

ORDINANCE NO. O-2013-11

AN ORDINANCE ENACTING A NEW ARTICLE III OF CHAPTER 10 OF THE CODE OF ORDINANCES OF THE CITY OF DURANGO, ESTABLISHING A DISPOSABLE CHECKOUT BAG POLICY; ESTABLISHING A DISPOSABLE CHECKOUT BAG FEE AND REGULATIONS PERTAINING THERETO; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, The City Council has a duty to protect the natural environment and the health of its citizens and visitors; and

WHEREAS, it is the goal of the City, through its policies, programs and laws, to reduce the amount of waste in its landfills and provide long term planning to emphasize waste reduction efforts;

WHEREAS, despite recycling efforts and voluntary solutions to control pollution from disposable checkout bags, many disposable checkout bags are ultimately disposed of in landfills, litter the environment on a local and global scale, block storm drains, and endanger wildlife;

WHEREAS, the City of Durango residents bear the burden of clean-up costs and environmental damages associated with disposable checkout bag litter; and

WHEREAS, evidence indicates that the vast majority of disposable bags are used for bagging and carrying out products purchased from large grocery retail establishments;

WHEREAS, the City of Durango believes that residents and visitors should use reusable carryout bags and that the establishment of a fee on the distribution of disposable checkout bags by large grocery retail establishments is appropriate to fund the City's efforts to educate residents, business and visitors about disposable checkout bag waste reduction efforts; to fund the distribution of reusable carryout bags to residents and visitors; and to fund City programs and cleanup events that reduce disposable checkout bag waste in the community;

WHEREAS, based upon the information that has been provided to City Council by City Staff, the disposable checkout bag fee imposed in this new Article bears a reasonable relationship to the anticipated costs of providing the City programs and services described in this Article and is neither intended nor designed to raise revenues to defray the general expenses of City government.

NOW THEREFORE THE CITY OF DURANGO HEREBY ORDAINS:

**Section 1:** That Chapter 10 of the Code of Ordinances of the City of Durango should be and the same is amended through the addition of a new Article III pertaining to disposable checkout bags, which reads, in its entirety, as follows:

ARTICLE III DISPOSABLE CHECKOUT BAGS

**Sec. 10-51 Definitions.**

The following terms used in this Article III shall have the following meaning:

*"Business Opting-In"* means a business within the City holding a City business license that voluntarily adopts and applies the Disposable Checkout Bag Policy to its business

and thereafter collects and remits the Disposable Checkout Bag Fee pursuant to this Article III

“*Disposable Checkout Bag*” includes Disposable Plastic Checkout Bags and Disposable Paper Checkout Bags that are provided by a Grocer or a Business Opting-In to a customer at the point of sale for the purpose of transporting goods.

The term Disposable Checkout Bag does not include:

- (a) Bags utilized by customers inside stores to:
  - (1) Package bulk items such as fruits, vegetables, nuts, grains, candy or small hardware items;
  - (2) Contain or wrap frozen foods, meat, poultry or fish;
  - (3) Contain or wrap flowers, potted plants, or other items where dampness may be a problem;
  - (4) Contain unwrapped prepared foods or bakery goods; or
  - (5) A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a Reusable Carryout Bag.
- (b) Bags provided by pharmacists to contain prescription drugs.
- (c) Newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold in packages containing multiple bags intended for use as garbage bags, pet waste, or yard waste bags.
- (d) Reusable Carryout Bags.

“*Disposable Checkout Bag Fee*” means a \$0.10 city fee imposed and required to be paid by each customer making a purchase from a Grocer or Business Opting-In for each Disposable Checkout Bag provided to the customer, whether paper or plastic as defined above, and used during the purchase to transport goods.

“*Disposable Paper Checkout Bag*” means a bag predominately made of paper that is provided to a customer by a Grocer or a Business Opting-In at the point of sale for the purpose of transporting goods.

“*Disposable Plastic Checkout Bag*” means any bag made from either non-compostable plastic or compostable plastic, which is provided to a customer by a Grocer or a Business Opting-In at the point of sale for the purpose of transporting goods.

“*Grocer*” means a retail establishment or business located within the City in a permanent building, operating year round, that is a full-line, self-service market with a retail market area of 25,000 square feet or more and which sells a line of staple foodstuffs, meats or dairy products or other perishable items. “Grocer” does not mean:

- (a) Temporary vending establishments for fruits, vegetables, packaged meats or dairy;
- (b) Vendors at farmer’s markets or other temporary events.

“*Recycling Collection Station*” means a receptacle that is intended for collecting non-commercial quantities of Disposable Plastic Checkout Bags and plastic film for the purpose of recycling. The receptacle shall be appropriately sized to accommodate, at a minimum, the average amount of Disposable Plastic Checkout Bags distributed by the Grocer on a weekly basis.

“*Reusable Carryout Bag*” means a bag that is:

- (a) Designed and manufactured to withstand repeated uses over a period of time;

- (b) Is made from a material (i.e. cloth, fiber, or other machine washable fabric) that can be cleaned and disinfected regularly.

