

ORDINANCE NO. 099, 2014
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 12 OF THE CODE OF THE CITY OF FORT COLLINS TO
ESTABLISH REGULATIONS REGARDING DISPOSABLE BAGS

WHEREAS, the City, through its policies, programs, and laws, supports efforts to reduce the amount of waste deposited into the landfill and to pursue waste minimization as a long term goal by emphasizing waste prevention efforts; and

WHEREAS, the use of plastic or paper disposable bags has severe impacts on the environment on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption, and solid waste generation; and

WHEREAS, even when recycled, plastic disposable bags cause operational problems at recycling processing facilities; and

WHEREAS, although disposable paper bags are perceived by some as being more environmentally friendly than disposable plastic bags, the manufacturing, transport, recycling, and disposal of paper bags consumes a substantial amount of environmental resources; and

WHEREAS, some retailers do not provide disposable bags to their customers, thereby avoiding the environmental impacts associated with the use of such bags; and

WHEREAS, the City's taxpayers bear the costs associated with the negative impacts of disposable bags; and

WHEREAS, from an overall environmental and economic perspective, the City believes that the best alternative to the continued use of disposable bags is to promote the use of more durable, reusable bags; and

WHEREAS, studies document that when customers are charged for disposable bags, the use of such bags is dramatically reduced; and

WHEREAS, the City Council believes that requiring retailers to charge for the use of disposable bags would help address the environmental problems associated with such use, would relieve City taxpayers of the costs incurred by the City in connection therewith, and would be in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS AS FOLLOWS:

Section 1. That the foregoing recitals are hereby incorporated herein as findings of the City Council.

Section 2. That Chapter 12 of the Code of the City of Fort Collins is hereby amended by the addition of a new Article IX which shall read in its entirety as follows:

**ARTICLE IX
DISPOSABLE BAGS**

Sec. 12-137. Definitions.

The following terms used in this Chapter shall have the meanings ascribed to them below unless the context clearly indicates otherwise:

Consent to purchase shall mean a customer understands there is a charge for a disposable bag and agrees, by words or actions, to purchase a disposable bag.

Disposable Bag shall mean a bag, other than a reusable bag, provided to a customer at a checkout stand, cash register, point of sale, or other point of departure by any retailer for the purpose of transporting and carrying away items purchased at the retail location. *Disposable Bag* shall not include:

- (1) bags used by consumers inside the retail location, before the point of sale, to:
 - a. package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;
 - b. contain or wrap frozen foods, meat, or fish;
 - c. contain or wrap flowers, potted plants, or other items where dampness may be a problem; or
 - d. contain unwrapped prepared foods or bakery goods.
- (2) bags used to protect a purchased item from damaging or contaminating other items when placed in a reusable bag;
- (3) bags provided by pharmacists to contain prescription drugs; or
- (4) newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold to the end user in packages containing multiple bags for uses such as food storage, garbage, pet waste, or yard waste.

Retailer shall mean any person selling, leasing or renting tangible personal property or services at retail that provides disposable bags to customers. *Retailer* shall include any of the following:

- (1) auctioneer;

(2) salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of, or obtains such property or services sold from, a dealer, distributor, supervisor or employer; and

(3) charitable organization or governmental entity that makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes.

Retailer shall not include:

(1) temporary vending establishments for fruits, vegetables, packaged meats, and dairy;

(2) vendors at farmers' markets, garage sales, or other temporary events; or

(3) any establishment that is a type of restaurant as defined in the City's Land Use Code.

Reusable Bag shall mean a bag that:

(1) is designed and manufactured to withstand repeated uses over a period of time;

(2) is made from a material that can withstand regular cleaning and disinfecting;

(3) is at least two and one-quarter (2.25) mils thick if made from plastic;

(4) is designed to have a minimum lifetime of seventy (75) uses; and

(5) has the capability of carrying a minimum of eighteen (18) pounds.

Disposable bag charge shall mean a cost imposed by a retailer pursuant to the provisions of this Article upon each disposable bag used by customers to transport goods from the food store.

Sec. 12-138. Disposable bag charge requirements.

(1) For each disposable bag a retailer provides to a customer, the retailer shall collect from the customer, and the customer shall pay, at the time of purchase, a disposable bag charge of no less than five cents (\$0.05).

(2) All retailers shall record on the customer transaction receipt the number of disposable bags provided to the customer and the total amount collected from such customer for the disposable bag charge.

(3) No retailer may provide, and no customer may receive, a disposable bag unless such customer has given consent to purchase such bag.

(4) No retailer may provide a rebate or in any way reimburse a customer for any part of the disposable bag charge.

(5) No retailer may exempt any customer from any part of the disposable bag charge for any reason except as stated in Section 12-140.

(6) Nothing in this Article shall prohibit retailers from providing incentives for the use of reusable bags through credits or rebates for customers who bring their own bags to the point of sale for the purpose of carrying away goods.

(7) Nothing in this Article shall prohibit customers from using bags of any type that the customers bring into a retail location or from carrying away goods purchased by such customers and that are not placed in a bag.

Sec. 12-139. Retention and administration of the disposable bag charge.

(1) All monies collected by a retailer for any disposable bag charge may be retained by the retailer.

(2) The City Manager may adopt administrative rules and regulations to implement the provisions of this Article.

Sec. 12-140. Exemptions.

A retailer that participates in a federal or state food assistance program may provide a disposable bag to a customer at no charge if the customer provides proof that he or she is a participant in a federal or state Food Assistance Program, to the extent permissible under the relevant program.

Sec. 12-141. Audits.

(a) Each retailer shall maintain accurate and complete records of the disposable bag charges collected under the provisions of this Article, the number of disposable bags provided to customers, and shall also maintain such books, accounts, invoices, or other documentation necessary to verify the accuracy and completeness of such records. It shall be the duty of each retailer 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 retailer shall make the foregoing records available for inspection and audit by the City during regular business hours so that the City may verify

compliance with the provisions of this Article. To the extent permitted by law, all such records shall be treated as confidential commercial information.

Sec. 12-142. Violations and penalties.

Any person who violates any provision of this Article, whether by acting in a manner declared to be unlawful or by failing to act as required, commits a civil infraction and shall be subject to the penalty provisions of Subsection 1-15(f) of this Code.

Sec. 12-143. Severability.

If any provision, paragraph, clause or word of this Article is declared to be invalid by a decision of any court of competent jurisdiction, it is hereby declared to be the legislative intent that the effect of such decision shall be limited to the provision that is expressly invalidated. Such decision shall not affect, impair or nullify this Article as a whole or any other part, and the rest of this Article shall continue in full force and effect.

Section 3. The City Manager is directed to fully implement the use of biodegradable animal waste and other refuse bags in City operations, implement City practices that promote the reduction of use of disposable bags, and eliminate the use of disposable bags wherever feasible.

Section 4. The City Manager is directed to develop an awareness and conservation campaign to educate the public about the financial and environmental costs of using disposable bags. If funds are available to produce educational materials as part of said awareness campaign, the City Manager shall make them available upon request to retailers that are subject to the requirements of this Ordinance.

Section 5. The provisions of this Ordinance shall take effect April 1, 2015.

Section 6. This Ordinance is necessary to protect the public health, safety, and welfare of the residents of the City, and covers matters of local concern.

Introduced, considered favorably on first reading, and ordered published this 1st day of July, A.D. 2014, and to be presented for final passage on the 19th day of August, A.D. 2014.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 19th day of August, A.D. 2014.

Mayor

ATTEST:

City Clerk