

COUNCIL BILL NO. 3

Series 2023

A BILL FOR AN ORDINANCE TO REDUCE SINGLE USE PLASTICS AND IN CONNECTION THEREWITH ESTABLISHING FINES AND PENALTIES.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. That title 5, chapter 12, entitled "DISPOSABLE BAG FEE" is hereby repealed and replaced in its entirety with the following language underlined to read as follows:

CHAPTER 12
REDUCTION OF SINGLE USE PLASTICS AND
RECYCLED PAPER CARRYOUT BAG FEE

5-12-1: DEFINITIONS:

As used in this Chapter, the following words shall have the following meanings. Where terms are not defined, they shall have their ordinarily accepted meanings within the context that they are used.

BUSINESS: means any commercial enterprise or establishment, including sole proprietorships, joint ventures, partnerships, corporations or any other legal entity whether for profit or not for profit. The definition of business is specifically intended to include both minor festival events and major festival events.

CONTAINER: means a receptacle upon which or inside which food may be placed for consumption, whether or not the receptacle can be fully closed. Container includes hinged food containers, plates, bowls, bottles, cups, and trays.

COMPOSTABLE PLASTIC BAG: Any bag made of a thin, flexible plastic material, including but not limited to plant based, cellulosic, polylactic (PLA), or bioplastic. May contain labeling such as compostable, degradable, biodegradable, or oxo-biodegradable.

CUSTOMER: Any person who makes a retail purchase from store.

1 EXPANDED POLYSTYRENE: means blown polystyrene, commonly known as Styrofoam™, and
2 any other expanded or extruded foam consisting of thermoplastic petrochemical materials
3 utilizing a styrene monomer and processed by techniques that may include:
4 (a) for expandable bead polystyrene, fusion of polymer spheres;
5 (b) injection molding;
6 (c) foam molding; and
7 (d) for extruded foam polystyrene, extrusion blow molding.
8 FARMERS' AND ARTISANS' MARKET: A market at which local farmers and artisans sell their
9 products and crafts directly to consumers.
10 FOOD: means any raw, cooked, or processed edible substance, ice, beverage, or ingredient
11 used or intended for use or for sale, in whole or in part, for human consumption.
12 FINANCE DIRECTOR: The Finance Director of the town, or such person's designee.
13 PLASTIC: means a synthetic material made from linking monomers through a chemical reaction
14 to create a polymer chain that can be molded or extruded at high heat into various solid forms
15 that retain their defined shapes during their life cycle and after disposal.
16 PLASTIC BEVERAGE CONTAINER: means a beverage container less than half gallon in size
17 and may or may not contain a lid.
18 POINT OF SALE: means a check-out stand, cash register, or other point at which a sales
19 transaction occurs in a store or retail food establishment or, for products that are ordered
20 remotely from a store or retail food establishment and delivered, the location where the products
21 are delivered.
22 POSTCONSUMER RECYCLED CONTENT: Any material that would otherwise be destined for
23 solid waste disposal, having completed its intended end use and product life cycle.
24 Postconsumer recycled material does not include materials and byproducts generated from
25 original manufacturing and fabrication process.
26 READY-TO-EAT FOOD: means food that is cooked or otherwise prepared in advance for
27 immediate consumption.

1 RECYCLED PAPER CARRYOUT BAG: means a bag that is one hundred percent recycled
2 material other post-consumer content furnished to a customer at a store or retail food
3 establishment at the point of sale for use by the customer to transport or carry purchased items.

4 Recycled carryout bag does not include:

5 (i) a bag made of paper when the paper has a basis weight of thirty pounds or less;

6 (ii) a bag that a pharmacy provides to a customer purchasing prescription medication; (iii) a bag
7 that a customer uses inside a store to:

8 (a) package loose or bulk items, such as fruits, vegetables, nuts, grains, candy, or greeting
9 cards; nails, bolts, screws, or other small hardware items; live insects, fish, crustaceans,
10 mollusks, or other small species; and bulk seed, bulk livestock feed, or bulk pet feed;

11 (b) contain or wrap frozen foods, meat, seafood, fish, flowers, potted plants, or other items that,
12 if they were to come in contact with other items, could dampen or contaminate the other items;
13 or

14 (c) contain unwrapped prepared foods or bakery goods; or

15 (iv) a laundry, dry cleaning, or garment bag.

