FOR SECOND READING-----APRIL 9

COUNCIL BILL NO. 5

Series 2013

AN ORDINANCE ADOPTING CHAPTER 12 OF TITLE 5 OF THE BRECKENRIDGE TOWN CODE; ESTABLISHING A "DISPOSABLE BAG FEE"; PROVIDING FOR THE PAYMENT AND COLLECTION OF SUCH FEE; AND PROVIDING OTHER DETAILS RELATED TO THE DISPOSABLE BAG FEE

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. Title 5 of the Breckenridge Town Code is amended by the addition of a new Chapter 12, to be entitled " Disposable Bag Fee", which shall read in its entirety as follows:

CHAPTER 12

DISPOSABLE BAG FEE

SECTION:

5-12-1: Short Title
5-12-2: Authority
5-12-3: Intent
5-12-4: Purpose
5-12-5: Legislative Findings
5-12-6: Definitions
5-12-7: Disposable Bag Fee Established
5-12-8: Disposable Bag Fee Requirements
5-12-9: Retention, Remittance, and Transfer of the Disposable Bag Fee
5-12-10: Required Signage
5-12-11: Exemption
5-12-12: Audits and Collection of the Disposable Bag Fee
5-12-13: Hearings
5-12-14: Penalties

5-12-1: SHORT TITLE: This Chapter is to be known and may be cited as the "Town Of Breckenridge Disposable Bag Fee Ordinance."

5-12-2: AUTHORITY: This Chapter is adopted by the Town Council pursuant to the following authority:

A. Section 31-15-103, C.R.S. (concerning municipal police powers).

B. The authority granted to home rule municipalities by Article XX of the Colorado Constitution.

C. The powers contained in the Breckenridge Town Charter.

5-12-3: INTENT:

A. The Disposable Bag Fee adopted by this Chapter is necessary to address the environmental problems associated with Disposable Bags and to relieve Town taxpayers of the costs imposed upon the Town associated with the use of Disposable Bags. The Town Council intends that the requirements of this Chapter will assist in offsetting the costs associated with using Disposable Bags by paying for the mitigation, educational, replacement, and administrative efforts of the Town.

B. The Disposable Bag Fee established by this Chapter is not designed to raise revenues to defray the general expenses of Town government, but rather is a charge imposed for the purpose of defraying the cost of the particular Town services and programs described in this Chapter.

5-12-4: PURPOSE: It is the purpose of this Chapter to protect the public health, safety, and welfare, and to implement both the Town's SustainableBreck Plan and the Town's Comprehensive Plan.

5-12-5: LEGISLATIVE FINDINGS: The Town Council finds and determines as follows:

A. The use of all disposable shopping bags (plastic and paper) has significant environmental impacts on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, water consumption, and solid waste generation.

B. After several years of public involvement the Town Council adopted the "SustainableBreck Plan" in 2011, which sets forth a series of sustainability initiatives that the Town should undertake. One such initiative is to "(e)ncourage reduction in the use of Disposable Bags."

C. Despite recycling and voluntary efforts to control pollution from Disposable Bags, relatively few Disposable Bags are recycled, and these bags last decades in the landfill or end up as litter.

D. Numerous studies have documented the prevalence of Disposable Bags littering the environment, blocking storm drains, and endangering wildlife.

E. Approximately two billion Disposable Bags are used annually in Colorado, but less than five percent are recycled.

F. The best alternative to Disposable Bags is to shift to Reusable Bags for shopping.

G. The Town Council aims to conserve resources, reduce greenhouse gas emissions, waste, and litter, and to protect the public health, safety, and welfare, including wildlife, all of which increase the quality of life for the Town's residents and visitors.

H. Studies document that charging a mandatory fee on Disposable Bags can dramatically reduce the use of these bags.

I. The Town of Breckenridge believes that residents and visitors should use Reusable Bags and that a fee on the distribution of Disposable Bags is appropriate to dissuade the use of Disposable Bags and fund the Town's efforts to educate residents, businesses, and visitors about the impact of Disposable Bags on the regional environmental health and to fund the use of Reusable Bags, Town cleanup events, and infrastructure and programs that reduce waste in the community.

J. Based on the information that has been provided to the Town Council by the Town staff, the Disposable Bag Fee imposed by this Chapter bears a reasonable relationship to the anticipated cost of providing the Town programs and services described in this Chapter.

5-12-6: DEFINITIONS: As used in this Chapter, the following words shall have the following meanings. Where terms are not defined, they shall have their ordinarily accepted meanings within the context that they are used.

CUSTOMER:	Any person who makes a retail purchase from a Retail Store.
DISPOSABLE BAG:	Except as provided in Section 5-12-11, any bag, other than a Reusable Bag, that is provided to a customer by a retailer at the point of sale for the purpose of transporting goods.
DISPOSABLE BAG FEE:	The Town fee imposed by this Chapter that is required to be paid by each consumer making a purchase from a Retail Store for each Disposable Bag used during the purchase, and imposed for the purpose of mitigating the impacts of Disposable Bags.

DISPOSABLE BAG FEE PUBLIC OUTREACH PLAN:	A program to be put in place by the Town to raise awareness and educate both residents and visitors on the Disposable Bag Fee. The program shall at a minimum include: the development of informational signage for all Retail Stores; informational sessions and communications with Retail Stores to explain the Disposable Bag Fee and the Retail Store's obligations; and the production of a "Breckenridge Reusable Bag" and distribution of such bags to lodging companies and Retail Stores.
FINANCIAL SERVICES MANAGER:	The Financial Services Manager of the Town, or such person's designee.
RETAIL STORE:	Any public commercial business engaged in the sale of personal consumer goods, household items, or groceries to customers who use or consume such items. "Retail Store" does not include temporary vendors at farmer's markets or other temporary events; or restaurants or other businesses (e.g., service providers such as salons and spas) where retail sales are clearly secondary and incidental to the primary activity occurring within the business. .
REUSABLE BAG:	A plastic bag that is at least 2.25 mil thick or a bag made of canvas, woven polypropylene, or similar types of durable materials.

5-12-7: DISPOSABLE BAG ESTABLISHED: For each Disposable Bag provided to a customer, each Retail Store shall collect from customers, and customers shall pay, at the time of purchase a Disposable Bag Fee of $0.10. The Disposable Bag Fee shall be remitted by the Retail Store to the Town in accordance with Section 5-12-9 of this Chapter.

5-12-8: DISPOSABLE BAG FEE REQUIREMENTS.

A. Retail Stores shall record the number of Disposable Bags provided and the total amount of Disposable Bag Fees charged on the customer transaction receipt as a separate and distinct item.

B. A Retail Store shall not refund to the customer any part of the Disposable Bag Fee, either directly or indirectly, nor shall the Retail Store advertise or state to customers that any part of the Disposable Bag Fee will be refunded to the customer.

C. A Retail Store shall not exempt any customer from any part of the Disposable Bag Fee for any reason except as stated in Section 5-12-11.

5-12-9: RETENTION, REMITTANCE, AND TRANSFER OF THE DISPOSABLE BAG FEE:

A. A Retail Store may retain 50 percent of each Disposable Bag Fee collected, which is the "Retained Percent~~.~~", up to a maximum amount of $1,000 per month within the first 12 months of the effective date of this ordinance and $100 per month maximum for all months thereafter.

B. The Retained Percent may only be used by the Retail Store to:

1. Provide educational information about the Disposable Bag Fee to customers;

2. Provide the signage required by Section 5-12-10, "Required Signage";

3. Train staff in the implementation and administration of the fee;

4. Improve or alter infrastructure to allow for the implementation, collection, administration of the fee;

5. Collect, account for, and remit the fee to the Town;

6. Develop and display informational signage to inform consumers about the fee

7. Encourage the use of Reusable Bags or promote recycling of ~~plastic~~ disposable bags; and

8. Improve infrastructure to increase ~~plastic~~ disposable bag recycling.

C. The ~~Retained Percent shall not be classified as revenue for the purposes of calculating sales tax~~Disposable Bag Fee shall be exempt from the Town of Breckenridge sales tax.

