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COUNCILBILL NO. 11

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**Section 1.** That title 5, chapter 12, entitled “DISPOSABLE BAG FEE” is hereby repealed and replaced in its entirety with the following language underlined to read as follows: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

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

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

1 CONTAINER: means a receptacle upon which or inside which food may be placed for  
2 consumption, whether or not the receptacle can be fully closed, including but not limited to  
3 hinged food containers, plates, bowls, cups, and trays.

4 CUSTOMER: means any person who makes a retail purchase from store.

5 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 (a) for expandable bead polystyrene, fusion of polymer spheres;  
9 (b) injection molding;  
10 (c) foam molding; and  
11 (d) for extruded foam polystyrene, extrusion blow molding.

12 FARMERS' AND ARTISANS' MARKET: means a market at which local farmers and artisans  
13 sell their products and crafts directly to consumers.

14 FOOD: means any raw, cooked, or processed edible substance, ice, beverage, or ingredient  
15 used or intended for use or for sale, in whole or in part, for human consumption.

16 FOOD SERVICEWARE means all types of single-use items provided by a retail food  
17 establishment or third-party delivery platform, including, but not limited to, utensils, chopsticks,  
18 napkins, straws, stirrers, splash sticks, and cocktail sticks, designed for a single-use. Single-use  
19 food service ware does not include lids for to-go cups.

20 PLASTIC: means a synthetic material made from linking monomers through a chemical reaction  
21 to create a polymer chain that can be molded or extruded at high heat into various solid forms  
22 that retain their defined shapes during their life cycle and after disposal.

23 POINT OF SALE: means a check-out stand, cash register, or other point at which a sales  
24 transaction occurs in a store or retail food establishment or, for products that are ordered  
25 remotely from a store or retail food establishment and delivered, the location where the products  
26 are delivered.

27 POSTCONSUMER RECYCLED CONTENT: means any material that would otherwise be  
28 destined for solid waste disposal, having completed its intended end use and product life cycle.

1 Postconsumer recycled material does not include materials and byproducts generated from  
2 original manufacturing and fabrication process.

3 READY-TO-EAT FOOD: means food that is cooked or otherwise prepared in advance for  
4 immediate consumption.

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

8 Recycled carryout bag does not include:

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

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

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

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

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

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

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

25 (a) Any private home;

26 (b) Private boarding houses;

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

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

1 include bags made of biologically based polymers such as corn or other plant sources; except  
2 that a carryout bag made of hemp is a reusable carryout bag if it is designed and manufactured  
3 in accordance with the above specifications.

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

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

14 WATER BOTTLE means a single-use plastic container of less than one (l) gallon containing  
15 drinking water.

16 5-12-2: RESTRICTIONS ON THE USE OF SINGLE-USE PLASTIC BAGS:

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

18 5-12-3: OPT-IN FOR FOOD SERVICWARE AND CONDIMENTS PROVIDED BY  
19 RETAIL FOOD ESTABLISHMENTS OR THIRD-PARTY DELIVERY PLATFORMS:

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

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

26 C. This section shall not apply to:

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

29 2. Prepackaged items that include single-use condiments and/or single-use food  
30 serviceware.

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

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

6 5-12-4: RECYCLED PAPER CARRYOUT BAG FEE:

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

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

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

15 5-12-5: SIGNAGE:

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

18 5-12-6: STORE COLLECTION, REMITTANCE, USES OF THE RECYCLED PAPER  
19 CARRY OUT BAG FEE:

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

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

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

27 2. To provide the signage required;

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

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

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

3           6. To improve infrastructure to increase recycling.

4 5-12-7: TOWN RECYCLED PAPER CARRY OUT BAG FEE FUND AND USES:

5 A. Administration of the fund.

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

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

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

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

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

15           3. Educating and developing outreach for the entire community, including residents,  
16 business, and visitors to the Town; and/or,

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

19 5-12-8: BAN ON SINGLE USE PLASTICS AND POLYSTYRENE:

20 A. The sale or provision of single use plastic water bottles and/or single use plastic food  
21 serviceware is prohibited in any building or portion of a building that the Town owns or leases,  
22 any building or portion of the building leased to the Town, any Town park, and/or at any special  
23 event of the Town or under a permit issued by the Town.

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

28 C. Beginning July 1, 2024, any business in the Town of Breckenridge shall be prohibited  
29 from selling or offering for sale any single use plastic water bottles.

1 D. Beginning July 1, 2024, any retail food establishment shall be prohibited from selling or  
2 offering for sale single use plastic containers and further shall be prohibited from providing  
3 single-use plastic food serviceware.

4 5-12-9: EXEMPTIONS:

5 This chapter does not apply to:

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

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

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

13 5-12-10: AUDITS; RECORDS; PENALTIES:

14 A. Each store shall maintain accurate and complete records of the recycled paper carryout bag  
15 fees collected, the number of bags provided to customers, the form and recipients of any notice  
16 required pursuant to this chapter, and any underlying records, including any books, accounts,  
17 invoices, or other records necessary to verify the accuracy and completeness of such records. It  
18 shall be the duty of each store to keep and preserve all such documents and records, including  
19 any electronic information, for a period of three years from the end of the calendar year of such  
20 records.

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

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



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

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

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

6 5-12-11: Fines and Penalties:

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

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

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

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

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

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

18 5-12-12: APPEAL OF NOTICE OF FINAL DETERMINATION:

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

24 B. The manager or their designated hearing officer shall conduct the hearing under the  
25 procedures prescribed by chapter 19 of title 1 of this code , except that the manager shall notify  
26 the store in writing of the time and place of the hearing at least ten (10) days before it is  
27 scheduled. The hearing shall be held within sixty (60) days of the date of receipt of the request

1 for a hearing, unless the Town and the store mutually agree to a later date or the hearing officer  
2 otherwise has good cause to extend the time to hold a hearing.

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

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

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

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

16 TOWN OF BRECKENRIDGE, a Colorado municipal corporation

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By: \_\_\_\_\_

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Eric S. Mamula, Mayor

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23 ATTEST:

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28 Helen Cospolich, CMC,

1 Town Clerk