16 RETAIL FOOD ESTABLISHMENT: means a retail operation that stores, prepares, or packages
17 food for human consumption or serves or otherwise provides food for human consumption to
18 consumers directly or indirectly through a delivery service, whether such food is consumed on
19 or off the premises or whether there is a charge for such food. "Retail food establishment" does
20 not mean:

21 (a) Any private home;

22 (b) Private boarding houses;

23 (c) Hospital and health facility patient feeding operations licensed by the Colorado department
24 of public health and environment;

25 (d) Child care centers and other child care facilities licensed by the department of human
26 services;

27 (e) Hunting camps and other outdoor recreation locations where food is prepared in the field
28 rather than at a fixed base of operation;

- 1 (f) Food or beverage wholesale manufacturing, processing, or packaging plants, or portions
2 thereof, that are subject to regulatory controls under state or federal laws or regulations;
- 3 (g) Motor vehicles used only for the transport of food;
- 4 (h) Establishments preparing and serving only hot coffee, hot tea, instant hot beverages, and
5 nonpotentially hazardous doughnuts or pastries obtained from sources complying with all laws
6 related to food and food labeling;
- 7 (i) Establishments that handle only nonpotentially hazardous prepackaged food and operations
8 serving only commercially prepared, prepackaged foods requiring no preparation other than the
9 heating of food within its original container or package;
- 10 (j) Farmers markets and roadside markets that offer only uncut fresh fruit and vegetables for
11 sale;
- 12 (k) Automated food merchandising enterprises that supply only prepackaged nonpotentially
13 hazardous food or drink or food or drink in bottles, cans, or cartons only, and operations that
14 dispense only chewing gum or salted nuts in their natural protective covering;
- 15 (l). The donation, preparation, sale, or service of food by a nonprofit or charitable organization in
16 conjunction with an event or celebration if such donation, preparation, sale, or service of food:
- 17 ii. Does not exceed the duration of the event or celebration or a maximum of fifty-two days
18 within a calendar year; and
- 19 iii. Takes place in the county in which such nonprofit or charitable organization resides or is
20 principally located.
- 21 (m) A home, commercial, private, or public kitchen in which a person produces food products
22 sold directly to consumers pursuant to the "Colorado Cottage Foods Act", section 25-4-1614.
- 23 REUSABLE CARRYOUT BAG means a carryout bag that is designed and manufactured for at
24 least one hundred twenty-five uses, can carry at least twenty-two pounds over a distance of one
25 hundred seventy-five feet, has stitched handles, and is made of cloth, fiber, or other fabric or a
26 recycled material such as polyethylene terephthalate (pet). "Reusable carryout bag" does not
27 include bags made of biologically based polymers such as corn or other plant sources; except
28 that a carryout bag made of hemp is a reusable carryout bag if it is designed and manufactured
29 in accordance with the above specifications.

1 SINGLE-USE FOOD SERVICEWARE means all types of single-use items provided by a retail
2 food establishment or third-party delivery platform, including, but not limited to, utensils,
3 chopsticks, napkins, condiment cups and packets, straws, stirrers, splash sticks, and cocktail
4 sticks, designed for a single-use.

5 SINGLE-USE CONDIMENT means packaged, single-serving condiments, such as relishes,
6 spices, sauces, confections, or seasonings, that requires no additional preparation and that is
7 used on a food item. This includes, but is not limited to, ketchup, mustard, mayonnaise, soy
8 sauce, salsa, syrup, jam, jelly, salt, sweeteners, pepper, or chile pepper.

9 STORE means a grocery store, supermarket, convenience store, liquor store, dry cleaner,
10 pharmacy, drug store, clothing store, or other type of retail establishment, a farmers' market,
11 roadside market or stand, festival, or other temporary vendor or event that includes temporary
12 vendors at which carryout bags are traditionally provided to customers. STORE includes a
13 small store that operates solely in Colorado, has three or fewer locations in the state, and is not
14 part of a franchise, corporation, or partnership that has physical locations outside of Colorado.

15 THIRD-PARTY DELIVERY PLATFORM means any person, website, mobile application, or
16 other internet service that offers or arranges for the sale of food and beverages prepared by,
17 and the same-day delivery or same-day pickup of food and beverages from retail food
18 establishments.

19 5-12-2: RESTRICTIONS ON THE USE OF SINGLE-USE PLASTIC BAGS:

20 Stores are prohibited from providing customers single-use plastic carryout bags.

21 5-12-3: OPT-IN FOR ACCESSORIES PROVIDED BY RETAIL FOOD
22 ESTABLISHMENTS OR THIRD PARTY DELIVERY PLATFORMS:

23 A. Retail food establishments shall not provide straws, single-use condiments and/or
24 single-use serviceware unless a customer requests them at the point of ordering whether online,
25 by phone, or in-person. The penalties established in section 5-12-11 below shall be applicable
26 only to retail food establishments but not individual employees.

