

1 BY AUTHORITY

2 ORDINANCE NO. _____

COUNCIL BILL NO. CB22-_____

3 SERIES OF 2022

COMMITTEE OF REFERENCE:

4 Business, Arts, Workforce & Aviation Services

5 **A BILL**

6 **For an ordinance amending Article XX of Chapter 2 of the Denver**
7 **Revised Municipal Code to clarify fees and restrictions on disposable**
8 **bags and polystyrene food containers .**

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

10 **Section 1.** That Article XX of Chapter 2, D.R.M.C. is amended by deleting the
11 language stricken and adding the language underlined to read as follows:

12 **ARTICLE XX. – FEE AND RESTRICTIONS ON DISPOSABLE BAGS AND POLYSTYRENE FOOD**
13 **CONTAINERS**

14 **Sec. 2-413. Definitions.**

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

17 (a) "Container" means a receptacle upon which or inside which food may be placed for
18 consumption, whether or not the receptacle can be fully closed. "Container" includes hinged food
19 containers, plates, bowls, cups, and trays.

20 (b) ~~(a)~~ "Customer" means any person who makes a retail purchase from a retail store.

21 (c) "Disposable bag" except as provided in section 2-414.5, D.R.M.C., means any bag, other
22 than a reusable carryout bag, that is provided to a customer by a store or retail food
23 establishment at the point of sale for the purpose of transporting goods.

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

29 (d) "Disposable bag fee" means the fee of ten cents (\$0.10) imposed by the city and county
30 of Denver and required to be paid by each ~~consumer~~ customer making a purchase from a store

1 for each disposable bag used during the purchase and imposed for the purposes set forth in 2-
2 417428, D.R.M.C.

3 (e) “Executive director” means the executive director of the office of climate action,
4 sustainability, and resiliency.

5 (f) “Expanded polystyrene” means blown polystyrene, commonly known as Styrofoam, and
6 any other expanded or extruded foam consisting of thermoplastic petrochemical materials
7 utilizing a styrene monomer and processed by techniques that may include:

8 (1) for expandable bead polystyrene, fusion of polymer spheres;

9 (2) injection molding;

10 (3) foam molding; and

11 (4) for extruded foam polystyrene, extrusion blow molding.

12 (g) “Food” means any raw, cooked, or processed edible substance, ice, beverage, or
13 ingredient used or intended for use or for sale, in whole or in part, for human consumption.

14 (h) “Plastic” means a synthetic material made from linking monomers through a chemical
15 reaction to create a polymer chain that can be molded or extruded at high heat into various solid
16 forms that retain their defined shapes during their life cycle and after disposal.

17 (i) “Point of sale” means a check-out stand, cash register, or other point at which a sales
18 transaction occurs in a store or retail food establishment or, for products that are ordered
19 remotely from a store or retail food establishment and delivered, the location where the
20 products are delivered.

21 (j) “Retail food establishment” means a retail operation that stores, prepares, or packages
22 food for human consumption or serves or otherwise provides food for human consumption to
23 consumers directly or indirectly through a delivery service, whether such food is consumed on or
24 off the premises or whether there is a charge for such food. “Retail food establishment” does not
25 mean:

26 (1) any private home;

27 (2) private boarding houses;

28 (3) hospital and health facility patient feeding operations licensed by the department;

1 (4) child care centers and other child care facilities licensed by the department of human
2 services;

3 (5) hunting camps and other outdoor recreation locations where food is prepared in the
4 field rather than at a fixed base of operation;

5 (6) food or beverage wholesale manufacturing, processing, or packaging plants, or
6 portions thereof, that are subject to regulatory controls under state or federal laws or
7 regulations;

8 (7) motor vehicles used only for the transport of food;

9 (8) establishments preparing and serving only hot coffee, hot tea, instant hot beverages,
10 and nonpotentially hazardous doughnuts or pastries obtained from sources complying
11 with all laws related to food and food labeling;

12 (9) establishments that handle only nonpotentially hazardous prepackaged food and
13 operations serving only commercially prepared, prepackaged foods requiring no
14 preparation other than the heating of food within its original container or package;