**Sec. 10-52. Disposable Checkout Bag Fee Requirements.**

- (a) For each Disposable Checkout Bag provided to a customer, the Grocer or Business Opting-In shall collect from the customer, and the customer shall pay, at the time of purchase, a Disposable Checkout Bag Fee of \$0.10 for each Disposable Checkout Bag provided to the customer. The Disposable Checkout Bag Fee shall not be subject to sales tax.
- (b) The Grocer or Business Opting-In shall record the number of Disposable Checkout Bags provided to the customer and the total amount of the Disposable Checkout Bag Fee charged to the customer shall be shown on the customer transaction receipt.
- (c) A Grocer or Business Opting-In shall not refund to the customer any part of the Disposable Checkout Bag Fee, nor shall the Grocer or Business Opting-In advertise or state to customers that any part of the Disposable Checkout Bag Fee will be refunded to the customer.
- (d) A Grocer or Business Opting-In shall not exempt any customer from any part of the Disposable Checkout Bag Fee for any reason except as stated in section 10-57, "Exemptions."

**Sec. 10-53. Voluntary Opt In.**

- (a) Any store or business with a City of Durango business license may voluntarily opt in and apply the Disposable Checkout Bag Policy to its business and thereafter collect Disposable Checkout Bag Fees pursuant to this Article III.

**Sec. 10-54. Implementation of Disposable Checkout Bag Policy and Fee.**

- (a) Grocers shall implement the requirements of the City's Disposable Checkout Bag Policy and commence the collection of Disposable Checkout Bag Fees on and after March 1, 2014, pursuant to the terms of this Article III.
- (b) Businesses Opting-In shall implement the requirements of the City's Disposable Checkout Bag Policy and commence the collection of the Disposable Checkout Bag Fee no later than 120 days after the election to opt-in has been made pursuant to section 10-53.
- (c) Violations of the requirements set forth in this Article III shall subject the offending Grocer or Business Opting-In to the penalties set forth below in section 10-59, "Audits and Violations."

**Sec. 10-55. Retention, Remittance and Transfer of the Disposable Checkout Bag Fee.**

- (a) A Grocer may retain 50 percent of each Disposable Checkout Bag Fee collected at their business.

A Business Opting-In after March 1, 2014, or a new Grocer that is established after March 1, 2014, which falls within the definition of Grocer as set forth in section 10-51 of this Article III, shall be allowed to retain 50 percent of each Disposable Checkout Bag Fee collected.

The collected amount retained by the Grocer or the Business Opting-In is referred to as the “Retained Percent.”

- (b) The Retained Percent shall only be used by Grocer or Business Opting-In to:
  - (1) Provide educational information to customers about the Disposable Checkout Bag Fee program;
  - (2) Provide the signage required by section 10-56, “ Required Signage for Grocers or Businesses Opting-In,”
  - (3) Train staff in the implementation and administration of the Disposable Checkout Bag Fee;
  - (4) Improve or alter infrastructure to allow for the implementation, collection, administration of the Disposable Checkout Bag Fee;
  - (5) Provide in-store Disposable Plastic Checkout Bag and plastic film Recycling Collection Stations. The Recycling Collection Stations shall meet the following criteria:
    - a. Available to the public in a prominent and accessible location;
    - b. Open during the normal hours of operation of the business;
    - c. Store customers shall be able to use the recycling stations at no additional charge;
    - d. Equipped with signage encouraging customers to recycle their Disposable Plastic Checkout Bags;
    - e. A minimum of one recycling station per store is required.
  - (6) Collect, account for and remit the unretained portion of the Disposable Checkout Bag Fee; and
  - (7) Encourage the use of Reusable Carryout Bags.
- (c) Reporting – The Grocer or Business Opting-In shall provide quarterly statistics on the quantity—by weight or by volume—of material recycled through the Recycling Collection Stations required under subsection (b)(5) of this section. This information shall be reported at the end of each quarter and shall be submitted in conjunction with monthly revenue reports.
- (d) The Retained Percent shall not be classified as revenue for the purposes of calculating sales tax.
- (e) The amount of the Disposable Checkout Bag Fee collected by a Grocer or Business Opting-In in excess of the Retained Percent shall be paid to the City and shall be used only as set forth in subsection (h) of this section to mitigate the adverse effects of Disposable Checkout Bags in the City.
- (f) No later than the 20<sup>th</sup> day of the following month, a Grocer or Business Opting-In shall pay and the City shall collect all Disposable Checkout Bag Fees collected during the preceding month in excess of the Retained Percent. The City shall provide the necessary forms for Grocers or Businesses Opting-In to file with the City.
  - (1) If payment of the amount due to the City is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due as described in section 10-59, “Audits and Violation.”
- (g) The Disposable Checkout Bag Fee shall be administered by the City Manager and or his designee. The City Manager or his designee is authorized to adopt rules and regulations reasonably necessary to provide methods of payment and collection, prescribe forms, and otherwise implement requirements of this Article III.
- (h) Funds received by the City from the Disposable Checkout Bag Fee shall be used only for expenditures that are intended to mitigate the effects of Disposable Checkout Bags, including without limitation the following:

