

ORDINANCE NO. 37

Series 2020

AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 12 OF TITLE 5 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE TOWN OF BRECKENRIDGE "DISPOSABLE BAG FEE"

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

Section 1. Chapter 12 of Title 5 of the Breckenridge Town Code, entitled " Disposable Bag Fee," is repealed and readopted with changes so as to read in its entirety as follows:

CHAPTER 12

DISPOSABLE BAG FEE

SECTION:

- 5-12-1: Short Title
- 5-12-2: Authority
- 5-12-3: Intent
- 5-12-4: Purposes
- 5-12-5: Legislative Findings
- 5-12-6: Definitions
- 5-12-7: Disposable Bag Fee Established
- 5-12-8: Disposable Bag Fee Requirements
- 5-12-9: Retention, Remittance, and Transfer of the Disposable Bag Fee
- 5-12-10: Authorized Use of Bag Fee Funds
- 5-12-11: Required Signage
- 5-12-12: Exemptions
- 5-12-13: Audits and Collection of the Disposable Bag Fee
- 5-12-14: Hearings
- 5-12-15: Unlawful Acts
- 5-12-16: Penalties

5-12-1: SHORT TITLE: This Chapter is to be known and may be cited as the "2020 Town Of Breckenridge Disposable Bag Fee Ordinance."

5-12-2: AUTHORITY: This Chapter is adopted by the Town Council pursuant to the following authority:

- A. Section 31-15-103, C.R.S. (concerning municipal police powers).
- B. Section 31-15-401, C.R.S.(concerning municipal police powers).
- C. The authority granted to home rule municipalities by Article XX of the Colorado Constitution.
- D. The powers contained in the Breckenridge Town Charter.

5-12-3: INTENT:

- A. The Disposable Bag Fee established by this Chapter is necessary to attempt to address the many negative impacts associated with Disposable Bags, and to defray the costs associated with the Town's regulatory program established by this Chapter.
- B. The Disposable Bag Fee established by this Chapter is not designed to raise revenues to defray the general expenses of Town government, but rather is a fee imposed for the purpose of defraying the costs of the Town's regulatory program established by this Chapter.

5-12-4: PURPOSES: The purposes of this Chapter are: (i) to protect the public health, safety, and welfare; (ii) to protect the natural environment and wildlife; (iii) to implement both the Town's

DISPOSABLE BAG FEE ORDINANCE

SustainableBreck Plan and the Town's Comprehensive Plan; (iv) to employ the Town's regulatory police power by establishing a specific, comprehensive regulatory program that is designed to reduce the environmental and societal impacts caused by the use of Disposable Bags by the residents of and many visitors to the Town, all as more fully set forth in this Chapter; and (v) to defray the reasonable direct and indirect cost of implementing the Town's regulatory program as established by this Chapter.

5-12-5: LEGISLATIVE FINDINGS: The Town Council finds and determines as follows:

- A. The use of all disposable shopping bags (plastic and paper) has significant environmental impacts on a local and global scale, including greenhouse gas emissions, litter, public health, harm to wildlife, water quality and consumption, and solid waste generation.
- B. After several years of public involvement the Town Council adopted the "SustainableBreck Plan" in 2011, which sets forth a series of sustainability initiatives that the Town should undertake. One such initiative is to "(e)ncourage reduction in the use of Disposable Bags."
- C. Despite recycling and voluntary efforts to control pollution from Disposable Bags, relatively few Disposable Bags are or can be recycled, and these bags last decades in the landfill or end up as litter.
- D. Numerous studies have documented the prevalence of Disposable Bags littering the environment, blocking storm drains, fouling waterways, and endangering wildlife.
- E. Approximately two billion Disposable Bags are used annually in Colorado, but less than five percent are recycled.
- F. The best alternative to Disposable Bags is to shift to Reusable Bags for shopping.
- G. The Town Council aims to conserve resources, reduce greenhouse gas emissions, waste, and litter, and to protect the public health, safety, and welfare, including wildlife, all of which increase the quality of life for the Town's residents and visitors.
- H. Studies document that charging a mandatory fee on Disposable Bags can dramatically reduce the use of Disposable Bags.
- I. The Town believes that residents and visitors should use Reusable Bags and that a fee on the distribution of Disposable Bags within the Town is an appropriate way to dissuade the use of Disposable Bags, and to fund the Town's regulatory program established by this Chapter.
- J. The Disposable Bag Fee imposed by this Chapter will be paid by those persons who, through the continued use of Disposable Bags, are helping to exacerbate the public health and environmental problems the Town is attempting to address by adopting this Chapter.
- K. Based on the information that has been provided to the Town Council by the Town staff, the Disposable Bag Fee imposed by this Chapter bears a reasonable relationship to the direct and indirect costs of implementing the Town's comprehensive regulatory program established by this Chapter.

5-12-6: 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.

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|-----------------|---|
| CUSTOMER: | Any person who makes a retail purchase from a Retail Store. |
| DISPOSABLE BAG: | Until September 1, 2021, the term "Disposable Bag" means: |

Any bag, other than a Reusable Bag, that is provided to a customer by a retailer at the point of sale for the purpose of transporting goods.

On and after September 1, 2021, the term "Disposable Bag" means:

Any paper bag that is provided to a customer at a Retail Store that contains at least 40 percent postconsumer recycled content.

DISPOSABLE BAG FEE:

The Town fee imposed by this Chapter that is 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 purpose of mitigating the impacts of Disposable Bags.

FARMERS' AND ARTISANS' MARKET:

A market at which local farmers and artisans sell their products and crafts directly to consumers.

FINANCE DIRECTOR:

The Finance Director of the Town, or such person's designee acting pursuant to Section 1-7-2 of this Code.

PLASTIC BAG:

Any bag made of a thin, flexible plastic material, especially but not limited to one with handles supplied by a store to carry goods purchased there.

POSTCONSUMER RECYCLED CONTENT:

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.

RETAIL STORE:

Any public commercial business engaged in the sale of personal consumer goods, household items, or groceries to customers who use or consume such items.

Without limiting the generality of the preceding sentence the term Retail Store includes, but is not limited to, a farmers' and artisans' market.

"Retail Store" does not include businesses where retail sales are clearly secondary and incidental to the primary activity occurring within the business, including, but not limited to, service providers such as salons and spas.

RESTAURANT:

An establishment 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. A

farmer's and artisan's market is not a restaurant.

REUSABLE BAG:

Any bag that has a handle; is designed for at least 125 uses; and is machine washable or made from a material that can be cleaned and disinfected.

5-12-7: DISPOSABLE BAG FEE ESTABLISHED: For each Disposable Bag provided to a customer, each Retail Store shall collect from customers at the time of a retail sale, and customers shall pay at such time, a Disposable Bag Fee of \$0.10. The Disposable Bag Fee shall be remitted by the Retail Store to the Town in accordance with Section 5-12-9 of this Chapter.

5-12-8: DISPOSABLE BAG FEE REQUIREMENTS:

- A. Retail Stores shall record the number of Disposable Bags provided and the total amount of Disposable Bag Fees charged on the customer transaction receipt as a separate and distinct item.
- B. A Retail Store shall not refund to the customer any part of the Disposable Bag Fee, either directly or indirectly, nor shall the Retail Store advertise or state to customers that any part of the Disposable Bag Fee will be refunded to the customer.
- C. A Retail Store shall not exempt any customer from any part of the Disposable Bag Fee for any reason except as stated in Section 5-12-12.
- D. A Restaurant shall be exempt from recording the number of Disposable Bags provided for carry out, but shall carry Disposable Bags that meet the definition in this Chapter.

5-12-9: RETENTION, REMITTANCE, AND TRANSFER OF THE DISPOSABLE BAG FEE:

- A. A Retail Store may retain 50 percent of each Disposable Bag Fee collected, which is the "Retained Percent", up to a maximum amount of \$100 per calendar month.
- B. The Retained Percent may only be used by the Retail Store to:
 - 1. Provide educational information about the Disposable Bag Fee to customers;
 - 2. Provide the signage required by Section 5-12-11, "Required Signage";
 - 3. Train staff in the implementation and administration of the fee;
 - 4. Improve or alter infrastructure or computer programs to allow for the implementation, collection, administration of the fee;
 - 5. Collect, account for, and remit the fee to the Town;
 - 6. Develop and display informational signage to inform consumers about the fee;
 - 7. Encourage the use of Reusable Bags, and/or promote the recycling of paper bags; and
 - 8. Improve infrastructure to increase Disposable Bag recycling.
- C. The Disposable Bag Fee shall be exempt from the Town of Breckenridge sales tax.
- D. The amount of the Disposable Bag Fee collected by a Retail Store in excess of the Retained Percent shall be paid to the Town and shall be used only as set forth in Section 5-12-10.