15 (10) farmers markets and roadside markets that offer only uncut fresh fruit and
16 vegetables for sale;

17 (11) automated food merchandising enterprises that supply only prepackaged
18 nonpotentially hazardous food or drink or food or drink in bottles, cans, or cartons only,
19 and operations that dispense only chewing gum or salted nuts in their natural protective
20 covering;

21 (12) the donation, preparation, sale, or service of food by a nonprofit or charitable
22 organization in conjunction with an event or celebration if such donation, preparation,
23 sale, or service of food:

24 (i) does not exceed the duration of the event or celebration or a maximum
25 of fifty-two days within a calendar year; and

26 (ii) takes place in the county in which such nonprofit or charitable
27 organization resides or is principally located.

1 (13) a home, commercial, private, or public kitchen in which a person produces food
2 products sold directly to consumers pursuant to the “Colorado Cottage Foods Act”,
3 Colorado Revised Statutes section 25-4-1614.

4 (ek) "Reusable carryout bag" means a bag:

5 (1) Specifically intended for multiple reuse;

6 (2) Made of cloth, fiber, or other fabric or material that can be cleaned and disinfected
7 regularly, and must be machine-washable;

8 (3) That has handles;

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

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

12 (56) Capable of carrying twenty-two (22) pounds or more; and

13 (67) Capable of one hundred twenty-five (125) uses or more.

14 (l) “Store” means a grocery store, supermarket, convenience store, liquor store, dry cleaner,
15 pharmacy, drug store, clothing store, or other type of retail establishment at which carryout bags
16 are traditionally provided to customers. “Store” includes a farmers market, roadside market or
17 stand, festival, or other temporary vendor or event that includes temporary vendors.

18 **Sec. 2-413.5. Administration; rules and regulations.**

19 The disposable bag fee, bag prohibition and polystyrene food container prohibition will be
20 administered by the executive director. The executive director may promulgate such rules and
21 regulations as may, in the executive director’s judgment, be necessary or appropriate to carry
22 out the purposes of this article, including forms or regulations that specify a structure whereby
23 retail food establishments and stores may file periodic reports with the city, rules specifying the
24 creation of a task force to review the program after the first year and make recommendations to
25 city council on possible program improvements, and rules specifying an education and outreach
26 program, including dispensing of free reusable carryout bags. The executive director may
27 delegate the administration of this article or any part thereof to duly authorized deputies or
28 agents.

29 **Sec. 2-414. Exemptions-Imposition of bag fee.**

1 There is levied and there shall be collected and paid a disposable bag fee in the amount of ten
2 cents (\$.10) on each disposable bag provided to a customer by a store.

3 **Sec. 2-414.5. Exemptions.**

4 The disposable bag fee imposed by this chapter does not apply to:

5 (a) A bag brought into a ~~retail store~~ store by a customer and used to transport goods from
6 the ~~retail store~~ store.

7 (b) A bag provided to a customer if the customer provides evidence that he or she is a
8 participant in a federal or state food assistance program.

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

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

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

20 (eg) Newspaper bags, door-hanger bags, laundry-dry cleaning and garment bags, bags used
21 to contain prescription drugs, and bags sold in packages containing multiple bags for
22 uses such as food storage, garbage, pet waste, or yard waste.

23 **Sec. 2-415. Collection, retention, remittance, and transfer of the disposable bag fee Store fee**
24 **collection duties.**

25 (a) A store shall ~~impose, collect, and account for~~ from each customer a disposable bag fee
26 in the amount of ten cents (\$.10) for each disposable bag provided to the customer by the
27 store.

28 (b) A store shall be liable and responsible for payment to the city ~~six cents (\$.06) of~~ in the
29 amount of ten cents (\$.10) for each disposable bag fee collected to defray costs to the city.
30 ~~A retail store shall remit to the executive director of the office of climate action,~~
31 ~~sustainability, and resiliency the total amount due to the city for the preceding calendar~~
32 ~~quarter on or before the twentieth day of the month following the quarter end. that it~~
33 provides to a customer, less four cents (\$.04), which the store may retain.

