

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2019

COUNCIL BILL NO. 19-1176
COMMITTEE OF REFERENCE:
Finance and Governance

A BILL

For an ordinance amending Chapter 48 of the Denver Revised Municipal Code by adding Article IX entitled Fee on Disposable Bags.

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

Section 1. Chapter 48, D.R.M.C., is amended by the addition of Article IX, to read as follows:

Secs. 48-116-120. - Reserved.

ARTICLE IX. Fee on Disposable Bags

Sec. 48-121. - Definitions.

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

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

(b) "Disposable bag" except as provided in section 48-122, D.R.M.C., means any bag, other than a reusable carryout bag, that is provided to a customer by a retail store at the point of sale for the purpose of transporting goods.

(c) "Disposable bag fee" means the fee of \$0.10 imposed by the city and county of Denver and required to be paid by each consumer making a purchase from a retail store for each disposable bag used during the purchase and imposed for the purposes set forth in 48-125, D.R.M.C.

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

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

(1) Specifically intended for multiple reuse;

- 1 (2) Made of cloth, fiber, or other fabric or material that can be cleaned and disinfected
- 2 regularly, and must be machine-washable;
- 3 (3) That has handles;
- 4 (4) If made of plastic material, cannot be plastic film where thickness is measured in mils;
- 5 (5) That has a permanent tag identifying the name of the manufacturer, the material used to
- 6 manufacture it, and location (country) where it was manufactured;
- 7 (5) Capable of carrying twenty-two pounds or more; and,
- 8 (6) Capable of one hundred twenty-five (125) uses or more.

9

10 **Sec. 48-122. -Exemptions**

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

- 12 (a) A bag brought into a retail store by a customer and used to transport goods from the
- 13 retail store.
- 14 (b) A bag provided to a customer if the customer provides evidence that he or she is a
- 15 participant in a federal or state Food Assistance Program.
- 16 (c) A bag used by consumers inside retail stores: to package bulk items, such as fruit,
- 17 vegetables, nuts, grains, candy or small hardware items like nails, nuts, and screws; contain or wrap
- 18 frozen or fresh foods, meat, or fish; contain or wrap flowers, potted plants, or other items where
- 19 dampness may be a problem; or contain unwrapped prepared foods or bakery goods.
- 20 (d) A bag used to protect purchased items from damaging or contaminating other purchased
- 21 items when placed in a disposable or reusable carryout bag.
- 22 (e) A bag no larger than 7 inches x 9 inches used for loose small retail items, including, but
- 23 not limited to, jewelry, buttons, beads, ribbon, herbs and spices, medical marijuana or adult-use
- 24 marijuana if sold by the holder of a permit issued pursuant to applicable law, and similar items.
- 25 (f) A bag provided by pharmacists to contain prescription drugs.
- 26 (g) Newspaper bags, door-hanger bags, laundry-dry cleaning and garment bags, and bags
- 27 sold in packages containing multiple bags for uses such as food storage, garbage, pet waste, or yard
- 28 waste.

29

30 **Sec. 48-123 – Collection, retention, remittance, and transfer of the disposable bag fee.**

- 31 (a) A retail store shall impose, collect, and account for a disposable bag fee.
- 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. On or before the twentieth day of each
- 34 month, a retail store shall remit to the manager of transportation and infrastructure the total amount

1 due to the city for the preceding calendar month.

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

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

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

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

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

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

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

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

14

15 **Sec. 48-124. – Additional requirements for retail stores.**

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

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

22 (c) A retail store may not exempt any customer from any part of the disposable bag fee
23 except as otherwise provided in section 48-122, D.R.M.C.; and,

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

27

28 **Sec. 48-125. - Purposes and allowed uses of monies in city disposable bag fee fund.**

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

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

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

34 (c) Educate residents, businesses, and visitors about the requirements of the program and

1 impact of disposable bags on the city’s environmental health, the importance of reducing the number
2 of disposable plastic bags and other single-use products entering the waste stream, and the expenses
3 associated with mitigating the effects of disposable bags on the city’s drainage system, transportation
4 system, wildlife and environment;

