

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2021

COUNCIL BILL NO. CB21-0662
COMMITTEE OF REFERENCE:
4 Finance and Governance

5
6 A BILL

7 **For an ordinance amending Chapter 48 of the Denver Revised Municipal Code**
8 **by repealing Article IX entitled Fee on Disposable Bags and amending and re-**
9 **enacting as Article IV of Chapter 2 of the Denver Revised Municipal Code.**
10

11 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

12
13 **Section 1.** That Article IX of Chapter 48 of the Revised Municipal Code, entitled Fee on
14 Disposable Bags is hereby repealed and the section is amended by re-enacting a new Article IV of
15 Chapter 2, to read as follows:
16

17 **ARTICLE IV. Fee on Disposable Bags**

18 **Sec. 2-413. - Definitions.**

19 The following terms as used in this article have the following meanings unless the context
20 clearly indicates otherwise:

21 (a) "Customer" means any person who makes a retail purchase from a retail store.

22 (b) "Disposable bag" except as provided in section 2-414, D.R.M.C., means any bag, other
23 than a reusable carryout bag, that is provided to a customer by a retail store at the point of sale for
24 the purpose of transporting goods.

25 (c) "Disposable bag fee" means the fee of \$.10 imposed by the city and county of Denver
26 and required to be paid by each consumer making a purchase from a retail store for each disposable
27 bag used during the purchase and imposed for the purposes set forth in 2-417, D.R.M.C.

28 (d) "Retail store" means any public commercial business engaged in the sale of personal
29 consumer goods, household items, or groceries to customers who use or consume such items.
30 "Retail store" does not include restaurants or other businesses where retail sales are clearly
31 secondary and incidental to the primary activity occurring within the business or any temporary
32 vendors or temporary events.

33 (e) "Reusable carryout bag" means a bag:

34 (1) Specifically intended for multiple reuse;

35 (2) Made of cloth, fiber, or other fabric or material that can be cleaned and disinfected

1 regularly, and must be machine-washable;

2 (3) That has handles;

3 (4) If made of plastic material, cannot be plastic film where thickness is measured in mils;

4 (5) That has a permanent tag identifying the name of the manufacturer, the material used
5 to manufacture it, and location (country) where it was manufactured;

6 (5) Capable of carrying twenty-two pounds or more; and,

7 (6) Capable of one hundred twenty-five (125) uses or more.

8

9 **Sec. 2-414. -Exemptions**

10 The disposable bag fee imposed by this Chapter does not apply to:

11 (a) A bag brought into a retail store by a customer and used to transport goods from the
12 retail store.

13 (b) A bag provided to a customer if the customer provides evidence that he or she is a
14 participant in a federal or state Food Assistance Program.

15 (c) A bag used by consumers inside retail stores: to package bulk items, such as fruit,
16 vegetables, nuts, grains, candy or small hardware items like nails, nuts, and screws; contain or wrap
17 frozen or fresh foods, meat, or fish; contain or wrap flowers, potted plants, or other items where
18 dampness may be a problem; or contain unwrapped prepared foods or bakery goods.

19 (d) A bag used to protect purchased items from damaging or contaminating other
20 purchased items when placed in a disposable or reusable carryout bag.

21 (e) A bag no larger than 8 inches x 12 inches used for loose small retail items, including,
22 but not limited to, jewelry, buttons, beads, ribbon, herbs and spices, medical marijuana or adult-use
23 marijuana if sold by the holder of a permit issued pursuant to applicable law, and similar items.

24 (f) A bag provided by pharmacists to contain prescription drugs.

25 (g) Newspaper bags, door-hanger bags, laundry-dry cleaning and garment bags, and
26 bags sold in packages containing multiple bags for uses such as food storage, garbage, pet waste,
27 or yard waste.

28

29 **Sec. 2-415. – Collection, retention, remittance, and transfer of the disposable bag fee.**

30 (a) A retail store shall impose, collect, and account for a disposable bag fee in the amount
31 of \$0.10 per bag provided from the retail store.

32 (b) A retail store shall be liable and responsible for payment to the city \$0.06 of each
33 disposable bag fee collected to defray costs to the city. A retail store shall remit to the executive
34 director of the office of climate action, sustainability, and resiliency the total amount due to the city

1 for the preceding calendar quarter on or before the twentieth day of the month following the quarter
2 end.