1 (c) ~~A retail store may retain four cents (\$0.04) of each disposable bag fee collect that~~The
2 four cents (\$0.04) that the store may retain may only be used to:

- 3 (1) Provide educational information about the disposable bag fee to customers;
- 4 (2) Develop and display informational signage to inform consumers about the fee,
5 encourage the use of reusable carryout bags, or promote recycling of disposable bags;
- 6 (3) Train staff in the implementation and administration of the fee;
- 7 (4) Improve or alter infrastructure to allow for the implementation, collection,
8 administration of the fee;
- 9 (5) Provide free reusable carryout bags to customers; and
- 10 (6) Improve infrastructure to increase disposable plastic bag recycling.

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

13 **Sec. 2-4165.5. Additional requirements for stores.**

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

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

20 (c) A store may not exempt any customer from any part of the disposable bag fee except
21 as otherwise provided in section 2-414.5, D.R.M.C.; and

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

25 **Sec. 2-416. Additional requirements for retail stores. Returns.**

26 Every store obligated to collect the disposable bag fee shall file a completed return and remit the
27 disposable bag fee to the executive director for the preceding calendar quarter on or before the
28 twentieth day of the month following the quarter end. The returns filed by the store shall contain
29 such information and be made in such a manner and upon such forms as the executive director
30 may prescribe.

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

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

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

26 **Sec. 2-417. Duty to Keep Books and Records.**

27 It shall be the duty of every store subject to the provisions of this article to keep and preserve
28 suitable records and such other books or accounts as may be necessary to determine the amount
29 of the disposable bag fee for the collection, withholding, or payment of which the store is liable
30 under this article. It shall be the duty of every store to keep and preserve (for a period of four (4)
31 years following the later of: the due date of the return; or the date the return is actually filed, all
32 such books, invoices and other records necessary to determine the disposable bag fee, and the
33 same shall be open for examination by the executive director. Upon demand by the executive
34 director, the store shall make the books, invoices, accounts or other records it maintains available

1 at the office of the executive director or some other place designated by the executive director
2 for examination, inspection and audit by the executive director and the store shall maintain its
3 books, invoices, accounts or other records until the examination, inspection and audit is
4 completed.

5 **Sec. 2-418. Civil penalties.**

6 ~~A retail store that violates the provisions of this article is subject to a civil penalty of not~~
7 ~~more than nine hundred ninety nine dollars (\$999.00).~~

8 **Sec. 2-418. Trust status of fee in possession of store.**

9 All sums of money paid by the customer to the store as fees imposed by this article shall be and
10 remain public money, the property of the city, in the hands of such store, and the store shall hold
11 the same in trust for the sole use and benefit of the city until returned and paid over to the
12 executive director as herein provided, and the failure so to pay over to the executive director
13 shall constitute a violation of this article by the store.

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

15 ~~(a) A retail store subject to the provisions of this article must maintain accurate and complete~~
16 ~~records of the disposable bag fees collected, the number of disposable bags provided to~~
17 ~~customers, the form and recipients of any notice required by this article; and any underlying~~
18 ~~records, including any books, accounts, invoices, or other records necessary to verify the~~
19 ~~accuracy and completeness of such records. It is the duty of each retail store to keep and~~
20 ~~preserve, either locally or at its corporate headquarters, all documents and records,~~
21 ~~including any electronic information, for a period of four (4) years from the end of the~~
22 ~~calendar year of such records.~~

23 ~~(b) If requested, each retail store must make its records available for compliance audit by the~~
24 ~~office of climate action, sustainability, and resiliency, during regular business hours for the~~
25 ~~city to verify compliance with this article. To the extent permitted by law, the city will treat~~
26 ~~the information as confidential commercial documents. If any retail store fails, neglects, or~~
27 ~~refuses to collect the disposable bag fee, or underpays the disposable bag fee, the executive~~
28 ~~director of the office of climate action, sustainability, and resiliency must make an estimate~~
29 ~~of the fees due, based on available information, and must add to it penalties, interest, and~~
30 ~~any additions to the fees. The executive director of the office of climate action,~~

1 sustainability, and resiliency must serve upon the delinquent retail store personally, by
2 electronic mail, or by first class mail directed to the last address of the retail store on file
3 with the city, written notice of the estimated fees, penalties, and interest, constituting a
4 notice of final determination, assessment and demand for payment, (also referred to as
5 "notice of final determination") due and payable within twenty (20) calendar days after the
6 date of the notice. The retail store may request a hearing on the assessment as provided in
7 section 2-420.