27 B. Third-party delivery platforms shall not provide single-use condiments and/or single-use
28 serviceware unless a customer requests them.

29 C. This section shall not apply to:

1 1. Self-service stations inside retail food establishments or special events providing
2 for single-use condiments and single-use serviceware.

3 2. Prepackaged items that include single-use condiments and single-use
4 serviceware.

5 3. Meals provided as part of a social service to vulnerable populations, including
6 without limitation, meals provided by school systems, homeless shelters and programs that
7 deliver meals to the elderly.

8 4. Specific accessories used by third-party delivery platforms, including cup lids,
9 spill plugs, and trays, in order to prevent spills and deliver food and beverages safely.

10 D. On July 1, 2024, this section 5-12-3 shall hereby be repealed.

11 5-12-4: RECYCLED PAPER CARRYOUT BAG FEE:

12 A. A store shall collect twenty-five (\$.25) cents for each recycled paper carryout bag
13 provided to a customer at the point of sale.

14 B. A store shall provide an itemized receipt with the number of recycled paper carryout
15 bags provided to a customer per each transaction.

16 C. If a store has paper carryout bags containing at least forty (40) percent postconsumer
17 recycled content remaining in their inventory on the effective date of this ordinance, a store may
18 provide the remaining inventory to customers until the inventory is gone; provided, however, the
19 store shall charge twenty-five (\$.25) cents per bag provided.

20 5-12-5: SIGNAGE:

21 Stores shall conspicuously display a sign in a location inside or outside the store that alerts
22 customers about the recycled paper carry out bag fee.

23 5-12-6: STORE COLLECTION, REMITTANCE, USES OF THE RECYCLED PAPER CARRY
24 OUT BAG FEE:

25 A. Unless the fees collected in any quarter total less than twenty (20) dollars, a
26 store shall remit 60% of the first twenty-five (\$.25) cents of the fee to the Town of Breckenridge
27 and the store shall retain 40% of the remaining portion of the twenty-five (\$.25) cents.

1 B. A store shall only use the retained portion of the bag fee for the following
2 purposes:

3 1. To provide educational information to customers about the fee;

4 2. To provide the signage required;

5 3. To train staff in the implementation and administration of the fee;

6 4. To improve or alter infrastructure or computer programs to allow for the
7 implementation, collection, administration of the fee;

8 5. To encourage the use of reusable bags, and/or promote the recycling of
9 paper bags; and/or,

10 6. To improve infrastructure to increase recycling.

11 5-12-7: TOWN RECYCLED PAPER CARRY OUT BAG FEE FUND AND USES:

12 A. Administration of the fund.

13 1. The fee shall be administered by the finance director and in a manner that separately
14 tracks the collection and expenditure of such fees.

15 2. The fees collected in accordance with this section shall not be used for general
16 municipal or governmental purposes or spending, nor shall the fund ever be transferred to or
17 become part of the Town's general fund.

18 B. All sums of money collected by the Town per this section are intended to be used
19 exclusively for the following purposes:

20 1. Staffing, administration and enforcement of the program;

21 2. Developing recycling, composting, or other waste diversion programs;

22 3. Educating and developing outreach for the entire community, including residents,
23 business, and visitors to the Town;

24 4. Purchasing and installing equipment, reusable bags, and other materials designed to
25 minimize bag pollution, including but not limited to, recycling containers, and waste receptacles.

26 5-12-8: BAN ON SINGLE USE PLASTICS AND POLYSTYRENE:

1 A. Single use plastic beverage containers are prohibited for sale or use in any building or
2 portion of a building that the Town owns or leases, any building or portion of the building leased
3 to the Town, any Town park, and any special event of the Town or under a permit issued by the
4 Town.

5 B. Beginning January 1, 2024, a retail food establishment in the Town of Breckenridge shall
6 be prohibited from selling or offering for sale any product in any container that is made of
7 polystyrene products, also known in certain nomenclature as the trademarked name of
8 Styrofoam™.

9 C. Beginning July 1, 2024, any business in the Town of Breckenridge shall be prohibited
10 from selling or offering for sale any plastic beverage containers and further shall be prohibited
11 from providing plastic straws, single-use plastic food serviceware, and/or single-use
12 condiments.

13 D. Beginning July 1, 2024, any retail food establishment shall be prohibited from selling or
14 offering for sale all single use plastic containers.

