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MEMORANDUM

TO: Mayor and City Councilmembers

FROM: Steve Roy, City Attorney

DATE: March 5, 2013

RE: Agenda Item #32 - Plastic Bag Fee

Attached is a slightly revised version of Ordinance No. 46, 2013, dealing with the imposition of a plastic bag fee. Section 3 of the ordinance has been changed so as to delay the effective date of all provisions of the ordinance until October 1, 2013, to allow for the development of processes for implementing and administering the fee.

SR/pec
Attachment

ORDINANCE NO. 046, 2013
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 12 OF THE CODE OF THE CITY
OF FORT COLLINS TO ESTABLISH A DISPOSABLE BAG FEE

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 single-use 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, despite recycling and voluntary solutions to control pollution from disposable carryout bags, many disposable single-use bags ultimately are disposed of in landfills, litter the environment, block storm drains and endanger wildlife; and

WHEREAS, Fort Collins consumers use approximately twenty-two (22) million disposable bags from food stores each year; and

WHEREAS, the City's taxpayers bear the costs associated with the effects of disposable bags on the solid waste stream, drainage, litter and wildlife; and

WHEREAS, the City Council has determined that a disposable bag fee is necessary to address the environmental problems associated with disposable bags and to relieve City taxpayers of the costs incurred by the City in connection with the use of disposable bags; and

WHEREAS, the City Council intends that the fee imposed by this ordinance will help offset the costs associated with the use of disposable bags in the City and help fund the mitigation, educational, replacement, and administrative efforts 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 incorporated herein as findings of the City Council.

Section 2. That Chapter 12, Article VII of the Code of the City of Fort Collins is hereby amended by the addition of a new Division 3 which shall read in its entirety as follows:

ARTICLE VII
RESOURCE CONSERVATION
Division 3

Sec. 12-133. Definitions.

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

Disposable Bag shall mean a bag that is not a reusable bag. *Disposable Bag* shall not include:

- (1) bags used by consumers inside stores 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 purchased 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 in packages containing multiple bags for uses such as food storage, garbage, pet waste, or yard waste bags.

Food store shall mean a retail establishment or business located within City limits in a permanent building, operating year round, that is a full-line, self-service market and which sells a line of staple foodstuffs, meats, produce or dairy products or other perishable items. *Food store* shall not include:

- (1) temporary vending establishments for fruits, vegetables, packaged meats and dairy;
- (2) vendors at farmers' markets or other temporary events;
- (3) businesses at which foodstuffs are an incidental part of the business; or

For the purposes of subsection (3) above, food sales will be considered to be “incidental” if such sales comprise no more than two (2) percent of the business’s gross sales in the City as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.

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 be cleaned and disinfected regularly;
- (3) is at least two and one-quarter (2.25) mils thick if made from plastic;
- (4) has a minimum lifetime of seventy (75) uses; and
- (5) has the capability of carrying a minimum of eighteen (18) pounds.

Disposable bag fee or fee shall mean a City fee imposed and required to be paid by each consumer making a purchase from a food store for each disposable bag used during the purchase, the proceeds of which are to be used for the purposes specified in Section 12-135(7).

Sec. 12-134. Disposable bag fee requirements.

- (1) For each disposable bag provided to a customer, all food stores shall collect from customers, and customers shall pay, at the time of purchase, a disposable bag Fee of ten cents (\$0.10.)
- (2) All food stores shall record the number of disposable bags provided and the total amount of disposable bag fees charged on the customer transaction receipt.
- (3) No food store shall refund to a customer any part of the disposable bag fee, nor shall any food store advertise or state to customers that any part of the disposable bag fee will be refunded to the customer.
- (4) No food store shall exempt any customer from any part of the disposable bag fee for any reason except as stated in Section 12-139.

Sec. 12-135. Retention, remittance, and transfer of the disposable bag fee.

- (1) A food store may retain forty (40) percent of each disposable bag fee collected, which is the “retained percent.”
- (2) The retained percent may only be used by the food store to:
 - a. provide educational information about the disposable bag fee to customers;
 - b. provide the signage required by Section 12-136;
 - c. train staff in the implementation and administration of the fee;
 - d. improve or alter infrastructure to allow for the implementation, collection, administration of the fee;
 - e. collect, account for and remit the fee to the City;
 - f. develop and display informational signage to inform consumers about the fee;

- g. encourage the use of reusable bags or promote recycling of plastic bags; and
- h. improve infrastructure to increase plastic bag recycling.

(3) The amount of the disposable bag fee collected by a food store in excess of the retained percent shall be paid to the City and shall be used only as set forth in subsection (7) of this Section to mitigate the effects of disposable bags in the City.

(4) A food store shall pay and the City shall collect all disposable bag fees. The City shall provide the necessary forms for food stores to file with the City, to demonstrate compliance with the provisions of this Article.

(5) If payment of any amount 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 12-139.

(6) The disposable bag fee shall be administered by the City Manager. The City Manager is authorized to adopt administrative rules to implement this Division, including, but not limited to, prescribing forms and providing methods of payment and collection.

(7) Revenues received by the City from the disposable bag fee shall be used only for expenditures that are intended to mitigate the effects of disposable bags, including, but not limited to, the following:

- a. administrative costs associated with developing and implementing the disposable bag fee.
- b. activities of the City to:
 - 1. provide reusable carryout bags to residents and visitors;
 - 2. 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 expenses associated with mitigating the effects of single-use bags on the City's drainage system, transportation system, wildlife and environment;
 - 3. fund programs and infrastructure that allow the Fort Collins community to reduce waste associated with disposable bags;
 - 4. purchase and install equipment designed to minimize bag pollution, including, but not limited to, recycling containers and waste receptacles associated with disposable bags;
 - 5. fund community cleanup events and other activities that reduce trash associated with disposable bags;
 - 6. mitigate the effects of disposable bags on the City's drainage system, transportation system, wildlife and environment;

7. maintain a public website that educates residents on the progress of waste reduction efforts associated with disposable bags; and
 8. fund the administration of the disposable bag fee program.
- c. No disposable bag fees collected in accordance with this Article shall be used for general government purposes.

Sec. 12-136. Required signage for food stores.

Every food store subject to the collection of the disposable bag fee shall display a sign in a location outside or inside of the business, viewable by customers, alerting customers to the disposable bag fee.

Sec. 12-137. Exemptions.

A food 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.

Sec. 12-138. Audits.

(a) Each food 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 Article, 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 food 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 food store shall make its records available for audit by the City during regular business hours for the City to verify compliance with the provisions of this Article. All such information shall be treated as confidential commercial documents.

Sec. 12-139. Failure to comply with disposable bag fee requirements.

(a) If any food store fails, neglects, or refuses to collect the disposable bag fee, or underpays the disposable bag fee, the City 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 City shall serve upon the delinquent food store personally, by electronic mail or by first class mail directed to the last address of the food store on file with the City, 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 twenty

(20) calendar days after the date of the notice. The food store may request a hearing on the assessment as provided in Chapter 2, Article VI of the City Code.

(b) If payment of any amount of the disposable 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 ten (10) percent of total due;
- (2) interest charge of one (1) percent of the total penalty per month.

Sec. 12-140. Violations and penalties.

Any food store found guilty of violating 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 is subject to the penalty provisions of subsection 1-15(f).

Section 3. ~~The provisions of this Ordinance relating to the collection of the Disposable Bag Fee and required store signage shall become effective October 1, 2013. All other provisions shall be effective thirty (30) days from the date of passage.~~ The City Manager shall develop and implement the administrative and financial processes for the collection of the fee between the effective date of this Ordinance and October 1, 2013.

Section 4. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

Section 5. 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 5th day of March, A.D. 2013, and to be presented for final passage on the 19th day of March, A.D. 2013.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 19th day of March, A.D. 2013.

Mayor

ATTEST:

City Clerk