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

11 ~~(i) A penalty of ten (10) percent of total due; and~~

12 ~~(ii) Interest charge of one (1) percent on the amount of the deficiency of the disposable~~

13 **Sec. 2-419. Excess collections; failure to remit collections.**

14 If any store shall, during any reporting period, collect as a fee an amount in excess of the amount
15 set forth in section 2-415 of this article during the reporting period, it shall return and pay over
16 to the executive director the full amount of the fee herein levied and also such excess. The
17 retention by the store of any excess of fee collections over the aforesaid rate or the intentional
18 failure to remit punctually to the executive director the full amount required to be remitted by
19 the provisions of this article shall be a violation of this article.

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 (20)~~
23 ~~calendar days. The request for hearing shall set forth the reasons for and amount of changes~~
24 ~~in the notice of final determination that the retail store seeks and such other information as~~
25 ~~the executive director of the office of climate action, sustainability, and resiliency may~~
26 ~~prescribe.~~

27 ~~(b) The executive director of the office of climate action, sustainability, and resiliency will~~
28 ~~appoint a hearing officer to review and render a decision concerning the facts supporting~~
29 ~~the notice of final determination. The hearing officer must determine by a preponderance~~

1 ~~of the evidence if a violation of this article has been committed. Upon a finding against a~~
2 ~~retail store, the hearing officer must enter a decision and order any necessary relief, if~~
3 ~~applicable. A decision by the hearing officer is final and subject to review by the district~~
4 ~~court.~~

5 **Sec. 2-420. Examination of returns; refunds, credits and deficiencies.**

6 (a) As soon as practicable after a return required by this article is filed, the executive
7 director shall examine it for correctness. If it then appears that the correct amount of fee to be
8 remitted is greater or less than that shown in the return, the fee shall be recomputed.

9 (b) If the amount paid exceeds that which is due, the excess shall be refunded with interest
10 or credited against any subsequent remittance from the same store. Interest shall be paid on
11 refunds. Interest shall accrue from the time the overpayment is made. The rate of interest shall
12 be fixed and shall be the average monthly rate earned by the city on the general fund for the
13 calendar year immediately preceding the year in which the refund is made.

14 (c) If the amount paid is less than the amount due, the difference, together with interest
15 thereon at the rate of one (1) percent each month, or fraction thereof, from the until the date
16 paid, together with applicable penalty, if any, shall be paid over by the store within thirty (30)
17 days after written notice and demand for payment from the executive director.

18 **Sec. 2-421. Administration—Rules.**

19 ~~The disposable bag fee will be administered by the executive director of the office of climate~~
20 ~~action, sustainability, and resiliency. The office of climate action, sustainability, and resiliency~~
21 ~~may promulgate rules and regulations that specify a structure whereby retail stores may file~~
22 ~~periodic reports with the city, rules specifying the creation of a task force to review the program~~
23 ~~after the first year and make recommendations to city council on possible program~~
24 ~~improvements, and rules specifying an education and outreach program, including dispensing of~~
25 ~~free reusable carryout bags.~~

26 **Sec. 2-421. Interest on late payments, penalty.**

27 (a) In any case in which a store fails to file a timely return or pay over the fee within the
28 time required by this article, but without the intent to defraud, there shall be added as a penalty
29 fifteen (15) percent of the total amount of the deficiency, but not less than twenty-five dollars

1 (\$25.00), and interest in such cases shall be collected at the rate of one (1) percent each month,
2 or fraction thereof, on the amount due on the deficiency from the time the return was due to
3 the date the fee is paid, which interest and addition shall become due and payable within thirty
4 (30) days after the written notice and demand by the executive director, and such interest shall
5 be assessed, collected and paid in the same manner as the fee itself.

