

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2022

COUNCIL BILL NO. 22-1545
COMMITTEE OF REFERENCE:
4 Business, Arts, Workforce & Aviation Services

5
6 A BILL

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

10
11 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

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

14 **ARTICLE XX. – FEE AND RESTRICTIONS ON DISPOSABLE BAGS AND POLYSTYRENE FOOD**
15 **CONTAINERS**

16 **Sec. 2-413. – Definitions.**

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

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

22 ~~(ab)~~ “Customer” means any person who makes a retail purchase from a retail-store.

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

26 ~~(ed)~~ “Disposable bag fee” means the fee of ten cents (\$0.10) imposed by the city and county
27 of Denver and required to be paid by each ~~consumer~~customer making a purchase from a retail-store
28 for each disposable bag used during the purchase and imposed for the purposes set forth in 2-
29 44728, D.R.M.C.

30 ~~(d)~~ “Retail store” means any public commercial business engaged in the sale of personal
31 consumer goods, household items, or groceries to customers who use or consume such items.
32 “Retail store” does not include restaurants or other businesses where retail sales are secondary and

1 incidental to the primary activity occurring within the business or any temporary vendors or temporary
2 events.

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 any
6 other expanded or extruded foam consisting of thermoplastic petrochemical materials utilizing a
7 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 ingredient
13 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 remotely
19 from a store or retail food establishment and delivered, the location where the products are delivered.

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

24 (1) any private home;

25 (2) private boarding houses;

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

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

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

31 (6) food or beverage wholesale manufacturing, processing, or packaging plants, or

1 portions thereof, that are subject to regulatory controls under state or federal laws or regulations;

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

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

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

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

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

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

17 a. does not exceed the duration of the event or celebration or a maximum of
18 fifty-two days within a calendar year; and

19 b. takes place in the county in which such nonprofit or charitable organization
20 resides or is principally located.

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

24 (ek) “Reusable carryout bag” means a bag:

25 (1) Specifically intended for multiple reuse;

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

28 (3) That has handles;

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

31 (5) That has a permanent tag identifying the name of the manufacturer, the material

1 used to manufacture it, and location (country) where it was manufactured;
2 (56) Capable of carrying twenty-two (22) pounds or more; and
3 (67) Capable of one hundred twenty-five (125) uses or more.

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

8 **Sec. 2-413.5. – Administration; rules and regulations.**

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

18 **Sec. 2-414. – Imposition of bag fee.**

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

21 **Sec. 2-414.5. – Exemptions.**

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

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

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

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

31 (d) A bag used to protect purchased items from damaging or contaminating other purchased

1 items when placed in a disposable or reusable carryout bag.

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

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

7 ~~(g) Newspaper bags, door-hanger bags, laundry-dry cleaning and garment bags, bags used~~
8 ~~to contain prescription drugs, and bags sold in packages containing multiple bags for uses such as~~
9 ~~food storage, garbage, pet waste, or yard waste.~~

10 **~~Sec. 2-415. – Collection, retention, remittance, and transfer of the disposable bag fee~~Store**
11 **fee collection duties.**

12 (a) ~~A retail store shall impose, collect, and account for~~ from each customer a disposable bag
13 fee in the amount of ten cents (\$0.10) for each disposable bag provided to the customer by the retail
14 store.

15 (b) ~~A retail store shall be liable and responsible for payment to the city six cents (\$0.06) of~~
16 the amount of ten cents (\$0.10) for each disposable bag fee collected to defray costs to the city. A
17 ~~retail store shall remit to the executive director of the office of climate action, sustainability, and~~
18 ~~resiliency the total amount due to the city for the preceding calendar quarter on or before the~~
19 ~~twentieth day of the month following the quarter end. that it provides to a customer, less four cents~~
20 (\$0.04), which the store may retain.

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

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

31 (d) The retained portion of the disposable bag fee is not revenue for the purposes of

1 calculating sales tax.

2 **Sec. 2-4165.5. – Additional requirements for retail stores.**

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

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

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

11 (d) A ~~retail~~-store required to collect the disposable bag fee must display a sign in a location
12 outside or inside of the business, viewable by customers, alerting customers to the disposable bag
13 fee.

