

ORDINANCE NO. 12

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 That title 5, chapter 12, entitled "DISPOSABLE BAG FEE" is hereby repealed and replaced in its entirety with the following language to read as follows: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

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

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

EXPANDED POLYSTYRENE: means blown polystyrene, commonly known as styrofoam, and any other expanded or extruded foam consisting of thermoplastic petrochemical materials utilizing a styrene monomer and processed by techniques that may include:

- (a) for expandable bead polystyrene, fusion of polymer spheres;
- (b) injection molding;

(c) foam molding; and

(d) for extruded foam polystyrene, extrusion blow molding.

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

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

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

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

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

POSTCONSUMER RECYCLED CONTENT: means any material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from original manufacturing and fabrication process.

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

RECYCLED PAPER CARRYOUT BAG: means a bag that is one hundred percent recycled material or other post-consumer content furnished to a customer at a store or retail food establishment at the point of sale for use by the customer to transport or carry purchased items. Recycled carryout bag does not include:

- (i) a bag made of paper when the paper has a basis weight of thirty pounds or less;
- (ii) a bag that a pharmacy provides to a customer purchasing prescription medication; (iii) a bag that a customer uses inside a store to:
 - (a) package loose or bulk items, such as fruits, vegetables, nuts, grains, candy, or greeting cards; nails, bolts, screws, or other small hardware items; live insects, fish, crustaceans, mollusks, or other small species; and bulk seed, bulk livestock feed, or bulk pet feed;
 - (b) contain or wrap frozen foods, meat, seafood, fish, flowers, potted plants, or other items that, if they were to come in contact with other items, could dampen or contaminate the other items; or
 - (c) contain unwrapped prepared foods or bakery goods; or
 - (iv) a laundry, dry cleaning, or garment bag.

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

- (a) Any private home;
- (b) Private boarding houses;
- (c) Hospital and health facility patient feeding operations licensed by the Colorado department of public health and environment;
- (d) Child care centers and other child care facilities licensed by the department of human services;
- (e) Hunting camps and other outdoor recreation locations where food is prepared in the field rather than at a fixed base of operation;
- (f) Food or beverage wholesale manufacturing, processing, or packaging plants, or portions thereof, that are subject to regulatory controls under state or federal laws or regulations;
- (g) Motor vehicles used only for the transport of food;
- (h) Establishments preparing and serving only hot coffee, hot tea, instant hot beverages, and nonpotentially hazardous doughnuts or pastries obtained from sources complying with all laws related to food and food labeling;
- (i) Establishments that handle only nonpotentially hazardous prepackaged food and operations serving only commercially prepared, prepackaged foods requiring no preparation other than the heating of food within its original container or package;
- (j) Farmers markets and roadside markets that offer only uncut fresh fruit and vegetables for sale;
- (k) Automated food merchandising enterprises that supply only prepackaged nonpotentially hazardous food or drink or food or drink in bottles, cans, or cartons only, and operations that dispense only chewing gum or salted nuts in their natural protective covering;
- (l). The donation, preparation, sale, or service of food by a nonprofit or charitable organization in conjunction with an event or celebration if such donation, preparation, sale, or service of food:
 - i. Does not exceed the duration of the event or celebration or a maximum of fifty-two days within a calendar year; and
 - ii. Takes place in the county in which such nonprofit or charitable organization resides or is principally located.
- (m) A home, commercial, private, or public kitchen in which a person produces food products sold directly to consumers pursuant to the "Colorado Cottage Foods Act", section 25-4-1614.

REUSABLE CARRYOUT BAG: means a carryout bag that is designed and manufactured for at least one hundred twenty-five uses, can carry at least twenty-two pounds over a distance of one hundred seventy-five feet, has stitched handles, and is made of cloth, fiber, or other fabric or a recycled material such as polyethylene terephthalate (pet). "Reusable carryout bag" does not

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

SINGLE USE: means a product designed to be used once and then discarded, and not designed for repeated use or sanitizing.

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

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

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

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

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

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

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

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

C. This section shall not apply to:

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

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

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

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

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

- A. A store shall collect twenty-five (\$.25) cents for each recycled paper carryout bag provided to a customer at the point of sale.
- B. A store shall provide an itemized receipt with the number of recycled paper carryout bags provided to a customer per transaction.
- C. If a store has paper carryout bags containing at least forty (40) percent postconsumer recycled content remaining in their inventory on the effective date of this ordinance, a store may provide the remaining inventory to customers until the inventory is gone; provided, however, the store shall charge twenty-five (\$.25) cents per bag provided.

5-12-5: SIGNAGE:

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

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

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

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

- 1. To provide educational information to customers about the fee;
- 2. To provide the signage required;
- 3. To train staff in the implementation and administration of the fee;
- 4. To improve or alter infrastructure or computer programs to allow for the implementation, collection, administration of the fee;
- 5. To encourage the use of reusable bags, and/or promote the recycling of paper bags; and/or,
- 6. To improve infrastructure to increase recycling.

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

A. Administration of the fund.

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

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

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

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

2. Developing recycling, composting, or other waste diversion programs;
3. Educating and developing outreach for the entire community, including residents, business, and visitors to the Town; and/or,
4. Purchasing and installing equipment, reusable bags, and other materials designed to minimize bag pollution, including but not limited to, recycling containers, and waste receptacles.

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

- A. The sale or provision of single use plastic water bottles and/or single use plastic food serviceware is prohibited in any building or portion of a building that the Town owns or leases, any building or portion of the building leased to the Town, any Town park, and/or at any special event of the Town or under a permit issued by the Town.
- B. Beginning January 1, 2024, a retail food establishment in the Town of Breckenridge shall be prohibited from selling or offering for sale any product in any container that is made of polystyrene products, also known in certain nomenclature as the trademarked name of Styrofoam®.
- C. Beginning July 1, 2024, any business in the Town of Breckenridge shall be prohibited from selling or offering for sale any single use plastic water bottles.
- D. Beginning July 1, 2024, any retail food establishment shall be prohibited from selling or offering for sale single use plastic containers and further shall be prohibited from providing single-use plastic food serviceware.

5-12-9: **EXEMPTIONS:**

This chapter does not apply to:

- A. A bag brought into a store by a customer and used to transport goods from the store.
- B. A bag that was previously used and made available to customers at a store.
- C. A bag provided to a customer at no charge if the customer presents, at the time of purchase, a benefit card or similar documentation reflecting participation in a federal, state, county or Town income-qualified aid program, including but not limited to benefits delivered via Electronic Benefits Transfer (EBT) such as the federal Supplemental Nutrition Assistant Program (SNAP) or Supplemental Nutrition Program for Women, Infants and Children (WIC).

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

- A. Each store shall maintain accurate and complete records of the recycled paper carryout bag fees collected, the number of bags provided to customers, the form and recipients of any notice required pursuant to this chapter, and any underlying records, including any books, accounts, invoices, or other records necessary to verify the accuracy and completeness of such records. It shall be the duty of each store to keep and preserve all such documents and records, including any electronic information, for a period of three years from the end of the calendar year of such records.
- B. If requested, each store shall make its records available for audit by the finance director during regular business hours for the Town to verify compliance with the provisions of this chapter. All such information shall be treated as confidential commercial documents.

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

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

1. A penalty of ten percent (10%) of total due; and,
2. Interest charge of one (1%) percent of total penalty per month.

5-12-11: Fines and Penalties:

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

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

1. Fifty dollars (\$50.00) for the first violation after the written warning;
2. One hundred dollars (\$100.00) for the second violation in the same calendar year of the first violation; and
3. Three hundred dollars (\$300.00) for the third and each subsequent violation in the same calendar year of the earlier violations.
4. No more than one (1) penalty shall be imposed within a seven (7) day period.

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

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

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

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

5-12-13: Authority to adopt rules and regulations.

The Town Council hereby grants authority to public works to oversee and administer the requirements of this chapter and additional authority to adopt rules and regulations to implement and enforce the requirements of the program.

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

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

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 14th day of March, 2023.

This ordinance was published in full on the Town of Breckenridge website on March 16, March 17, March 18, March 19 and March 20, 2023.

A public hearing on this ordinance was held on March 28, 2023.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 28th day of March, 2023. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

Helen Cospolich, CMC, Town Clerk

Eric S. Mamula, Mayor

APPROVED IN FORM

Town Attorney Date

This Ordinance was published on the Town of Breckenridge website on March 31, April 1, April 2, April 3 and April 4, 2023. This ordinance shall become effective on May 4, 2023.