6 (b) Payments of part but less than all of a deficiency, including interest, or interest and
7 penalty, shall be first applied to penalty, if any, secondly to accrued interest and, lastly, to the fee
8 itself.

9 **~~Secs. 2-422—2-430. Reserved~~**

10 **Sec. 2-422. Penalty for deficiency caused by fraud.**

11 If any part of the deficiency is due to fraud with the intent to evade the fee, there shall be added
12 as a penalty fifty percent (50%) of the total amount of the deficiency, and in such case the whole
13 amount of the fee unpaid, including the additions, shall become due and payable thirty (30) days
14 after written notice and demand by the executive director, and an additional one (1) percent
15 each month, or fraction thereof, on said amounts shall be added from the date the return was
16 due until paid, and such addition shall be assessed, collected and paid in the same manner as the
17 fee itself.

18 **Sec. 2-423. Investigation of stores' books.**

19 For the purposes of ascertaining the correctness of a return, for the purpose of determining the
20 amount of fee due from any store, or for the purpose of estimating the fee due from any store,
21 the executive director is empowered to examine any books, papers, records or memoranda
22 bearing upon the matters required to be included in the return; and if the store refuses to
23 cooperate in such examination, the executive director may require the attendance of such store,
24 or any officer or employee of such store, by subpoena issued under the hand of the executive
25 director, to give testimony and to produce any of the foregoing information in the possession or
26 under the control of the individual, or of any person having knowledge of such fees.

27 **Sec. 2-423.5. Audit; estimate of fees, penalty, and interest; notice; assessment.**

28 (a) The executive director is authorized to examine, inspect and audit the books,
29 invoices, accounts and other records kept or maintained by the store for the collection of the

1 fees imposed by this article. If the executive director determines that any store neglects or
2 refuses to make a timely return in payment of the fees or to pay or to correctly account for any
3 fees as required by this article, the executive director shall make an estimate, based upon such
4 information as may be available, with or without employing investigative powers vested in the
5 executive director by this article, of the amount of the fees due for the period or periods for
6 which the store is delinquent; and upon the basis of such estimated amount, compute and assess
7 in addition thereto a penalty equal to fifteen (15) percent thereof, together with the interest on
8 such delinquent taxes at the rate of one (1) percent each month, or a fraction thereof, from the
9 date when due until the date paid.

10 (b) Promptly thereafter the executive director shall notify the delinquent store in
11 writing and demand payment thereof of such estimated fees, penalty and interest.

12 (c) Such estimated amounts shall thereupon become an assessment, and such
13 assessment shall be final and due and payable from the store to the city thirty (30) days from the
14 date of the notice and demand; provided, however, that within said thirty-day period the
15 delinquent taxpayer may petition the executive director in writing for review of the assessment
16 in the manner provided in section 2-424 of this article. The filing of a petition shall not toll the
17 accrual of interest and applicable penalties on the amount of fees due.

18 **Sec. 2-424. Review by the executive director.**

19 (a) Petitions. Petitions submitted to the executive director shall be in writing and shall
20 contain a statement of facts and reasons for and the amount of the requested changes in the
21 assessment or decision to deny or reduce a refund claim, shall clearly indicate an authorized
22 representative for purposes of the petition, along with contact information for service of process
23 for all matters related to the petition, and shall otherwise comply with the applicable rules
24 promulgated by the executive director relating to petitions and hearings.

25 (b) Time limit for filing petitions. Petitions shall be submitted to the executive director
26 within thirty (30) days from the date of the assessment or decision to deny or reduce a refund
27 claim. If a petition is not submitted within this time, the assessment or decision is final, due and
28 payable and no further review is available.

1 (c) Notice of hearing. The executive director shall notify the store in writing of the time
2 and place within the city fixed for hearing.