3 (c) A retail store may retain \$0.04 of each disposable bag fee collected that may only be
4 used to:

5 (1) Provide educational information about the disposable bag fee to customers;

6 (2) Develop and display informational signage to inform consumers about the fee,
7 encourage the use of reusable carryout bags, or promote recycling of disposable bags;

8 (3) Train staff in the implementation and administration of the fee;

9 (4) Improve or alter infrastructure to allow for the implementation, collection, administration
10 of the fee;

11 (5) Provide free reusable carryout bags to customers; and

12 (6) Improve infrastructure to increase disposable plastic bag recycling.

13 (d) The retained portion of the disposable bag fee is not revenue for the purposes of
14 calculating sales tax.

15

16 **Sec. 2-416. – Additional requirements for retail stores.**

17 (a) A retail store must record the number of disposable bags provided to a customer and
18 the total amount of fees charged for the disposable bags, itemized by the bag material type, on the
19 customer transaction receipt;

20 (b) A retail store may not refund to the customer any part of the disposable bag fee, either
21 directly or indirectly, nor shall the retail store advertise or state to customers that any part of the
22 disposable bag fee will be refunded to the customer;

23 (c) A retail store may not exempt any customer from any part of the disposable bag fee
24 except as otherwise provided in section 2-414, D.R.M.C.; and,

25 (d) A retail store required to collect the disposable bag fee must display a sign in a location
26 outside or inside of the business, viewable by customers, alerting customers to the disposable bag
27 fee.

28

29 **Sec. 2-417. - Purposes and allowed uses of monies in city disposable bag fee fund.**

30 Monies from the disposable bag fee may be used to defray the costs to the city for
31 administering the disposable bag fee program including for the following specific uses:

32 (a) Administrative costs associated with developing, implementing, and administering the
33 disposable bag fee;

34 (b) Provide reusable carryout bags to residents and visitors;

- 1 (c) Educate residents, businesses, and visitors about the requirements of the program and
2 impact of disposable bags on the city's environmental health, the importance of reducing the number
3 of disposable plastic bags and other single-use products entering the waste stream, and the
4 expenses associated with mitigating the effects of disposable bags on the city's drainage system,
5 transportation system, wildlife and environment;
- 6 (d) Fund programs and infrastructure that allow the city to reduce waste associated with
7 disposable bags and other single-use products;
- 8 (e) Purchase and install equipment designed to minimize bag pollution, including,
9 recycling containers, and waste receptacles associated with disposable bags and other single-use
10 products;
- 11 (f) Fund community cleanup events and other activities that reduce trash associated with
12 disposable bags and single-use products;
- 13 (g) Mitigate the effects of disposable bags and single-use products on the city's drainage
14 system, transportation system, wildlife, and environment;
- 15 (h) Conduct studies of disposable bag usage and the impact of the disposable bag fee in
16 Denver;
- 17 (i) Maintain a public website that educates residents on the progress of waste reduction
18 efforts associated with disposable bags and single-use products; and,
- 19 (j) Develop a task force to analyze the data and impact, and to recommend
20 improvements.

21

22 **Sec. 2-418. - Civil Penalties.**

23 A retail store that violates the provisions of this article is subject to a civil penalty of not more
24 than \$999.00.

25

26 **Sec. 2-419. - Records and violations.**

27 (a) A retail store subject to the provisions of this article must maintain accurate and
28 complete records of the disposable bag fees collected, the number of disposable bags provided to
29 customers, the form and recipients of any notice required by this article; and any underlying records,
30 including any books, accounts, invoices, or other records necessary to verify the accuracy and
31 completeness of such records. It is the duty of each retail store to keep and preserve, either locally
32 or at its corporate headquarters, all documents and records, including any electronic information, for
33 a period of four years from the end of the calendar year of such records.

