

ORDINANCE NO. 013, 2025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 12 OF THE CODE OF THE CITY OF
FORT COLLINS TO ADOPT REQUIREMENTS TO REDUCE
PLASTIC POLLUTION AND TO UPDATE AND REENACT THE
CITY'S DISPOSABLE BAG ORDINANCE

A. On February 16, 2021, the City Council adopted Ordinance No. 26, 2021, the Disposable Bag Ordinance (“DBO”), which was referred to and approved by the City electorate at the April 2021 election. The DBO banned large grocery stores from distributing plastic bags to customers and placed a ten-cent fee on paper bags starting May 1, 2022. The DBO required the large grocery stores to remit six cents of each ten-cent fee to the City and required the City to expend that portion of the paper bag fee on the City’s waste reduction program. Each large grocer was required to develop a plan to implement the disposable bag fee program and expend its four-cent share on that plan.

B. In 2021, the State of Colorado adopted the Plastic Pollution Reduction Act at C.R.S. § 25-17-501 et seq (the “PPRA”), which, through a phased approach, banned the distribution of plastic bags to customers of “stores” and “retail food establishments.” Similarly to the City’s DBO, the PPRA also imposed a ten-cent fee on recycled paper carryout bags distributed by stores and required six-cents of each fee to be remitted to local governments and four-cents to be retained by the store. Further, the PPRA prohibits retail food establishments from distributing expanded polystyrene containers for ready-to-eat food. Finally, the PPRA authorizes local governments to adopt the requirements of the PPRA, enforce those requirements, and impose more stringent requirements than the PPRA.

C. The PPRA contains detailed definitions of: “stores,” which will encompass hundreds of commercial operations in the City of Fort Collins, including large grocery stores; “retail food establishments,” which will encompass many restaurants in the City of Fort Collins; and different types of “carryout bags,” which are similar to the City’s definitions of different types of bags in the DBO.

D. Under existing law, the City can enforce the DBO, but not the PPRA, and the State of Colorado can enforce the PPRA.

E. The City seeks to adopt and enforce the requirements of the PPRA, including: the prohibition on the distribution of single-use plastic carryout bags from stores and many retail food establishments; the ten-cent fee for stores to distribute recycled paper carryout bags to customers; and the ban on retail food establishments from distributing expanded polystyrene containers to customers for ready-to-eat food.

F. The City also seeks to adopt requirements that are more stringent than the PPRA, including requirements that: the City use its portion of the recycled paper carryout bag fee for the City’s established waste reduction program; each store must expend its four-cent share of the recycled paper carryout bag fee for implementation costs; each

store must comply with record-keeping and reporting requirements in excess of PPRA requirements; and make any violation of these requirements by a store or retail food establishment a civil infraction under the Code of the City of Fort Collins ("City Code,") which the City may enforce.

G. The City seeks to accomplish this by amending the City Code. The DBO is codified in Chapter 12, Article XIII of the Code. Article XIII will remain in effect until June 30, 2025, and any obligation of a large grocery store incurred under that Article through June 30, 2025, will continue to be an obligation of that large grocery store past June 30, 2025. The DBO will sunset on January 1, 2027, which will allow large grocery stores sufficient time to comply with and close out all requirements of the DBO. City Council is authorized to repeal an ordinance referred to and approved by the voters pursuant to Article X, Section 5 of the City Charter.

H. Additionally, the City Code will be amended to include a new Article XIV in Chapter 12 to adopt requirements of the PPRA and more stringent requirements, as noted above, for stores and retail food establishments. The requirements of this new Article will take effect on July 1, 2025.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. Section 12-300 of the Code of the City of Fort Collins is hereby amended as follows:

Sec. 12-300. - Scope and purpose; Effective Dates; Sunset.

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 from May 1, 2022, through June 30, 2025. Any obligation of a large grocer incurred under this Article through June 30, 2025, shall continue to be an obligation of that large grocer past June 30, 2025. This Article shall be repealed January 1, 2027.

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

ARTICLE XIV.

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

12-310. – Scope and Purpose; Effective Date.

This Article is enacted pursuant to the City’s authority to regulate single-use plastics under the Plastic Pollution Reduction Act at C.R.S. § 25-17-501 et seq. 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 July 1, 2025.

12-311. Definitions.

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

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

(a) *Carryout bag* does not include:

(1) A bag made of paper when the paper has a basis weight of thirty pounds or less;

(2) A bag that a pharmacy provides to a customer purchasing prescription medication;

(3) A bag that a customer uses inside a store to:

(i) Package loose or bulk items, such as fruits, vegetables, nuts, grains, candy, or greeting cards; nails, bolts, screws, or other small hardware items; live insects, fish, crustaceans, mollusks, or other small species; and bulk seed, bulk livestock feed, or bulk pet feed;

(ii) Contain or wrap frozen foods, meat, seafood, fish, flowers, potted plants, or other items that, if they were to come in contact with other items, could dampen or contaminate the other items; or

(iii) Contain unwrapped prepared foods or bakery goods; or

(4) A laundry, dry cleaning, or garment bag.

Container means a receptacle upon which or inside which food may be placed for consumption, whether or not the receptacle can be fully closed. *Container* includes hinged food containers, plates, bowls, cups, and trays.

Drug means:

(a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;

- (b) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;
- (c) Articles, other than food, intended to affect the structure or any function of the body of a human or other animals;
- (d) Articles intended for use as a component of any article specified in paragraph (a), (b), or (c) of this definition of *drug* but does not include devices or their components, parts, or accessories.

Expanded polystyrene means blown polystyrene, commonly known as Styrofoam™, and any other expanded or extruded foam consisting of thermoplastic petrochemical materials utilizing a styrene monomer and processed by techniques that may include:

- (a) For expandable bead polystyrene, fusion of polymer spheres;
- (b) Injection molding;
- (c) Foam molding; and
- (d) For extruded foam polystyrene, extrusion blow molding.

Food means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale, in whole or in part, for human consumption. *Food* does not include a drug.

Nonpotentially hazardous means any food or beverage that, when stored under normal conditions without refrigeration, will not support the rapid and progressive growth of microorganisms that cause food infections or food intoxications.

Plastic means a synthetic material made from linking monomers through a chemical reaction to create a polymer chain that can be molded or extruded at high heat into various solid forms that retain their defined shapes during their life cycle and after disposal.

Point of sale means a check-out stand, cash register, or other point at which a sales transaction occurs in a store or retail food establishment or, for products that are ordered remotely from a store or retail food establishment and delivered, the location where the products are delivered.

Ready-to-eat food means food that is cooked or otherwise prepared in advance for immediate consumption.

Recycled paper carryout bag means a carryout bag made from one hundred percent:

- (a) Recycled material; or
- (b) Other post-consumer content.

Retail food establishment means a retail operation that stores, prepares, or packages food for human consumption or serves or otherwise provides food for human consumption

to consumers directly or indirectly through a delivery service, whether such food is consumed on or off the premises or whether there is a charge for such food. *Retail food establishment* does not mean:

- (a) Any private home;
- (b) Private boarding houses;
- (c) Hospital and health facility patient feeding operations licensed by the Colorado department of public health and environment;
- (d) Child care centers and other child care facilities licensed by the Colorado department of human services;
- (e) Outdoor recreation locations where food is prepared in the field rather than at a fixed base of operation;
- (f) Food or beverage wholesale manufacturing, processing, or packaging plants, or portions thereof, that are subject to regulatory controls under state or federal laws or regulations;
- (g) Motor vehicles used only for the transport of food;
- (h) Establishments preparing and serving only hot coffee, hot tea, instant hot beverages, and nonpotentially hazardous doughnuts or pastries obtained from sources complying with all 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;
- (l) The donation, preparation, sale, or service of food by a nonprofit or charitable organization in conjunction with an event or celebration if such donation, preparation, sale, or service of food:
 - (i) Does not exceed the duration of the event or celebration or a maximum of fifty-two (52) days within a calendar year; and
 - (ii) Takes place in the county in which such nonprofit or charitable organization resides or is principally located.

(m) A home, commercial, private, or public kitchen in which a person produces food products sold directly to consumers pursuant to the “Colorado Cottage Foods Act”, as the Colorado Cottage Foods Act was codified on February 28, 2025 at C.R.S. § 25-4-1614.

Reusable carryout bag means a carryout bag that is designed and manufactured for at least one hundred twenty-five uses, can carry at least twenty-two pounds over a distance of one hundred seventy-five feet, has stitched handles, and is made of cloth, fiber, or other fabric or a recycled material such as polyethylene terephthalate (PET) and includes any hemp bag that meets these standards. *Reusable carryout bag* does not include bags made of biologically based polymers such as corn or other plant sources.

School means a public school, including a charter school authorized by a Colorado school district, an institute charter school authorized by the state of Colorado, or a school operated by a board of cooperative services organized by a Colorado school district or the governing board of a Colorado postsecondary institution.

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

Small store means a store that operates solely in Colorado, has three or fewer locations in the state, and is not part of a franchise, corporation, or partnership that has physical locations outside of Colorado.

Store means a grocery store, supermarket, convenience store, liquor store, dry cleaner, pharmacy, drug store, clothing store, or other type of retail establishment at which carryout bags are traditionally provided to customers.

(a) *Store* includes a farmers market, roadside market or stand, festival, or other temporary vendor or event that includes temporary vendors.

(b) *Store* does not include a small store.

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

(a) The administration and operation of the waste reduction program and administration activities to collect all recycled paper recycled paper carryout bag fees;

(b) Activities and campaigns conducted by the City or its contractor to provide reusable carryout bags to residents and visitors, educate residents, businesses and visitors about the impact of single-use plastic 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 single-use

plastic bags entering the waste stream and to raise awareness about waste reduction and recycling;

(c) Community clean-up events, City activities, and other community-led activities to reduce or mitigate solid waste and litter;

(d) Programs and infrastructure to facilitate and encourage the community to reduce waste and recycle, including community-led efforts;

(e) Creating, expanding, and maintaining equitable outreach and engagement strategies, including a public website to educate residents on the progress of waste reduction efforts;

(f) Other activities directly related to the reduction of waste from single-use plastic bags, trash, other single-use plastics and other waste and its impact on the waterways and environment within the city and the Cache la Poudre watershed;

(g) Providing assistance to members of the public in need of assistance to access and use reusable carryout bags and to enable and facilitate knowledge about and participation in waste reduction programs and strategies; and

(h) Funding or providing other support for programs and activities conducted by others in furtherance of these purposes.

12-312. Ban on Single-Use Plastic Carryout Bags.

(a) A store or retail food establishment is prohibited from providing a single-use plastic carryout bag to a customer; except that a retail food establishment need not comply with this section if the retail food establishment:

(1) Prepares or serves food in individual portions for immediate on- or off-premises consumption; and

(2) Is not a grocery store or convenience store.

12-313. Recycled Paper Carryout Bag Fee; Records; Reporting; Audits.

(a) A store may provide a customer with one or more recycled paper carryout bags at the point of sale only if the customer pays a recycled paper carryout bag fee of ten cents per recycled paper carryout bag. For each recycled paper carryout bag fee collected pursuant to this subsection (a), the store is required to:

(1) Remit sixty percent (60%) to the City. The City shall use these funds to implement the waste reduction program. The City Manager may amend the waste reduction program from time to time, provided the amendments are consistent with the scope and purposes of this Article.

(2) Retain forty percent (40%), which portion of the fee does not count as revenue for the purpose of calculating sales tax. Each store must use its retained share for reimbursement of expenses directly related to implementation of this

Article, including for signage, staff training, and support for customers, as well as ongoing expenses for compliance and promotion of the use of reusable carryout bags and for plastic pollution and waste reduction in the store or in the community. No penalties or fines assessed for noncompliance may be paid using the retained share.

(3) The recycled paper carryout bag fee set forth in subsection (a) of this section does not apply to a customer that provides evidence to the store that the customer is a participant in a federal or state food assistance program.

(b) In providing carryout bags for a fee pursuant to this section, a store is required to:

(1) For each customer provided a carryout bag for a fee, provide on the customer's transaction receipt a record of the number of carryout bags provided as part of the transaction and the total amount of fees charged for the carryout bags provided, itemized by type of carryout bag;

(2) Not refund to the customer any portion of the recycled paper carryout bag fee, either directly or indirectly, or advertise or otherwise convey to customers that any portion of the recycled paper carryout bag fee will be refunded;

(3) Conspicuously display a sign in a location inside or outside the store that alerts customers to the recycled paper carryout bag fee; and

(4) On a quarterly basis, remit to the City of Fort Collins Finance Department from the total amount of recycled paper carryout bag fees collected in the previous quarter the amount that is owed to the City.

(5) On an annual basis, report the number of reusable carryout bags sold and how it has expended its retained share of the recycled paper carryout bag fee. The City Manager will designate, from time to time, the form and timing of the annual report due under this subsection (b)(5). The store shall also maintain such books, accounts, invoices, or other documentation necessary to verify the accuracy and completeness of such records.

(6) It is the duty of each store to keep and preserve all documents and records required to be retained under this subsection (b) for a period of three (3) years from the end of the calendar year in which the documents or records were generated. If requested by the City, a store 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. 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. To the extent permitted by law, all such records must be treated as confidential commercial information.

(7) The requirements of this section only apply to stores that offer recycled paper carryout bags to customers. The City Manager or their designee may establish a process to determine whether a store is exempt from the requirements of this section because it does not offer recycled paper carryout bags to customers.

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

(9) Nothing in this Article prohibits 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.

12-314. Ban on Polystyrene Containers.

A retail food establishment shall not distribute an expanded polystyrene product for use as a container for ready-to-eat food.

12-315. Reporting to City Council.

(a) The City Manager will provide to the City Council an annual report on implementation and status of the matters described in this Article after the end of 2025 and each calendar year thereafter, which may address:

(1) equity impacts;

(2) compliance and outcomes including performance metrics related to number and type of bags distributed; and

(3) other relevant and complementary metrics consistent with the scope and purpose of this Article as recommended by City staff.

12-316. Rulemaking.

The City Manager may adopt reasonable and necessary administrative rules and regulations to implement the provisions of this Article.

12-317. Violations and Penalties.

(a) 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).

(b) For purposes of this section, each retail sales transaction in which a violation of this Article is committed, regardless of whether multiple violations of this Article are committed in one retail sales transaction, constitutes a single violation of this Article.

(c) The City shall not enforce a violation of this Article against a retail food establishment located within a school.

Introduced, considered favorably on first reading on February 4, 2025, and approved on second reading for final passage on February 18, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: February 28, 2025

Approving Attorney: Ted Hewitt