15 5-12-9: EXEMPTIONS:

16 This chapter does not apply to:

17 A. A bag brought into a store by a customer and used to transport goods from the store.

18 B. A bag that was previously used and made available to customers at a store.

19 C. A bag provided to a customer at no charge if the customer presents, at the time of
20 purchase, a benefit card or similar documentation reflecting participation in a federal, state,
21 county or Town income-qualified aid program, including but not limited to benefits delivered via
22 Electronic Benefits Transfer (EBT) such as the federal Supplemental Nutrition Assistant
23 Program (SNAP) or Supplemental Nutrition Program for Women, Infants and Children (WIC).

24 5-12-10: AUDITS; RECORDS; PENALTIES:

25 A. Each store shall maintain accurate and complete records of the recycled paper carryout bag
26 fees collected, the number of bags provided to customers, the form and recipients of any notice
27 required pursuant to this chapter, and any underlying records, including any books, accounts,
28 invoices, or other records necessary to verify the accuracy and completeness of such records. It
29 shall be the duty of each store to keep and preserve all such documents and records, including

1 any electronic information, for a period of three years from the end of the calendar year of such
2 records.

3 B. If requested, each store shall make its records available for audit by the finance director
4 during regular business hours for the Town to verify compliance with the provisions of this
5 chapter. All such information shall be treated as confidential commercial documents.

6 C. If any person fails, neglects, or refuses to collect or pay the bag fee, the finance director
7 shall make an estimate of the fees due, based on available information, and shall add thereto
8 penalties, interest, and any additions to the fees. The finance director shall serve upon the
9 delinquent store personally, by electronic mail or by first class mail directed to the last address
10 of the store on file with the town, written notice of such estimated fees, penalties, and interest,
11 constituting a Notice of Final Determination, Assessment, and Demand for Payment, (also
12 referred to as "Notice of Final Determination") due and payable within 30 calendar days after the
13 date of the notice.

14 D. If payment of any amount of the bag fee due to the Town is not received on or before the
15 applicable due date, penalty and interest charges shall be added to the amount due in the
16 amount of:

17 1. A penalty of ten percent (10%) of total due; and,

18 2. Interest charge of one (1%) percent of total penalty per month.

19 5-12-11: Fines and Penalties:

20 A. Upon the first violation, a one (1) time only written warning notice that a violation has
21 occurred shall be issued by the Town to store, business, and/or retail food establishment, as the
22 case may be. No monetary penalty shall be imposed for the first violation.

23 B. Upon a subsequent violation and conviction, the Town shall impose a penalty that shall
24 not exceed:

25 1. Fifty dollars (\$50.00) for the first violation after the written warning;

26 2. One hundred dollars (\$100.00) for the second violation in the same calendar year of the
27 first violation; and

1 3. Three hundred dollars (\$300.00) for the third and each subsequent violation in the same
2 calendar year of the earlier violations.

3 4. No more than one (1) penalty shall be imposed within a seven (7) day period.

4 5-12-12: APPEAL OF NOTICE OF FINAL DETERMINATION:

5 A. A store may request a hearing on any proposed fee imposed under this chapter after
6 receiving a notice of final determination, by filing a written request for hearing within thirty (30)
7 calendar days of the date of mailing of the notice of final determination. The request for hearing
8 shall set forth the reasons for and amount of changes in the notice of final determination that the
9 store seeks and such other information as the finance director may prescribe.

10 B. The manager or their designated hearing officer shall conduct the hearing under the
11 procedures prescribed by chapter 19 of title 1 of this code, except that the manager shall notify
12 the store in writing of the time and place of the hearing at least ten (10) days before it is
13 scheduled. The hearing shall be held within sixty (60) days of the date of receipt of the request
14 for a hearing, unless the Town and the store mutually agree to a later date or the hearing officer
15 otherwise has good cause to extend the time to hold a hearing.

16 C. The manager shall make a final decision and such decision shall be a final decision for
17 purposes of appeal to district court under C.R.C.P. Rule 106.

18 **Section 2.** The Town Council hereby finds, determines and declares that this ordinance
19 is necessary and proper to provide for the safety, preserve the health, promote the prosperity,
20 and improve the order, comfort and convenience of the Town of Breckenridge and the
21 inhabitants thereof.

22 **Section 3.** This ordinance shall be published and become effective as provided by
23 Section 5.9 of the Breckenridge Town Charter.

24

25 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
26 PUBLISHED IN FULL this 14th day of February, 2023. A Public Hearing shall be held at the
27 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 28th day of
28 February, 2023, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
29 Town.

30 TOWN OF BRECKENRIDGE, a Colorado municipal corporation

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By: _____

Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk