



Memo

To: Town Council
From: Jessie Burley, Sustainability + Parking Manager
Date: 2/7/2023
Subject: First Reading – Reduction of single use plastics and recycled paper carryout bag fee

At the January 10, 2023 Council work session, Staff reviewed with Council the Breckenridge disposable bag fee and Colorado's Plastics Pollution bill HB 21-1162. At Council's direction, Staff is proposing the following ordinance for first reading. It repeals and replaces title 5, chapter 12 to establish an ordinance to reduce single use plastics and increase recycled paper carryout bag fee.

The purpose of this ordinance is to comply with provisions in Colorado HB 21-1162 and to expand regulations to limit single use plastics in order to meet the material management goals adopted in the SustainableBreck Plan (2022). Specifically, the ordinance:

1. Requires customers opt-in to single-use plastic service ware and condiments at retail food establishments until July 1, 2024 at which time they are prohibited.
2. Raises the recycled carryout bag fee to 25 cents and requires carryout bags to be 100% recycled content. The first 60% of the fees collected are remitted to the Town and the remaining 40% can be kept by the store for certain uses. Business with remaining inventory of 40% recycled content paper bags can use them until depleted.
3. Immediately bans all plastic beverage containers in any Town facility, park, or special event permitted by the Town.
4. Establishes a ban on polystyrene containers in retail food establishments beginning January 1, 2024 and other plastic carryout containers beginning July 1, 2024.
5. Prohibits all businesses from selling plastic beverage containers less than half gallon in size as well as offering plastic service ware beginning July 1, 2024.
6. Establishes penalties.

It is Staff's recommendation that Council approve this ordinance on first reading.

COUNCIL BILL NO. ____

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 That title 5, chapter 12, entitled "DISPOSABLE BAG FEE" is hereby repealed and replaced in its entirety with the following language underlined to read as follows: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

RECYCLED PAPER CARRYOUT BAG: means a bag that is one hundred percent recycled material 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;

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

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.

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 February, 2023. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of ___, 2023, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

1
2
3
4
5
6
7
8
9
10
11
12
13

By: _____

Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk