

**ORDINANCE NO. 026, 2021
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 AND
MITIGATION OF OTHER SOURCES OF SINGLE USE PLASTIC POLLUTION**

WHEREAS, on March 3, 2015, City Council adopted Resolution 2015-030, updating community greenhouse gas goals and targets to be achieved by 2020, 2030, and 2050; and

WHEREAS, staff has developed an implementation plan based on the accelerated goals of the Climate Action Plan (“CAP”) and has identified several initiatives for immediate action and investment based on guidance provided by the City Council; and

WHEREAS, City Council has also identified plastics pollution as a priority concern, which aligns with the CAP goals of reducing greenhouse gasses and with the community’s Road to Zero Waste goal to produce zero waste by 2030 and the City’s strategic objective to sustain and improve the health of the Cache la Poudre River and all watersheds within the city; and

WHEREAS, because plastic makes up about 10% of waste landfilled as “municipal solid waste”, mitigating plastic pollution will be a necessary component of achieving the City’s goal of producing zero waste by 2030; and

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

WHEREAS, plastic disposable bags must be separately recycled and when incorrectly included in other recycling streams cause operational problems at recycling processing facilities; and

WHEREAS, although disposable paper bags may have a lesser impact on waterways and wildlife than disposable plastic bags, they have higher greenhouse gas emissions and water impacts throughout their lifecycle; and

WHEREAS, Fort Collins consumers use approximately fifty (50) million disposable bags from large grocers each year; and

WHEREAS, Fort Collins taxpayers bear the costs associated with the effects of disposable bags on the solid waste stream, greenhouse gas emissions, the Cache la Poudre watershed, litter, and other adverse impacts to their environment; and

WHEREAS, City Council has discussed various options for mitigating single-use plastic pollution, including disposable plastic and paper bags, while continuing to study microplastic pollution, at four Council Work Sessions on February 11, 2020, October 27, 2020, December 8, 2020, and January 12, 2021; and

WHEREAS, by adoption of Resolution 2020-118 on December 15, 2020, City Council directed development of an ordinance regulating the use of disposable bags and recognizing that further regulation of single-use plastics may be adopted by future Council action; and

WHEREAS, City Council desires to adopt this ordinance to protect the public health, safety and welfare, to maintain and improve the health of the Cache la Poudre watershed and to further the City's Climate Action Plan and Road to Zero Waste, all of which serve the best interests of the residents of Fort Collins.

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 XIII which shall read in its entirety as follows:

**ARTICLE XIII
REGULATION OF DISPOSABLE BAGS AND MITIGATION OF
OTHER SOURCES OF SINGLE USE PLASTIC POLLUTION**

Sec. 12-300. Scope and purpose.

The purpose of this Article is to protect the public health, safety and welfare, to maintain and improve the health of the Cache la Poudre watershed and to further the City's Climate Action Plan and Road to Zero Waste, all of which serve the best interests of the residents of Fort Collins. The provisions of this Article shall be effective beginning May 1, 2022.

Sec. 12-301. 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, 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 retail establishment for the purpose of transporting and carrying away items purchased at the store. A *disposable bag* may be made primarily of paper (a *disposable paper bag*) or plastic (a *disposable plastic bag*) or other material that does not meet the standards for a *reusable bag*. *Disposable bag* shall not include:

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

Disposable bag fee shall mean a fee collected pursuant to the provisions of this Article upon each disposable paper bag provided to and used by customers to transport goods from the store. The amount of the *disposable bag fee* shall be twelve cents (\$0.12) per bag.

Large grocer shall mean a retail business within the city limits that is located in a permanent building containing at least ten thousand (10,000) square feet of retail space, which operates year-round offering for sale at least four of the following typical grocery departments: staple foodstuffs, meats, produce, dairy products, frozen foods or other perishable items primarily for human consumption. *Large grocer* shall not include:

- (1) temporary vending establishments for fruits, vegetables, packaged meats, and dairy; or
- (2) vendors at farmers' markets or other temporary events.

Reusable bag shall mean a bag that is:

- (1) designed and manufactured to withstand repeated uses over a period of time and have a minimum lifetime of one hundred twenty-five (125) uses;
- (2) made from a material that can withstand regular machine washing;
- (3) if made from plastic material, not made of plastic film where thickness is measured in mils;
- (4) designed with the capability to carry minimum of twenty-two (22) pounds over one hundred seventy-five (175) feet.

Vendor share shall mean six cents (\$0.06) of the disposable bag fee.

Waste reduction program shall mean a plastic pollution mitigation and solid waste and litter reduction program carried out by the City, which may include, without limitation:

- (1) the administration and operation of the Waste Reduction Program and administration activities to collect all disposable bag fees;
- (2) activities and campaigns conducted by the City (or a contracted vendor) to provide reusable bags to residents and visitors, educate residents, businesses and visitors about the impact of disposable bags, trash, single-use plastics and other waste on the waterways and environment and on the health and welfare of its residents and visitors, the importance of reducing the number of disposable bags entering the waste stream and to raise awareness about waste reduction and recycling;
- (3) community clean-up events, City activities, and other community-led activities to reduce or mitigate solid waste and litter;
- (4) programs and infrastructure to facilitate and encourage the community to reduce waste and recycle, including community-led efforts;
- (5) creating, expanding, and maintaining equitable outreach and engagement strategies, including a public website to educate residents on the progress of waste reduction efforts;
- (6) other activities directly related to the reduction of waste from disposable bags, trash, single-use plastics and other waste and its impact on the waterways and environment within the city and the Cache la Poudre watershed;
- (7) providing assistance to members of the public who face barriers to participation to support widespread inclusion and participation in waste reduction programs and strategies; and
- (8) funding or providing other support for programs and activities conducted by others in furtherance of these purposes.