3 (d) Executive director may appoint designee. A hearing, if any, shall be before the
4 executive director or its designee, who is authorized to administer oaths, to take testimony, to
5 hear arguments, and to issue all necessary and appropriate orders and decisions.

6 (e) Burden of proof. The burden of proof shall be on the store that it is entitled to a
7 refund, a modification of cancellation of an assessment, or that it is exempt from collecting the
8 fee imposed by this article, and such proof shall be by a preponderance of the evidence.

9 (f) Final order or decision. The final order or decision of the executive director or its
10 designee shall be in writing and notice thereof shall be mailed to the store forthwith.

11 **Sec. 2-424.5. Review of executive director's final order or decision.**

12 Should a store or retail food establishment be aggrieved by a final order or decision of the
13 executive director, the store or retail food establishment store may proceed to have the same
14 reviewed under Colorado Rules of Civil Procedure 106(a)(4) by the district court for the second
15 judicial district of the state. The petition or complaint for review must be filed within thirty (30)
16 days from the date of the final order or decision.

17 **Sec. 2-425. Lien.**

18 The fee imposed by this article, together with the penalties and interest herein provided and the
19 costs of collection which may be incurred, shall be and, until paid, remain a first and prior lien
20 superior to all other liens, aside from tax liens, upon the goods, merchandise, furniture and
21 fixtures, tools and equipment of any retail store, or used by any store in conducting its retail
22 business under lease, title retaining contract or other contract arrangement, within the city and
23 shall take precedence on all such property over other liens or claims of whatsoever kind or nature
24 and may be foreclosed by seizing under distraint warrant and selling so much of said
25 merchandise, furniture and fixtures, tools and equipment as may be necessary to discharge said
26 lien.

27 **Sec. 2-426. Recovery of unpaid fee by action at law.**

28 (a) The executive director may recover at law the amount of such fees, penalties, interest
29 and any statutory damages and costs in any county or district court having jurisdiction of the

1 amounts sought to be collected in the county wherein the store resides or has his principal place
2 of business. The return of the store or the assessment made as provided in this article by the
3 executive director shall be prima facie proof of the amount due.

4 (b) Additional damages, charges, fees and costs allowed.

5 (1) The executive director may recover charges for unpaid bank drafts and other
6 negotiable instruments pursuant to section 53-402.

7 (2) The executive director may recover statutory damages for checks, drafts, or orders
8 not paid upon presentment pursuant to Colorado Revised Statutes section 13-21-
9 109.

10 (3) If the executive director employs a collection agency, collection fees pursuant to
11 section 53-403 shall apply.

12 **Sec. 2-427. Statute of limitations.**

13 (a) Except as provided in this section and unless such time is extended by waiver, the
14 amount of the fee imposed by this article and the penalty and interest applicable thereto, other
15 than interest accruing thereafter, shall be assessed within three (3) years after the return is filed,
16 and no notice of lien shall be filed or distraint warrant issued or suit for collection instituted or
17 any other action to collect the same commenced after the expiration of such period unless the
18 executive director issues a notice of assessment for a fee deficiency within such period.

19 (b) For purposes of this section, a fee return filed before the last day prescribed by law or
20 by regulation promulgated pursuant to law for the filing thereof shall be considered as filed on
21 such last day.

22 (c) In the case of failure to file a return or the filing of a false or fraudulent return with
23 intent to evade the fee, the fee together with penalty and interest may be assessed and collected
24 at any time.

25 (d) Where, before the expiration of the time prescribed in this section for the assessment
26 of tax, both the executive director and the store have consented in writing to an assessment after
27 such time, the fee may be assessed at any time prior to the expiration of the period agreed upon.
28 The period so agreed upon may be extended by subsequent agreements in writing made before
29 the expiration of the period previously agreed upon. No lien shall continue under this article

1 beyond the period provided for assessing the fee unless fees have been assessed within the
2 period, as it may be extended, and the lien shall then continue for one (1) year after the
3 expiration of any such period, unless otherwise specifically provided in this article.

4 (e) Nothing in this section shall be construed to limit any right accrued, or revive any
5 liability barred by any such limitation, by ordinance effective prior to the enactment of this
6 section.

7 **Sec. 2-428. Purposes and allowed uses of monies in city disposable bag fee fund.**

8 Monies from the disposable bag fee shall be used to defray the costs to the city for
9 administering the disposable bag fee program, which may include the following specific uses:

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

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

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

18 (d) Fund programs and infrastructure that allow the city to reduce waste associated with
19 disposable bags and other single-use products;

20 (e) Purchase and install equipment designed to minimize bag pollution, including, recycling
21 containers, and waste receptacles associated with disposable bags and other single-use products;

22 (f) Fund community cleanup events and other activities that reduce trash associated with
23 disposable bags and single-use products;

24 (g) Mitigate the effects of disposable bags and single-use products on the city's drainage
25 system, transportation system, wildlife, and environment;

26 (h) Conduct studies of disposable bag usage and the impact of the disposable bag fee in
27 Denver;

28 (i) Maintain a public website that educates residents on the progress of waste reduction
29 efforts associated with disposable bags and single-use products; and

1 (j) Develop a task force to analyze the data and impact, and to recommend improvements.

2 **Sec. 2-429. Restriction on use of disposable bags.**

3 (a) On and after January 1, 2024, a store or retail food establishment shall not provide a
4 disposable bag to a customer; except that a retail food establishment need not comply with this
5 section if the retail food establishment:

6 (i) prepares or serves food in individual portions for immediate on- or off-premises
7 consumption; and

8 (ii) is not a grocery store or convenience store.

9 (b) Subject to the disposable bag fee in this Article, a store or retail food establishment may
10 provide a disposable bag to a customer on or before June 1, 2024, if the disposable bag was
11 part of the store or retail food establishment's inventory before January 1, 2024.

12 (c) Recycled paper disposable bags made from one hundred percent recycled material or
13 other post-consumer content are exempt from this section.

14 **Sec. 2-429.5. Restriction on use of expanded polystyrene food containers.**

15 (a) Except as provided in subsection (b) of this section, effective January 1, 2024, a retail food
16 establishment shall not distribute an expanded polystyrene product for use as a container for
17 ready-to-eat food in the City and County of Denver.

18 (b) If a retail food establishment purchased expanded polystyrene products before January
19 1, 2024, the retail food establishment may distribute any remaining inventory of the expanded
20 polystyrene products then purchased for use as containers for ready-to-eat food in the City and
21 County of Denver until the inventory is depleted.

22 **Sec. 2-430 Civil penalties.**

23 (a) A store that violates the provisions of this article is subject to a civil penalty of not more
24 than nine hundred ninety-nine dollars (\$999.00) per violation. For purposes of this article, the
25 continuation of a violation shall be a separate violation for each day the executive director
26 determines a store or retail food establishment has violated this article.

27 (b) The executive director is hereby authorized to waive for good cause shown any civil
28 penalty assessed under this article.

1 (c) Any person who disputes a civil penalty assessed pursuant to this article shall be resolved
2 by administrative hearing pursuant to the procedure established by section 2-424, regarding
3 hearings before the executive director. The decision of the executive director is the final decision
4 which may only be appealed to Denver district court under the provisions of Colorado Rule of
5 Civil Procedure 106(a)(4) within thirty (30) days of the date the order becomes final.
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13 COMMITTEE APPROVAL DATE: TBD

14 MAYOR-COUNCIL DATE: TBD

15 PASSED BY THE COUNCIL: _____.

16 _____ - PRESIDENT

17 APPROVED: _____ - MAYOR _____.

18 ATTEST: _____ - CLERK AND RECORDER,
19 EX-OFFICIO CLERK OF THE
20 CITY AND COUNTY OF DENVER
21

22 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____ ; _____.

23 PREPARED BY: Lee M. Zarzecki, Assistant City Attorney DATE: _____.

24 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of
25 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
26 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
27 § 3.2.6 of the Charter.

28 Kristin M. Bronson, Denver City Attorney

1 BY: _____, Assistant City Attorney

DATE: _____.