 (i) Conduct studies of disposable bag usage across all industries;

18 (ii) Provide reusable carryout bags to food store customers;

19 (iii) Educate residents and businesses about the impact of disposable bags
20 on environmental health, the importance of reducing the number of single-use
21 carryout bags entering the waste stream, and the expenses associated with
22 mitigating the effects of trash associated with single-use bags on the city's
23 drainage system, transportation system, wildlife, and environment;

24 (iv) Provide reusable carryout bags, in the discretion of the manager, to
25 other appropriate locations;

26 (v) Fund programs and infrastructure that allow the Denver community to
27 reduce waste associated with disposable bags;

28 (vi) Purchase and install equipment designed to minimize pollution from
29 trash associated with disposable bags, including, recycling containers, and
30 waste receptacles for disposable bags;

31 (vii) Fund community cleanup events and other activities that reduce trash
32 associated with disposable bags;

- (viii) Mitigate the effects of trash associated with disposable bags on the city's drainage system, transportation system, wildlife, and environment;
- (ix) Maintain a website that reports on the progress of waste reduction efforts for trash associated with disposable bags;
- (x) Fund the city's costs of administration of the disposable bag fee program, including any audit costs;
- (xi) Communicate and educate food stores on compliance and remittance of the fees;
- (xii) Accept, store and distribute donated bags in accordance with rules and regulations; and
- (xiii) Any other activities determined by the manager to mitigate the effects of trash associated with disposable bags.

(i) No disposable bag fees collected in accordance with this ordinance shall be used for general governmental purposes.

(j) Disposable bag fees collected in accordance with this article shall be deposited by the city to a special revenue fund and available for the uses and purposes set forth in subsection (h) of this section. No disposable bag fee funds shall be used for any purpose not authorized in this article.

Section 48-123. 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 Denver's disposable bag fee.

48-124. Records and violations.

(a) Each store subject to the provisions of this article 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 article; 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, either locally or at its corporate headquarters, 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 compliance audit by the Denver environmental health manager or the manager's designee during regular business hours for the city to verify compliance with the provisions of this article. All such information shall be treated as confidential commercial documents. If any person fails, neglects, or refuses to collect the disposable bag fee, or underpays the disposable bag fee, the 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 twenty (20) calendar days after the date of the notice. The food store may request a hearing on the assessment as provided in D.R.M.C. chapter 24.

(c) 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:

- (i) A penalty of ten percent of total due; and
- (ii) Interest charge of one percent of total penalty per month.

Section 48-125. Hearings.

(a) A food store may request a hearing on any proposed fee imposed under this title after receiving a notice of final determination as provided in D.R.M.C. chapter 24.

Section 48-126. Civil Penalties.

(a) Any person who violates any provision of D.R.M.C. title 48, article IX for collection and remittance of the disposable bag fee or any order issued by the manager shall also be subject to civil penalties under D.R.M.C. chapter 24.

Section 48-127. Severability.

If any part, term, or provision of this article is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights, obligations and enforcement of this article shall be continued in full force and effect as if the article did not contain the particular part, term, or provision held to be invalid.

Section 48-128. Effective dates. The provisions of this ordinance shall be effective April 22, 2014. The manager shall develop and implement the administrative and financial processes for collection of the fee between the effective date of this ordinance and April 22, 2014.

Section 2. That Section 24-5 "Administrative assessment of civil penalties", of the Revised Municipal Code is amended by adding the language underlined and deleting the language stricken as follows:

Sec. 24-5. Administrative assessment of civil penalties.

(a) Any person who violates any provision of chapter 8 (animals), excluding the provisions of sections 8-48 (damaging property), 8-51 (dog attack or bite), 8-52 (dangerous dogs), 8-55 (pit bulls prohibited), 8-131(a) (cruelty to animals prohibited), 8-134 (abandonment), and 8-135 (keeping place for fighting animals), article II of chapter 27 (housing code), ~~or chapter 36 (noise control)~~ or article IX of chapter 48 (solid waste), shall also be subject to a civil penalty of not more than nine hundred and ninety-nine dollars (\$999.00) per violation.

(b) Any person who violates any order issued by the manager of the department of environmental health shall also be subject to a civil penalty of not more than nine hundred and ninety-nine dollars (\$999.00) per violation.

(c) Each day a violation exists or continues shall constitute a separate and distinct violation.

(d) Enforcement actions are intended to be cumulative in nature. The city may pursue one (1) or more civil, criminal, and administrative actions, fees, fines, sentences, penalties, judgments, and remedies and may do so simultaneously or in succession.

(e) The board is hereby authorized to adopt regulations, in connection with a public rulemaking hearing, to establish or modify a schedule of the amounts, or to specify a range of amounts, of civil penalties to be assessed administratively.

(f) The manager of the department of environmental health may issue an administrative citation for the assessment of civil penalties in particular cases in accordance with the regulations adopted by the board.

(g) A civil penalty assessed by means of an administrative citation shall be payable directly to the manager of finance. If not timely paid, a late fee of up to twenty-five dollars (\$25.00) may be assessed and interest at the rate of ten (10) percent per annum. If the responsible party fails to pay all penalties and charges assessed within thirty (30) days of

1 assessment, the manager may refer the matter for collection by any and all means available
2 to the city.

3 (h) Any person who disputes a violation for which a civil penalty has been assessed by
4 or on behalf of the city pursuant to the authority of the manager, may petition the board of
5 environmental health for a hearing in accordance with article I of chapter 24, D.R.M.C. and
6 rules and regulations adopted and promulgated thereunder except as provided in this
7 section 24-5. If the hearing is conducted by a hearing officer, the hearing officer's
8 recommended decision shall be deemed to be the decision of the board unless a petition to
9 review the hearing officer's recommended decision is filed with the board within ten (10)
10 calendar days of service of the decision. If received five (5) working days before the next
11 regularly scheduled meeting of the board, review of the hearing officer's recommended
12 decision will be conducted at such meeting unless continued for good cause; otherwise, the
13 review will be conducted at the next following regularly scheduled meeting of the board
14 unless expedited or continued for good cause. The board's review will be on the
15 administrative record established at the underlying hearing. Compliance with the provisions
16 of this subsection shall be a jurisdictional prerequisite to any request for hearing or appeal
17 brought under the provisions of this section, and failure to comply shall forever bar any such
18 action.

19 (i) The decision of the board is the final decision which may be appealed to Denver
20 district court under the provisions of Colorado Rule of Civil Procedure 106(a)(4) within thirty
21 (30) days of the date the order becomes final.

22 (j) A stay of any order of the manager pending judicial review shall not relieve any
23 person from any liability under subsection (a) or (b).

24 (k) The city may also petition the district court for the issuance of a preliminary or
25 permanent injunction, or both, as may be appropriate, restraining any person from
26 continued violation.
27

1 MAYOR-COUNCIL DATE:
2 PASSED BY THE COUNCIL: _____, 2013
3 _____ - PRESIDENT
4 APPROVED: _____ - MAYOR _____, 2013
5 ATTEST: _____ - CLERK AND RECORDER,
6 EX-OFFICIO CLERK OF THE
7 CITY AND COUNTY OF DENVER
8 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2013; _____, 2013
9 PREPARED BY: Laurie J. Heydman, Assistant City Attorney DATE:
10 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
11 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
12 ordinance. The proposed ordinance IS NOT submitted to the City Council for approval pursuant to
13 §3.2.6 of the Charter.
14
15 Douglas J. Friednash, City Attorney,
16
17 BY: _____, Assistant City Attorney DATE: _____, 2013