34 (b) If requested, each retail store must make its records available for compliance audit by

1 the office of climate action, sustainability, and resiliency, during regular business hours for the city
2 to verify compliance with this article. To the extent permitted by law, the city will treat the information
3 as confidential commercial documents. If any retail store fails, neglects, or refuses to collect the
4 disposable bag fee, or underpays the disposable bag fee, the executive director of the office of
5 climate action, sustainability, and resiliency must make an estimate of the fees due, based on
6 available information, and must add to it penalties, interest, and any additions to the fees. The
7 executive director of the office of climate action, sustainability, and resiliency must serve upon the
8 delinquent retail store personally, by electronic mail, or by first class mail directed to the last address
9 of the retail store on file with the city, written notice of the estimated fees, penalties, and interest,
10 constituting a notice of final determination, assessment and demand for payment, (also referred to
11 as “notice of final determination”) due and payable within twenty calendar days after the date of the
12 notice. The retail store may request a hearing on the assessment as provided in section 2-420.

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

16 (i) A penalty of ten percent of total due; and

17 (ii) Interest charge of one percent on the amount of the deficiency of the disposable bag
18 fee per month.

19

20 **Sec. 2-420. - Hearings.**

21 (a) A retail store may request a hearing on any proposed fee imposed under this title after
22 receiving a notice of final determination, by filing a written request within twenty calendar days. The
23 request for hearing shall set forth the reasons for and amount of changes in the notice of final
24 determination that the retail store seeks and such other information as the executive director of the
25 office of climate action, sustainability, and resiliency may prescribe.

26 (b) The executive director of the office of climate action, sustainability, and resiliency will
27 appoint a hearing officer to review and render a decision concerning the facts supporting the notice
28 of final determination. The hearing officer must determine by a preponderance of the evidence if a
29 violation of this article has been committed. Upon a finding against a retail store, the hearing officer
30 must enter a decision and order any necessary relief, if applicable. A decision by the hearing officer
31 is final and subject to review by the district court.

32

33 **Sec. 2-421. - Administration - rules.**

34 The disposable bag fee will be administered by the executive director of the office of climate

1 action, sustainability, and resiliency. The office of climate action, sustainability, and resiliency may
2 promulgate rules and regulations that specify a structure whereby retail stores may file periodic
3 reports with the city, rules specifying the creation of a task force to review the program after the first
4 year and make recommendations to city council on possible program improvements, and rules
5 specifying an education and outreach program, including dispensing of free reusable carryout bags.
6

7 **Section 2.** That Sec. 24-5(a) shall be amended by deleting the language stricken and adding
8 the language underlined, to read as follows as follows:

9 (a) Any person who violates any provision of chapter 8 (animals), excluding the provisions
10 of sections 8-74 (damaging property), 8-61 (dog attack or bite), 8-62 (dangerous dogs), 8-67 (pit
11 bulls prohibited without a breed-restricted permit), 8-131(a) (cruelty to animals prohibited), 8-133
12 (abandonment), and 8-134 (keeping place for fighting animals); chapter 11 (child care); chapter 17
13 (emergency vehicles); article X (body art) of chapter 24 (health and sanitation); chapter 26 (boarding
14 homes, personal care boarding homes, and nongovernmental residential facilities for the treatment
15 or supervision of offenders); article II of chapter 27 (housing code); chapter 33 (lodging); chapter 35
16 (mobile homes and trailers); chapter 36 (noise control); article I of chapter 37 (health nuisances); or
17 chapter 51 (pools); ~~or any retail store who violates article IX of chapter 48 (disposable bags)~~, is also
18 subject to a civil penalty of not more than nine hundred ninety-nine dollars (\$999.00) per violation.
19

20 **Section 3. Effective Date.** This ordinance takes effect upon passage and applies to
21 disposable bags provided by retail stores on and after July 1, 2021.

22 [BALANCE OF PAGE INTENTIONALLY LEFT BLANK]
23

1 COMMITTEE APPROVAL DATE: June 8, 2021

2 MAYOR-COUNCIL DATE: June 15, 2021

3 PASSED BY THE COUNCIL _____

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9

10 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

11 PREPARED BY: Jonathan Griffin, Assistant City Attorney DATE: June 4, 2021

12 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the
13 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
14 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
15 3.2.6 of the Charter.
16

17 Kristin M. Bronson, Denver City Attorney

18

19 BY: Jonathan Griffin, Assistant City Attorney DATE: Jun 17, 2021