Sec. 12-302. Prohibitions.

- (a) No large grocer shall provide a disposable plastic bag to a customer at the point of sale.
- (b) No large grocer shall provide a disposable paper bag to a customer at the point of sale unless such bag is made of at least forty percent (40%) post-consumer paper material that is one hundred percent (100%) recyclable and designed to carry purchases out of stores.
- (c) Nothing in this Article XIII shall prohibit a large grocer from making reusable bags available for sale or for no cost to customers.

Sec. 12-303. Disposable bag fee requirements.

- (a) For each disposable paper bag a large grocer provides to a customer, the large grocer shall collect from the customer, and the customer shall pay, at the time of purchase, the disposable bag fee.
- (b) All large grocers shall record on the customer transaction receipt the number of disposable paper bags provided to each customer and the total amount collected from such customer for the disposable bag fee.
- (c) No large grocer may provide a rebate or in any way reimburse a customer for any part of the disposable bag fee.
- (d) No large grocer may exempt any customer from any part of the disposable bag fee for any reason except as stated in § 12- 305.
- (e) The vendor share of all disposable paper bag fees collected by a large grocer may be retained by the large grocer and used in accordance with this subsection (e). Each large grocer must create a plan for its use of the vendor share to implement the disposable bag fee program and encourage customer use of disposable bags, which plan shall be approved by the City prior to expenditure of the vendor share.

A plan for use of the vendor share shall be submitted for City approval for each calendar year from 2022 through 2025, inclusive, and for each 4-calendar year calendar period thereafter. An approved plan may be amended with the approval of the City. Each large grocer must use its vendor share of disposable paper bag fees collected to implement and administer its approved plan. An approved plan may include, but is not limited to, reimbursement of expenses for signage, staff training, and support for customers in advance of the initiation of the disposable bag fee, as well as ongoing expenses for compliance and promotion of the use of reusable bags. No penalties or fines assessed for noncompliance may be paid using disposable bag fee revenues.

- (f) Each large grocer shall annually report the number and type of disposable and reusable bags it furnishes, the amount of disposable bag fee revenue collected, the number of reusable bags sold, and any other elements of the approved plan for use of its vendor share. The City Manager shall designate, from time to time, the form and timing of the annual report due under this subsection.
- (g) Nothing in this Article shall prohibit large grocers 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.
- (h) Nothing in this Article shall prohibit customers from using bags of any type that they bring into the store themselves or from carrying away goods that are not placed in a bag.

Sec. 12-304. Payment to and administration of the disposable bag fee by the City.

(a) All disposable paper bag fees collected in excess of the vendor share shall be paid by the large grocer to the City of Fort Collins Finance Department and used for the operation and administration of the waste reduction program.

(b) The City Manager shall administer the disposable bag fee and adopt (and may amend, from time to time) the waste reduction plan consistent with the scope and purpose set forth in § 12-301 and the parameters of the definition set forth in § 12-302 above.

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

(d) The City Manager and City Council may suspend the collection and payment of disposable bag fees and other regulations set forth in or adopted pursuant to this Article as deemed necessary due to public health emergencies or other unforeseen circumstances.

Sec. 12-305. Exemptions – low income relief.

A large grocer may provide a disposable paper bag to a customer at no charge if the customer presents, at the time of purchase, a benefit card reflecting participation in a federal, state, county or City income-qualified aid program, including but not limited to benefits delivered via Electronic Benefits Transfer (EBT) such as the federal Supplemental Nutrition Assistant Program (SNAP) or Supplemental Nutrition Program for Women, Infants and Children (WIC), or such other indicia of need as determined by the City Manager from time to time.

Sec. 12-306. Recordkeeping and audits.

(a) Each large grocer shall maintain accurate and complete records of the disposable bag fees collected under the provisions of this Article and 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 large grocer 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 in which the documents or records were generated. In the event of an audit, investigation or other enforcement action, records and documents must be retained until three (3) years after notice of completion or resolution of such audit, investigation or enforcement action.

(b) If requested, each large grocer 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. 12-307. Reporting; modifications.

The City Manager shall provide to the City Council an annual report on implementation and status of the matters described in this Article after the end of 2022 and each calendar year thereafter, which shall address:

- (1) equity impacts;
- (2) compliance and outcomes including performance metrics related to number and type of bags distributed; and
- (3) presence of single-use plastic bags in the environment as a percentage of litter removed from sensitive areas such as Natural Areas and the Poudre River; and
- (4) Other relevant and complementary metrics consistent with the scope and purpose of this Article as recommended by City staff.

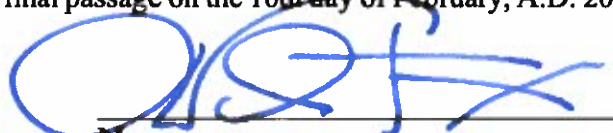
Sec. 12-308. Violations and penalties.

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 City Code subsection 1-15(f).

Section 3. 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 article or chapter.


Section 4. 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 2nd day of February, A.D. 2021, and to be presented for final passage on the 16th day of February, A.D. 2021.



Mayor

ATTEST:



City Clerk / Deputy




Passed and adopted on final reading on this 16th day of February, A.D. 2021.



Mayor

ATTEST:



City Clerk
Deputy