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

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

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

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

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

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

17 (j) Develop a task force to analyze the data and impact, and to recommend improvements.
18

19 **Sec. 48-126. - Administration - rules.**

20 The disposable bag fee will be administered by the manager of transportation and
21 infrastructure. The manager of transportation and infrastructure may promulgate rules and regulations
22 that specify a structure whereby retail stores may file periodic reports with the city, rules specifying the
23 creation of a task force to review the program after the first year and make recommendations to city
24 council on possible program improvements, and rules specifying an education and outreach program,
25 including dispensing of free reusable carryout bags.
26

27 **Sec. 48-127. - Records and violations.**

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

1 (b) If requested, each retail store must make its records available for compliance audit by
2 the manager of transportation and infrastructure, during regular business hours for the city to verify
3 compliance with this article. To the extent permitted by law, the city will treat the information as
4 confidential commercial documents. If any retail store fails, neglects, or refuses to collect the
5 disposable bag fee, or underpays the disposable bag fee, the manager of transportation and
6 infrastructure must make an estimate of the fees due, based on available information, and must add to
7 it penalties, interest, and any additions to the fees. The manager of transportation and infrastructure
8 must serve upon the delinquent retail store personally, by electronic mail, or by first class mail directed
9 to the last address of the retail store on file with the city, written notice of the estimated fees, penalties,
10 and interest, constituting a notice of final determination, assessment and demand for payment, (also
11 referred to as "Notice of Final Determination") due and payable within twenty calendar days after the
12 date of the notice. The retail store may request a hearing on the assessment as provided in D.R.M.C.
13 chapter 24.

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

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

18 (ii) Interest charge of one percent on the amount of the deficiency of the disposable bag fee
19 per month.
20

21 **Sec. 48-128. - Hearings.**

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

25 **Sec. 48-129. - Civil Penalties.**

26 A retail store that violates the provisions of this article is subject to civil penalties under chapter
27 24, D.R.M.C.
28

29 **Section 2.** Section 24-5 (a), D.R.M.C., is amended by adding the language underlined and
30 deleting the language stricken as follows:
31

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

33 (a) Any person who violates any provision of chapter 8 (animals), excluding the provisions of

1 sections 8-74 (damaging property), 8-61 (dog attack or bite), 8-62 (dangerous dogs), 8-67 (pit bulls
2 prohibited), 8-131(a) (cruelty to animals prohibited), 8-133 (abandonment), and 8-134 (keeping place
3 for fighting animals); chapter 11 (child care); chapter 17 (emergency vehicles); article X (body art) of
4 chapter 24 (health and sanitation); chapter 26 (boarding homes, personal care boarding homes, and
5 nongovernmental residential facilities for the treatment or supervision of offenders); article II of chapter
6 27 (housing code); chapter 33 (lodging); chapter 35 (mobile homes and trailers); chapter 36 (noise
7 control); article I of chapter 37 (health nuisances); ~~or~~ chapter 51 (pools); or any retail store who
8 violates article IX of chapter 48 (disposable bags), is also subject to a civil penalty of not more than
9 nine hundred ninety-nine dollars (\$999.00) per violation.

10

11 **Section 4. Effective Date.** This ordinance takes effect upon passage and applies to disposable
12 bags provided by retail stores on and after July 1, 2020.

13

14 COMMITTEE APPROVAL DATE: _____

15 MAYOR-COUNCIL DATE: _____

16 PASSED BY THE COUNCIL _____

17 _____ - PRESIDENT

18 APPROVED: _____ - MAYOR _____

19 ATTEST: _____ - CLERK AND RECORDER,
20 EX-OFFICIO CLERK OF THE
21 CITY AND COUNTY OF DENVER
22

23 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

24

25 PREPARED BY: Kirsten Crawford, Assistant City Attorney; DATE: December 12, 2019

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27 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
28 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
29 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
30 3.2.6 of the Charter.

31

32 Kristin M. Bronson, Denver City Attorney

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34 BY: Kirsten J. Crawford, Assistant City Attorney DATE: Dec 11, 2019

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