

CONFIDENTIAL DRAFT-FOR DISCUSSION ONLY

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. _____

SERIES OF 2013

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).

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.

1 (e) "Food store" does not include:

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

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

5 (3) Businesses at which foodstuffs are an incidental part of the business. Food
6 sales will be considered to be "incidental" if such sales comprise no more than 2
7 percent of the business' annual gross sales in the city as measured by the dollar
8 value of food sales as a percentage of the dollar value of total sales at any single
9 location.

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

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

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

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

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

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

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

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

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

21 **Section 48-121. Disposable bag fee requirements.**

22 (a) For each disposable bag provided to a customer, food stores shall collect from
23 customers, and customers shall pay, at the time of purchase, a disposable bag fee of five
24 cents (\$0.05).

25 (b) Food stores shall record the number of disposable bags provided and the total
26 amount of disposable bag fees charged on the customer transaction receipt.

27 (c) A food store shall not refund to the customer any part of the disposable bag fee, nor
28 shall the food store advertise or state to customers that any part of the disposable bag fee
29 will be refunded to the customer.

30 (d) A food store shall not exempt any customer from any part of the disposable bag fee
31 for any reason.

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

(a) A food store may retain, as the retained percent, two cents (\$0.02) of each five cents (\$0.05) disposable bag fee collected up to a maximum amount of one thousand dollars (\$1,000.00) per month within the first twelve months from the effective date of the ordinance and up to a maximum of five hundred dollars (\$500.00) per month for each month thereafter.

(b) The retained percent may be used by the food store to:

- (1) Collect, account for, and remit the fee to the city;
- (2) Provide the signage required by D.R.M.C. section 48-123, "Required signage for food stores";
- (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) Provide educational information about the disposable bag fee to customers;
- (6) Develop and display informational signage to inform consumers about the fee, encourage the use of reusable bags or promote recycling of plastic bags;
- (7) Improve infrastructure to increase plastic bag recycling; and
- (8) Donate to an environmental cause approved by the manager, with sufficient evidence of the donation to be provided to the manager as the rules and regulations adopted by the manager may require.

(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 D.R.M.C. 48-122(h) to mitigate the effects of disposable bags in Denver.

(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.

(f) 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 D.R.M.C. section 48-125, "Records and violations,"

1 (g) The disposable bag fee shall be administered by the department of environmental
2 health. The manager is authorized to adopt interpretive rules and regulations to implement
3 this article, prescribe forms, and provide methods of payment and collection and otherwise
4 implement requirements of this article.

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

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

10 (2) Activities of the city to:

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

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

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

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

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

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

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

27 (viii) Mitigate the effects of trash associated with disposable bags on the
28 city's drainage system, transportation system, wildlife, and environment;

29 (ix) Maintain a website that reports on the progress of waste reduction
30 efforts for trash associated with disposable bags;

- (x) Fund the city's costs of administration of the disposable bag fee program;
- (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

1 information shall be treated as confidential commercial documents. If any person fails,
2 neglects, or refuses to collect the disposable bag fee, or underpays the disposable bag fee,
3 the Denver environmental health manager shall make an estimate of the fees due, based on
4 available information, and shall add thereto penalties, interest, and any additions to the
5 fees. The manager shall serve upon the delinquent food store personally, by electronic mail
6 or by first class mail directed to the last address of the food store on file with the city, written
7 notice of such estimated fees, penalties, and interest, constituting a notice of final
8 determination, assessment and demand for payment, (also referred to as "Notice of Final
9 Determination") due and payable within twenty (20) calendar days after the date of the
10 notice. The food store may request a hearing on the assessment as provided in D.R.M.C.
11 section 48-126, "Hearings".

12 (c) If payment of any amount of the disposable bag fee to the city is not received on or
13 before the applicable due date, penalty and interest charges shall be added to the amount
14 due in the amount of:

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

17 **Section 48-125. Hearings.**

18 (a) A food store may request a hearing on any proposed fee imposed under this title
19 after receiving a notice of final determination, by filing a written request for hearing within
20 twenty (20) calendar days of the date of mailing of the notice of final determination. The
21 request for hearing shall set forth the reasons for and amount of changes in the notice of
22 final determination that the food store seeks and such other information as the manager
23 may prescribe.

24 (b) The Denver environmental health manager shall conduct the hearing under the
25 procedures prescribed except that the manager shall notify the food store in writing of the
26 time and place of the hearing at least ten days before it is scheduled, unless the food store
27 agrees to a shorter time. The hearing shall be held within sixty (60) days of the date of
28 receipt of the request for a hearing, unless the food store agrees to a later date.

29 **Section 48-126. Civil Penalties.**

1 (a) Any person who violates any provision of D.R.M.C. title 48, article IX for collection
2 and remittance of the disposable bag fee shall also be subject to a civil penalty of not more
3 than nine hundred and ninety-nine dollars (\$999.00) per violation.

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

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

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

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

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

18 (g) A civil penalty assessed by means of an administrative citation shall be payable
19 directly to the manager of finance. If not timely paid, a late fee of up to twenty-five dollars
20 (\$25.00) may be assessed and interest at the rate of ten (10) percent per annum. If the
21 responsible party fails to pay all penalties and charges assessed within thirty (30) days of
22 assessment, the manager may refer the matter for collection by any and all means available
23 to the city.

24 **Section 48-127. Severability.**

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

1 **Section 48-128. Effective dates.** The provisions of this ordinance shall be effective April 22,
2 2014. The manager shall develop and implement the administrative and financial processes for
3 collection of the fee between the effective date of this ordinance and April 22, 2014.
4

DRAFT

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