

ORDINANCE 8559

AN ORDINANCE AMENDING SECTION 3-2-6, "EXEMPT PROPERTY AND SERVICES," AND CHAPTER 6-15, "DISPOSABLE BAG FEE," B.R.C. 1981, EXEMPTING THE DISPOSABLE BAG FEE FROM THE CITY'S SALES AND USE TAX AND ALIGNING THE CARRYOUT BAG FEE WITH COLORADO LAW; AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 3-2-6, "Exempt Property and Services," B.R.C. 1981, is amended to read as follows:

**3-2-6. Exempt Property and Services.**

Purchase, sale, or use of the following property and services is exempt from taxation under this chapter:

- (a) Services, not otherwise taxable under this chapter, whose price is separately stated from the price of tangible personal property with which the services are sold;
- (b) Services, not otherwise taxable under this chapter, whose price is not separately stated from the price of tangible personal property with which the services are sold, but that is calculated as a percentage of the total sales price of the property, and approved as exempt by the city manager upon written request;
- ...
- (y) Construction materials purchased by the responsible person to be used for installation, use or consumption on job sites or building construction addresses if:(1)The value of the construction materials was included in determining the valuation of the construction;(2)The vendor records on the invoice of sale the job site address and, when applicable, the building permit number; and(3)The contractor has prepaid the tax directly to the City as permitted in Chapter 3-16.
- (z) The disposable bag fee as established in Chapter 6-15, "Disposable Bag Fee," B.R.C. 1981.

1           Section 2. Chapter 6-15, “Disposable Bag Fee,” B.R.C. 1981, is amended to read as

2 follows:

3 **6-15-1. Legislative Intent and Purpose.**

4 (a) Purpose. It is the purpose of this chapter to protect the public health and safety and  
5 implement the city's Climate Action Plan, Zero Waste Master Plan, and the Boulder  
6 Valley Comprehensive Plan.

6 (b) Findings. The city council finds as follows:

7 ...

8 ~~(4) Boulder consumers use approximately 14.3 million disposable bags from food~~  
9 ~~stores each year; and~~

10 (45) The city's taxpayers bear the costs associated with the effects of disposable bags  
11 on the solid waste stream, drainage, litter, and wildlife.

12 (c) Intent. The disposable bag fee is necessary to address the environmental problems  
13 associated with disposable bags and to relieve city taxpayers of the costs imposed upon  
14 the city associated with the use of disposable bags. The city council intends that the  
15 requirements of this chapter will assist in offsetting the costs associated with using  
16 disposable bags to pay for the mitigation, educational, replacement, and administrative  
17 efforts of the city.

15 **6-15-2. Definitions.**

16 The following terms used in this chapter have the following meanings unless the context  
17 clearly indicates otherwise:

18 Carryout bag means a bag that is furnished to a customer at a store or retail food  
19 establishment at the point of sale for use by the customer to transport or carry purchased items.

20 Carryout bag does not include:

21 (a) Bags used by consumers inside stores to:

22 (1) Package bulk items, such as fruit, vegetables, nuts, grains, candy, small hardware  
23 items, or live insects, fish, crustaceans, mollusks, or other small species;

24 (2) Contain or wrap frozen foods, meat or fish;

25 (3) Contain or wrap flowers, potted plants, bulk seed, bulk livestock feed, bulk pet  
feed, or other items where dampness may be a problem;

- 1           (4)    Contain unwrapped prepared foods or bakery goods; or  
2           (5)    A non-handled bag used to protect a purchased item from damaging or  
3                    contaminating other purchased items when placed in a recycled paper carryout  
4                    bag or reusable carryout bag.

4 (b)    Bags provided by pharmacists to contain prescription drugs.

5 (c)    Newspaper bags, door-hanger bags, laundry-dry cleaning bags or bags sold in packages  
6            containing multiple bags for uses such as food storage, garbage, pet waste or yard waste.

7 (d)    A bag made of paper when the paper has a basis weight of thirty pounds or less.

8            *Disposable bag* means a carryout bag that is not a reusable carryout bag. Disposable bag  
9            includes single-use plastic carryout bag and recycled paper carryout bag.

10            *Disposable bag* does not include:

11 (a)    ~~Bags used by consumers inside stores to:~~

12            (1)    ~~Package bulk items, such as fruit, vegetables, nuts, grains, candy or small~~  
13                    ~~hardware items;~~

14            (2)    ~~Contain or wrap frozen foods, meat or fish;~~

15            (3)    ~~Contain or wrap flowers, potted plants or other items where dampness may be a~~  
16                    ~~problem;~~

17            (4)    ~~Contain unwrapped prepared foods or bakery goods; or~~

18            (5)    ~~A non handled bag used to protect a purchased item from damaging or~~  
19                    ~~contaminating other purchased items when placed in a recyclable paper bag or~~  
20                    ~~reusable bag.~~

21 (b)    ~~Bags provided by pharmacists to contain prescription drugs.~~

22 (c)    ~~Newspaper bags, door hanger bags, laundry dry cleaning bags or bags sold in packages~~  
23            ~~containing multiple bags for uses such as food storage, garbage, pet waste or yard waste.~~

24            *Disposable bag fee* means a city fee imposed and required to be paid by each consumer  
25            making a purchase from a ~~food-store~~ or small store for each disposable bag used during the  
26            purchase assessed for the purpose of mitigating the impacts of disposable bags.

27            *Food store* means a retail establishment or business located within Boulder city limits in a  
28            permanent building, operating ~~year-round~~ year-round, that is a full-line, self-service market and  
29            which sells a line of staple foodstuffs, meats, produce or dairy products or other perishable items.

1 *Food store does not include:*

- 2 ~~(a) Temporary vending establishment for fruits, vegetables, packaged meats and dairy.~~  
3 ~~(b) Vendors at farmer's markets or other temporary events.~~  
4 ~~(c) Businesses at which foodstuffs are an incidental part of the business. Food sales will be~~  
5 ~~considered to be *incidental* if such sales comprise no more than two percent of the~~  
6 ~~business's gross sales in the City as measured by the dollar value of food sales as a~~  
7 ~~percentage of the dollar value of total sales at any single location.~~

6 *Recycled paper carryout bag* means a carryout bag made from one hundred percent  
7 recycled material or other post-consumer content.

8 *Retail food establishment* means a retail operation that stores, prepares, or packages food  
9 for human consumption or serves or otherwise provides food for human consumption to  
10 consumers directly or indirectly through a delivery service, whether such food is consumed on or  
11 off the premises or whether there is a charge for such food.

11 *Retail food establishment does not include:*

- 12 (a) Any private home;  
13 (b) Private boarding houses;  
14 (c) Hospital and health facility patient feeding operations licensed by the state department of  
15 health and environment;  
16 (d) Child care centers and other child care facilities licensed by the state department of  
17 human services;  
18 (e) Hunting camps and other outdoor recreation locations where food is prepared in the field  
19 rather than at a fixed base of operation;  
20 (f) Food or beverage wholesale manufacturing, processing, or packaging plants, or portions  
21 thereof, that are subject to regulatory controls under state or federal laws or regulations;  
22 (g) Motor vehicles used only for the transport of food;  
23 (h) Establishments preparing and serving only hot coffee, hot tea, instant hot beverages, and  
24 nonpotentially hazardous doughnuts or pastries obtained from sources complying with all  
25 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;

1 (l) The donation, preparation, sale, or service of food by a nonprofit or charitable  
2 organization in conjunction with an event or celebration if such donation, preparation,  
3 sale or service of food:

4 (1) Does not exceed the duration of the event or celebration or a maximum of fifty-  
5 two days within a calendar year; and

6 (2) Takes place in the county in which such nonprofit or charitable organization  
7 resides or is principally located.

8 (m) A home, commercial, private, or public kitchen in which a person produces food  
9 products sold directly to consumers pursuant to the “Colorado Cottage Foods Act,” § 25-  
10 4-1614, C.R.S.

11 *Reusable carryout bag* means a carryout bag that is designed and manufactured for at least  
12 one hundred twenty-five uses, can carry at least twenty-two pounds over a distance of one  
13 hundred seventy-five feet, has stitched handles, and is made of cloth, fiber, or other fabric or a  
14 recycled material such as polyethylene terephthalate (PET). Reusable Carryout Bag does not  
15 include bags made of biologically based polymers such as corn or other plant sources; except  
16 that a carryout bag made of hemp is a reusable carryout bag if it is designed and manufactured in  
17 accordance with this definition.

18 *Single-use plastic carryout bag* means a carryout bag that is a single-use plastic product  
19 made predominantly of plastic derived from natural gas, petroleum, or a biologically based  
20 source, such as corn or other plant sources, and that is provided to a customer at the point of sale.  
21 Single-use plastic bag does not include a reusable carryout bag.

22 *Small store* means a store that operates solely in Colorado, has three or fewer locations in  
23 the state, and is not part of a franchise, corporation, or partnership that has physical locations  
24 outside of Colorado. Small store does not include any food store.

25 *Store* means a grocery store, supermarket, convenience store, liquor store, dry cleaner,  
26 pharmacy, drug store, clothing store, or other type of retail establishment at which disposable  
27 bags are traditionally provided to customers. Store includes a food store, farmers’ market,  
28 roadside market or stand, festival, or other temporary vendor or event that includes temporary  
29 vendors. Store does not include a small store.

30 *Recycled paper bag* means a paper bag that is one hundred percent recyclable and contains  
31 at least forty percent post-consumer recycled content.

32 *Reusable bag* means a bag that is:

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

34 (b) — Is made from a material that can be cleaned and disinfected regularly;

35 (c) — That is at least 2.25 mil thick if made from plastic;

36 (d) — Has a minimum lifetime of seventy five uses; and

1 ~~(e) — Has the capability of carrying a minimum of eighteen pounds.~~

2 **6-15-3. Disposable Bag Fee Requirements.**

3 (a) For each disposable bag provided to a customer, ~~food~~ stores shall collect from customers  
4 and customers shall pay, at the time of purchase, a disposable bag fee of \$0.10. On and  
5 after January 1, 2024, small stores shall collect from customers and customers shall pay,  
at the time of purchase, the disposable bag fee.

6 ~~(b) The disposable bag fee imposed by the city is in lieu of the same state imposed carryout~~  
7 ~~bag fee as defined in § 25-17-505, C.R.S.~~

8 ~~(c) On and after June 1, 2024, single-use plastic carryout bags will be prohibited at stores~~  
9 ~~and stores shall collect a disposable bag fee on recycled paper carryout bags only.~~  
10 ~~However, small stores shall continue to collect the disposable bag fee on all disposable~~  
11 ~~bags. Single-use plastic bags will not be prohibited at a retail food establishment if the~~  
12 ~~retail food establishment (a) prepares or serves food in individual portions for immediate~~  
13 ~~on- or off-premises consumption; and (b) is not a grocery store or convenience store.~~

14 ~~(d) Food sStores or small stores shall record the number of disposable bags provided and the~~  
15 ~~total amount of disposable bag fees charged on the customer transaction receipt.~~

16 ~~(ee) A food store or small store shall not refund to the customer any part of the disposable bag~~  
17 ~~fee, nor shall the food store or small store advertise or state to customers that any part of~~  
18 ~~the disposable bag fee will be refunded to the customer.~~

19 ~~(fe) A food store or small store shall not exempt any customer from any part of the disposable~~  
20 ~~bag fee for any reason except as stated in section 6-15-7, "Exemptions," B.R.C. 1981.~~

21 **6-15-4. Retention, Remittance and Transfer of Disposable Bag Fee.**

22 (a) ~~A food store or small store~~ may retain forty percent of each disposable bag fee collected,  
23 which is the *retained percent*.

24 ~~(b) — The retained percent may only be used by the food store to:~~

25 ~~(1) — Provide educational information about the disposable bag fee to customers;~~

~~(2) — Provide the signage required by section 6-15-5, "Required Signage for Food~~  
Stores," B.R.C. 1981;

~~(3) — Train staff in the implementation and administration of the fee;~~

~~(4) — Improve or alter infrastructure to allow for the implementation, collection and~~  
administration of the fee;

1           (5) ~~Collect, account for and remit the fee to the City;~~

2           (6) ~~Develop and display informational signage to inform consumers about the fee,~~  
3           ~~encourage the use of reusable bags or promote recycling of plastic bags; and~~

4           (7) ~~Improve infrastructure to increase plastic bag recycling.~~

5 (be) The retained percent shall not be classified as revenue for the purposes of calculating  
6 sales tax.

7 (cd) The amount of the disposable bag fee collected by a ~~food~~-store or small store in excess of  
8 the retained percent shall be paid to the City and shall be used only as set forth in  
9 subsection (g) of this section to mitigate the effects of disposable bags in the City.

10 (de) A ~~food~~-store or small store shall pay and the City shall collect all disposable bag fees.  
11 The City shall provide the necessary forms for ~~food~~-stores or small stores to file with the  
12 City to demonstrate compliance with the provisions of this chapter.

13 If payment of any amount to the City is not received on or before the applicable due date,  
14 penalty and interest charges shall be added to the amount due as described in section 6-  
15 15-8, "Audits and Violations," B.R.C. 1981.

16 (ef) The disposable bag fee shall be administered by the city manager. The city manager is  
17 authorized to adopt interpretive rules pursuant to chapter 1-4, "Rulemaking," B.R.C.  
18 1981, to implement this chapter, prescribe forms and provide methods of payment and  
19 collection and otherwise implement requirements of this chapter.

20 (fg) Funds from the disposable bag fee shall be used only for the expenditures that are  
21 intended to mitigate the effects of disposable bags, including, without limitation, the  
22 following:

23 (1) ~~Administrative and enforcement~~ costs associated with developing and  
24 implementing the disposable bag fee.

25 (2) ~~Activities of the City to:~~ For any recycling, composting, or other waste diversion  
programs and related outreach and education activities.