14 **Sec. 2-416. – Returns.**

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

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

21 It shall be the duty of every store subject to the provisions of this article to keep and preserve
22 suitable records and such other books or accounts as may be necessary to determine the amount
23 of the disposable bag fee for the collection, withholding, or payment of which the store is liable under
24 this article. It shall be the duty of every store to keep and preserve (for a period of four (4) years
25 following the later of: the due date of the return; or the date the return is actually filed, all such books,
26 invoices and other records necessary to determine the disposable bag fee, and the same shall be
27 open for examination by the executive director. Upon demand by the executive director, the store
28 shall make the books, invoices, accounts or other records it maintains available at the office of the
29 executive director or some other place designated by the executive director for examination,
30 inspection and audit by the executive director and the store shall maintain its books, invoices,
31 accounts or other records until the examination, inspection and audit is completed.

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

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

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

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

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

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

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

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

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

28 (a) In any case in which a store fails to file a timely return or pay over the fee within the time
29 required by this article, but without the intent to defraud, there shall be added as a penalty fifteen
30 (15) percent of the total amount of the deficiency, but not less than twenty-five dollars (\$25.00), and
31 interest in such cases shall be collected at the rate of one (1) percent each month, or fraction thereof,

1 on the amount due on the deficiency from the time the return was due to the date the fee is paid,
2 which interest and addition shall become due and payable within thirty (30) days after the written
3 notice and demand by the executive director, and such interest shall be assessed, collected and
4 paid in the same manner as the fee itself.

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

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

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

15 **Sec. 2-423. – Investigation of stores' books.**

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

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

25 (a) The executive director is authorized to examine, inspect and audit the books, invoices,
26 accounts and other records kept or maintained by the store for the collection of the fees imposed by
27 this article. If the executive director determines that any store neglects or refuses to make a timely
28 return in payment of the fees or to pay or to correctly account for any fees as required by this article,
29 the executive director shall make an estimate, based upon such information as may be available,
30 with or without employing investigative powers vested in the executive director by this article, of the
31 amount of the fees due for the period or periods for which the store is delinquent; and upon the basis

1 of such estimated amount, compute and assess in addition thereto a penalty equal to fifteen (15)
2 percent thereof, together with the interest on such delinquent taxes at the rate of one (1) percent
3 each month, or a fraction thereof, from the date when due until the date paid.

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

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

12 **Sec. 2-424. – Review by the executive director.**

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

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

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

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

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

31 (f) *Final order or decision.* The final order or decision of the executive director or its designee

1 shall be in writing and notice thereof shall be mailed to the store forthwith.

2 **Sec. 2-424.5. – Review of executive director’s final order or decision.**

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

8 **Sec. 2-425. – Lien.**

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

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

18 (a) The executive director may recover at law the amount of such fees, penalties, interest and
19 any statutory damages and costs in any county or district court having jurisdiction of the amounts
20 sought to be collected in the county wherein the store resides or has his principal place of business.
21 The return of the store or the assessment made as provided in this article by the executive director
22 shall be prima facie proof of the amount due.

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

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

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

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

30 **Sec. 2-427. – Statute of limitations.**

31 (a) Except as provided in this section and unless such time is extended by waiver, the amount

1 of the fee imposed by this article and the penalty and interest applicable thereto, other than interest
2 accruing thereafter, shall be assessed within three (3) years after the return is filed, and no notice of
3 lien shall be filed or distraint warrant issued or suit for collection instituted or any other action to
4 collect the same commenced after the expiration of such period unless the executive director issues
5 a notice of assessment for a fee deficiency within such period.

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

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

11 (d) Where, before the expiration of the time prescribed in this section for the assessment of
12 tax, both the executive director and the store have consented in writing to an assessment after such
13 time, the fee may be assessed at any time prior to the expiration of the period agreed upon. The
14 period so agreed upon may be extended by subsequent agreements in writing made before the
15 expiration of the period previously agreed upon. No lien shall continue under this article beyond the
16 period provided for assessing the fee unless fees have been assessed within the period, as it may
17 be extended, and the lien shall then continue for one (1) year after the expiration of any such period,
18 unless otherwise specifically provided in this article.

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

21 **Sec. 2-41728. – Purposes and allowed uses of monies in city disposable bag fee fund.**

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

- 24 (a) Administrative costs associated with developing, implementing, and administering the
25 disposable bag fee;
- 26 (b) Provide reusable carryout bags to residents and visitors;
- 27 (c) Educate residents, businesses, and visitors about the requirements of the program and
28 impact of disposable bags on the city's environmental health, the importance of reducing the
29 number of disposable plastic bags and other single-use products entering the waste stream, and the
30 expenses associated with mitigating the effects of disposable bags on the city's drainage system,
31 transportation system, wildlife and environment;

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

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

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

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

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

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

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

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

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

18 (1) prepares or serves food in individual portions for immediate on- or off-premises
19 consumption; and

20 (2) is not a grocery store or convenience store.

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

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

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

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

30 (b) If a retail food establishment purchased expanded polystyrene products before January 1,
31 2024, the retail food establishment may distribute any remaining inventory of the expanded

1 polystyrene products then purchased for use as containers for ready-to-eat food in the City and
2 County of Denver until the inventory is depleted.

3 **Sec. 2-41830. – Civil penalties.**

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

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

10 (c) Any person who disputes a civil penalty assessed pursuant to this article shall be resolved
11 by administrative hearing pursuant to the procedure established by section 2-424, regarding
12 hearings before the executive director. The decision of the executive director is the final decision
13 which may only be appealed to Denver district court under the provisions of Colorado Rule of Civil
14 Procedure 106(a)(4).

15 **Sec. 2-419. – Records and violations.**

16 ~~(a) A retail store subject to the provisions of this article must maintain accurate and complete~~
17 ~~records of the disposable bag fees collected, the number of disposable bags provided to customers,~~
18 ~~the form and recipients of any notice required by this article; and any underlying records, including~~
19 ~~any books, accounts, invoices, or other records necessary to verify the accuracy and completeness~~
20 ~~of such records. It is the duty of each retail store to keep and preserve, either locally or at its corporate~~
21 ~~headquarters, all documents and records, including any electronic information, for a period of four~~
22 ~~(4) years from the end of the 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 city to~~
25 ~~verify compliance with this article. To the extent permitted by law, the city will treat the information~~
26 ~~as confidential commercial documents. If any retail store fails, neglects, or refuses to collect the~~
27 ~~disposable bag fee, or underpays the disposable bag fee, the executive director of the office of~~
28 ~~climate action, sustainability, and resiliency must make an estimate of the fees due, based on~~
29 ~~available information, and must add to it penalties, interest, and any additions to the fees. The~~
30 ~~executive director of the office of climate action, sustainability, and resiliency must serve upon the~~
31 ~~delinquent retail store personally, by electronic mail, or by first class mail directed to the last address~~

1 of the retail store on file with the city, written notice of the estimated fees, penalties, and interest,
2 constituting a notice of final determination, assessment and demand for payment, (also referred to
3 as "notice of final determination") due and payable within twenty (20) calendar days after the date of
4 the notice. The retail store may request a hearing on the assessment as provided in section 2-420.

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

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

9 (ii) Interest charge of one (1) percent on the amount of the deficiency of the disposable
10 bag fee per month.

11 **Sec. 2-420. - Hearings.**

12 (a) A retail store may request a hearing on any proposed fee imposed under this title after
13 receiving a notice of final determination, by filing a written request within twenty (20) calendar days.
14 The request for hearing shall set forth the reasons for and amount of changes in the notice of final
15 determination that the retail store seeks and such other information as the executive director of the
16 office of climate action, sustainability, and resiliency may prescribe.

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

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

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

30
31

1 COMMITTEE APPROVAL DATE: November 30, 2022

2 MAYOR-COUNCIL DATE: December 6, 2022

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

12 PREPARED BY: Lee Zarzecki, Assistant City Attorney DATE: December 8, 2022

13

14 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the
15 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
16 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
17 3.2.6 of the Charter.
18

19 Kerry Tipper, Denver City Attorney

20

21 BY: _____, Assistant City Attorney DATE: _____