- (1) Administrative costs associated with developing and implementing the Disposable Checkout Bag Policy and the Disposable Checkout Bag Fee program.
- (2) Activities of the City to:
  - (a) Provide Reusable Carryout Bags to residents and visitors;
  - (b) Fund public education and outreach campaigns to raise awareness about Disposable Checkout Bag waste reduction and recycling;
  - (c) Fund programs and infrastructure that allow the Durango community to reduce waste associated with Disposable Checkout Bags;
  - (d) Purchase and install equipment designed to minimize Disposable Checkout Bag pollution, including recycling containers, and waste receptacles;
  - (e) Fund community cleanup events and other related activities that reduce trash associated with Disposable Checkout Bags;
  - (f) Maintain a public website that educates residents and visitors on the progress of waste reduction efforts associated with Disposable Checkout Bags.
- (3) No Disposable Checkout Bag Fees collected in accordance with this Article III shall be used for general government purposes or spending, nor shall such funds be utilized for any purpose not authorized by this Article III.

**Sec. 10-56. Required Signage for Grocers or Businesses Opting-In.**

- (a) Every Grocer or Business Opting-In to the Disposable Checkout Bag Policy pursuant to section 10-53 and subject to the collection of the Disposable Checkout Bag Fee shall display signage in a location outside or inside of the business, viewable by customers, alerting customers to the Disposable Checkout Bag Fee.
- (b) External signage shall be displayed at all public entrances. Signs shall have no less than 216 square inches (18 inches by 12 inches) of available space for content and shall be approved by the City Manager or his designee.

**Sec. 10-57. Exemptions.**

A Grocer or Business Opting-In shall provide one or more Disposable Checkout Bags, as needed, to a customer at no charge if the customer provides written or electronic evidence that he or she is a participant in a federal or state food assistance program.

**Sec. 10-58. Program Review.**

The Disposable Checkout Bag Fee program shall be reevaluated one-year after its implementation.

**Sec. 10-59. Audits and Violations.**

- (a) Each Grocer or Business Opting-In subject to the provisions of this Article shall maintain accurate and complete records of the Disposable Checkout Bag Fees collected, the number of Disposable Checkout Bags provided to customers, the forms and recipients of any notice required pursuant to this Article and any underlying records, including any books, accounts, invoices, or other records necessary to verify compliance with this Article III. It shall

be the duty of each Grocer or Business Opting-In to keep and preserve all such documents and records, including any electronic information, for a period of three (3) years from the end of the calendar year of such records.

- (b) Upon request from the City Manager, or his designee, each Grocer or Business Opting-In shall make its records available for audit by the City during regular business hours in order for the City to verify compliance with the provisions of this Article. All such information shall be treated as confidential commercial documents.
- (c) If a Grocer or Business Opting-In fails, neglects or refuses to collect the Disposable Checkout Bag Fee, the City may assess a charge equal to the fees that would have been remitted to the City pursuant to this Article had such fees been duly collected by the Grocer or Business Opting-In, based upon estimates from the City Finance Director.
- (d) Violation of any of the requirements of this act shall subject a Grocer or Business Opting-In to the penalties set forth in this section.
  - (1) If it is determined that violation has occurred, the City shall issue a warning notice to the Grocer or Business Opting-In for the initial violation.
  - (2) If it is determined that an additional violation of this Article has occurred within a 12 month period after a warning notice has been issued for an initial violation, the City shall issue a notice of infraction and shall impose a penalty against the Grocer or Business Opting-In.
  - (3) The penalty for each violation that occurs after the issuance of the initial warning notice shall be pursuant to the following schedule:
    - (a) \$50.00 for the first offense after the initial warning;
    - (b) \$100.00 for the second offense after the initial warning; and
    - (c) For the third and all subsequent offenses, there shall be a mandatory court appearance and the penalty to be imposed shall be determined by the municipal judge.
- (e) If payment of any amounts of the Disposable Checkout Bag Fee to the City 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 10% of the total amount due; and
  - (2) Interest charges of 1% per month of the total amount due.

**Section 2:** This Ordinance shall become effective March 1, 2014.

CITY COUNCIL OF THE CITY OF  
DURANGO

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

STATE OF COLORADO )

) ss.

COUNTY OF LA PLATA )

I, Amy Phillips, City Clerk of the City of Durango, La Plata County, Colorado, do hereby certify that Ordinance No. 0-2013-11 was regularly introduced and read at a regular meeting of the City Council of the City of Durango, Colorado on the 16<sup>th</sup> day of July, 2013, and was ordered published in accordance with the terms and conditions of the statutes in such cases made and provided, in the Durango Herald, a newspaper of general circulation, on the 21<sup>st</sup> day of July , 2013, prior to its final consideration by the City Council.

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City Clerk

I further certify that said Ordinance No. 0-2013-11 was duly adopted by the Durango City Council on the 6<sup>th</sup> day of August, 2013, and that in accordance with instructions received from the Durango City Council, said ordinance was published by title only in the Durango Herald on the 11<sup>th</sup> day of August, 2013.

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City Clerk