- E. Every Retail Store providing Disposable Bags subject to the Disposable Bag Fee shall be liable and responsible for the payment of the amount outlined in Subsection D. above to the Town, and shall file a report each month on forms prescribed by the Finance Director before the twentieth day of each month for the preceding month.
 - 1. All sums of money collected by Retail Stores for the Disposable Bag Fee imposed by this chapter minus the "Retained Percent" are intended exclusively for use as outlined in Section 5-12-10. Each Retail Store required to collect and remit the Disposable Bag Fee shall hold such monies in trust until paying them to the Town.
- F. The Disposable Bag Fee shall be administered by the Finance Director. The Finance Director is authorized to adopt administrative rules pursuant to Chapter 18 of Title 1 of this Code to implement this Chapter, prescribe forms and provide methods of payment and collection, and otherwise implement requirements of this Chapter.
- G. Disposable Bag Fees collected in accordance with this Chapter shall be accounted for by the Finance Director in such a manner that the Finance Director can separately track the collection and expenditure of such fees.
- H. No Disposable Bag Fees collected in accordance with this Chapter shall be used for general municipal or governmental purposes or spending. No Disposable Bag Fees shall ever be transferred to or become part of the Town's general fund.
- I. Disposable Bag Fees collected in accordance with this Chapter shall be continually available for the uses and purposes set forth in Section 5-12-10 without regard to fiscal year limitation.

5-12-10: AUTHORIZED USE OF BAG FEE FUNDS:

- A. Funds from the Disposable Bag Fee collected by the Town pursuant to this Chapter shall only be used to pay the direct and indirect costs of the Town's regulatory program established by this Chapter. Without limiting the generality of the preceding sentence, permitted use of the Disposable Bag Fees revenues include the following:
 - 1. Paying that portion of the salary and benefits of the Town's Sustainability Coordinator associated with: (i) developing and implementing the Disposable Bag Fee program as described in this chapter, and (ii) implementing the other allowed uses of the Disposable Bag Fee as set forth in this Section 5-12-10A.
 - 2. Paying for the following Town activities:
 - a. Producing Reusable Bags for distribution to lodging companies, residents, visitors, and Retail Stores;
 - b. Developing information signage for Retail Stores explaining the Disposable Bag Fee, and related matters.
 - c. Educating residents, businesses, and visitors about the impacts of Disposable Bags on: (i) the Town's environmental health; (ii) the importance of reducing the number of Disposable Bags entering the waste stream"; and (iii) the impacts of Disposable Bags on wildlife;
 - d. Funding programs and infrastructure that allow the Breckenridge community to reduce waste associated with Disposable Bags;
 - e. Purchasing and installing equipment designed to minimize bag pollution, including, recycling containers, and waste receptacles associated with Disposable Bags;

- f. Funding community cleanup events and other activities that reduce litter associated with Disposable Bags;
- g. Maintaining a public website that educates residents on the progress of waste reduction efforts associated with Disposable Bags;
- h. Educating residents, businesses, and visitors about: (i) the impacts of the use of single-use plastics on the public health, including, by way of example and not limitation, single-use plastic bottles and straws; (ii) the importance of reducing the number of single-use plastics entering the waste stream; and the (iii) impacts of single-use plastics on wildlife and the environment; and
- i. Such other uses as may be directed by the Town Council from time to time that are consistent with the stated intent and purposes of this Chapter.

B. No Disposable Bag Fee funds shall be used for any purpose not authorized in this Section.

5-12-11: REQUIRED SIGNAGE: Every retail store required to collect the Disposable Bag fee shall display a sign in a location outside or inside of the store, viewable by customers, alerting customers to the Town of Breckenridge's Disposable Bag Fee.

5-12-12: EXEMPTIONS: This Chapter does not apply to:

- A. A bag brought into a Retail Store by a customer and used to transport goods from the Retail Store.
- B. A bag that was previously used and made available to customers at a Retail Store.
- C. A bag provided to a customer at no charge if the customer provides evidence that he or she is a participant in a federal or state Food Assistance Program.
- D. Bags used by consumers inside Retail Stores to:
 - 1. Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items like nails, nuts, and screws;
 - 2. Contain or wrap frozen or fresh foods, meat, or fish;
 - 3. Contain or wrap flowers, potted plants, or other items where dampness may be a problem; and
 - 4. Contain unwrapped prepared foods or bakery goods;
- E. A non-handled bag used to protect purchased items from damaging or contaminating other purchased items when placed in a Disposable Bag or a Reusable Bag.
- F. Bags used for loose small retail items, including, but not limited to, jewelry, buttons, beads, ribbon, herbs and spices, medical marijuana or adult-use marijuana if sold by the holder of a permit issued pursuant to applicable law, and similar items.
- G. Bags provided by pharmacists to contain prescription drugs.
- H. Newspaper bags, door-hanger bags, laundry-dry cleaning and garment bags, and bags sold in packages containing multiple bags for uses such as food storage, garbage, pet waste, or yard waste.

5-12-13: AUDITS AND COLLECTION OF THE DISPOSABLE BAG FEE:

- A. Each Retail Store shall maintain accurate and complete records of the Disposable Bag Fees collected, the number of Disposable 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 Retail 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 Retail 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 Disposable Bag Fee, or underpays the Disposable 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 Retail Store personally, by electronic mail or by first class mail directed to the last address of the Retail 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. The Retail Store may request a hearing on the assessment as provided in Section 5-12-14 of this Chapter.
- D. If payment of any amount of the Disposable 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;
 - 2. Interest charge of one percent of total penalty per month.

5-12-14: HEARINGS:

- A. A Retail 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 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 Retail Store seeks and such other information as the Finance Director may prescribe.
- B. The Finance Director shall conduct the hearing under the procedures prescribed by Chapter 19 of Title 1 of this Code , except that the Finance Director shall notify the Retail Store in writing of the time and place of the hearing at least ten days before it is scheduled, unless the Retail Store agrees to a shorter time. The hearing shall be held within 60 days of the date of receipt of the request for a hearing, unless the Retail Store agrees to a later date.

5-12-15: UNLAWFUL ACTS: On and after September 1, 2021 it is unlawful and a misdemeanor offense for an employee of a Retail Store to:

- A. Sell, provide, distribute, or give away to a customer a plastic bag, except as provided in Section 5-12-12; or
- B. Sell, provide, distribute, or give away to a customer a paper bag that does not contain at least forty percent (40%) postconsumer recycled content.

The provisions of Section 5-12-16 shall not apply to a violation of this Section.

5-12-16: PENALTIES:

- A. It is unlawful for any person to violate any provision of this Chapter.

- B. The first or second violation of this Chapter within two years, based on the date of the violation, shall be an infraction. Every person found liable for such a violation shall be punished as provided in Section 1-4-1-1 of this Code; provided, however, the maximum penalty for each such violation shall be a fine of \$500.00.
- C. A third and each subsequent violation of this Chapter within two years, based on the date of violation, shall be a misdemeanor offense. Any person convicted of such a violation shall be punished as provided in Chapter 4 of Title 1 of this Code.

Section 2. The Finance Director shall develop and implement the administrative and financial processes for the collection of the Disposable Bag Fee imposed by this ordinance.

Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 4. The Town Council 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 5. 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 27th day of October, 2020.

This ordinance was published in full on the Town of Breckenridge website on October 28, October 29, October 30, October 31 and November 1, 2020.

A public hearing on this ordinance was held on November 10, 2020.

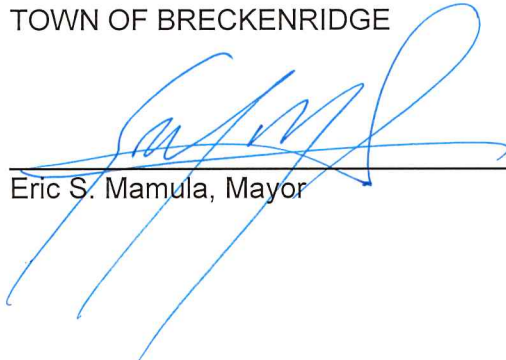
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 10th day of November, 2020. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE



 Helen Cospolich, CMC, Town Clerk



 Eric S. Mamula, Mayor

APPROVED IN FORM



 Town Attorney

11/10/20

 Date

This Ordinance was published on the Town of Breckenridge website on November 11, November 12, November 13, November 14 and November 15, 2020. This ordinance shall become effective on December 15, 2020.