(3) Activities of the City to:

(A) Provide reusable carryout bags to residents and visitors;

(B) Educate residents, businesses and visitors about the impact of disposable  
bags on the City's environmental health, the importance of reducing the  
number of single-use carryout bags entering the waste stream and the

1 expenses associated with mitigating the effects of single-use bags on the  
2 City's drainage system, transportation system, wildlife and environment;

3 (C) Fund programs and infrastructure that allow the Boulder community to  
4 reduce waste associated with disposable bags;

5 (D) Purchase and install equipment designed to minimize bag pollution,  
6 including recycling containers and waste receptacles associated with  
7 disposable bags;

8 (E) Fund community cleanup events and other activities that reduce trash  
9 associated with disposable bags;

10 (F) Mitigate the effects of disposable bags on the City's drainage system,  
11 transportation system, wildlife and environment;

12 (G) Maintain a public website that educates residents on the progress of waste  
13 reduction efforts associated with disposable bags; and

14 (H) Fund the administration of the disposable bag fee program.

15 (gh) No disposable bag fees collected in accordance with this chapter shall be used only for  
16 general government purposes.

17 (hi) Disposable bag fees collected in accordance with this chapter shall be continually  
18 available for the uses and purposes set forth in subsection (g) of this section without  
19 regard to fiscal year limitation. No disposable bag fee funds shall be used for any purpose  
20 not authorized in this chapter.

### 21 **6-15-5. Required Signage for Food Stores.**

22 Every ~~food~~-store or small store subject to the collection of the disposable bag fee shall  
23 display a sign in a location outside or inside of the business, viewable by customers, alerting  
24 customers to the City's disposable bag fee.

### 25 **6-15-6. Requirement for Disposable Paper Bags.**

No ~~food~~-store or small store shall provide any paper bag that is not a recycled paper  
carryout bag.

### **6-15-7. Exemptions.**

A ~~food~~-store or small store may provide a disposable bag 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.

1 **6-15-8. Audits and Violations.**

- 2 (a) Each store or small store licensed pursuant to the provisions of this chapter shall maintain  
3 accurate and complete records of the disposable bag fees collected, the number of  
4 disposable bags provided to customers, the form and recipients of any notice required  
5 pursuant to this chapter and any underlying records, including any books, accounts,  
6 invoices or other records necessary to verify the accuracy and completeness of such  
7 records. It shall be the duty of each ~~food~~-store or small store to keep and preserve all such  
8 documents and records, including any electronic information, for a period of three years  
9 from the end of the calendar year of such records.
- 10 (b) If requested, each ~~food~~-store or small store shall make its records available for audit by  
11 the city manager during regular business hours for the City to verify compliance with the  
12 provisions of this chapter. All such information shall be treated as confidential  
13 commercial documents.
- 14 (c) If any person fails, neglects or refuses to collect the disposable bag fee or underpays the  
15 disposable bag fee, the city manager shall make an estimate of the fees due, based on  
16 available information, and shall add thereto penalties, interest and any additions to the  
17 fees. The manager shall serve upon the delinquent ~~food~~-store or small store personally, by  
18 electronic mail or by first class mail directed to the last address of the ~~food~~-store or small  
19 store on file with the City, written notice of such estimated fees, penalties and interest,  
20 constituting a Notice of Final Determination, Assessment and Demand for Payment, (also  
21 referred to as "Notice of Final Determination") due and payable within twenty calendar  
22 days after the date of the notice. The ~~food~~-store or small store may request a hearing on  
23 the assessment as provided in section 6-15-9, "Hearings," B.R.C. 1981.

24 ...  
25 **6-15-9. Hearings.**

- (a) A ~~food~~-store or small store may request a hearing on any proposed fee imposed under this  
title after receiving a Notice of Final Determination by filing a written request for hearing  
within twenty 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 ~~food~~-store or small store seeks and such other  
information as the manager may prescribe.
- (b) The city manager shall conduct the hearing under the procedures prescribed by chapter 1-  
3, "Quasi-Judicial Hearings," B.R.C. 1981, except that the manager shall notify the ~~food~~  
store or small store in writing of the time and place of the hearing at least ten days before  
it is scheduled, unless the ~~food~~-store or small store agrees to a shorter time. The hearing  
shall be held within sixty days of the date of receipt of the request for a hearing, unless  
the ~~food~~-store or small store agrees to a later date.



1 READ ON SECOND READING, PASSED AND ADOPTED this 17<sup>th</sup> day of November  
2 2022.

3  
4  
5 \_\_\_\_\_  
Aaron Brockett,  
Mayor

6 Attest:

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8 \_\_\_\_\_  
Elesha Johnson,  
9 City Clerk

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