D. The amount of the Disposable Bag Fee collected by a Retail Store in excess of the Retained Percent shall be paid to the Town and shall be used only as set forth in Subsection G to mitigate the effects of Disposable Bags in Breckenridge.

E. Every Retail Store providing Disposable Bags subject to the Disposable Bag Fee shall be liable and responsible for the payment of the amount outlined in Subsection D. above to the Town, and shall file a report each month on forms prescribed by the Financial Services Manager before the twentieth day of each month for the preceding month. ~~A Retail Store shall pay and the Town shall collect all Disposable Bag Fees. The Town shall provide the necessary forms for Retail Stores to file with the Town in order to demonstrate compliance with the provisions of this ordinance.~~

1. All sums of money collected by Retail Stores for the Disposable Bag Fee imposed by this chapter minus the "Retained Percent" are intended exclusively for use as outlined in Subsection G. Each Retail Store required to collect and remit the Disposable Bag Fee shall hold such monies in trust until paying them to the town.

F. The Disposable Bag Fee shall be administered by the Financial Services Manager. The Financial Services Manager is authorized to adopt administrative rules pursuant to Chapter 18 of Title 1 of this Code to implement this Chapter, prescribe forms and provide methods of payment and collection, and otherwise implement requirements of this Chapter.

G. Funds from the Disposable Bag Fee paid to the Town shall be used only for the expenditures that are intended to mitigate the effects of Disposable Bags, including without limitation the following:

1. Administrative costs associated with developing and implementing the Disposable Bag Fee.

2. Activities of the Town to:

a. Provide Reusable Bags to residents and visitors;

b. Educate residents, businesses, and visitors about the impact of Disposable Bags on the Town's environmental health, the importance of reducing the number of Disposable Bags entering the waste stream, and the impacts of Disposable Bags on wildlife and the environment;

c. Fund programs and infrastructure that allow the Breckenridge community to reduce waste associated with Disposable Bags;

d. Purchase and install equipment designed to minimize bag pollution, including, recycling containers, and waste receptacles associated with Disposable Bags;

e. Fund community cleanup events and other activities that reduce litter associated with Disposable Bags;

f. Maintain a public website that educates residents on the progress of waste reduction efforts associated with Disposable Bags; and

g. Fund the administration of the Disposable Bag Fee program.

H. No Disposable Bag Fees collected in accordance with this Chapter shall be used only for general municipal or governmental purposes or spending.

I. Disposable Bag Fees collected in accordance with this Chapter shall be continually available for the uses and purposes set forth in subsection (g) of this section without regard to fiscal year limitation. No Disposable Bag Fee funds shall be used for any purpose not authorized in this Chapter.

5-12-10: REQUIRED SIGNAGE: Every retail store required to collect the Disposable Bag fee shall Display a sign in a location outside or inside of the store, viewable by customers, alerting customers to the Town of Breckenridge's Disposable Bag Fee.

5-12-11: EXEMPTION: The Disposable Bag Fee imposed by this Chapter does not apply to:

A. A bag brought into a Retail Store by a customer and used to transport goods from the Retail Store.

B. A bag that was previously used and made available to customers at a Retail Store.

~~B.~~C. A bag provided 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.

~~C.~~D. Bags used by consumers inside Retail Stores to:

a. Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items like nails, nuts, and screws;

b. Contain or wrap frozen or fresh foods, meat, or fish;

c. Contain or wrap flowers, potted plants, or other items where dampness may be a problem; and

d. Contain unwrapped prepared foods or bakery goods;

~~D.~~E. A non-handled bag used to protect purchased items from damaging or contaminating other purchased items when placed in a Disposable Bag or a Reusable Bag.

~~E.~~F. Bags used for loose small retail items, including, but not limited to, jewelry, buttons, beads, ribbon, herbs and spices, medical marijuana or adult-use marijuana if sold by the holder of a permit issued pursuant to applicable law, and similar items.

~~F.~~G. Bags provided by pharmacists to contain prescription drugs.

~~G.~~H. Newspaper bags, door-hanger bags, laundry-dry cleaning and garment bags, and bags sold in packages containing multiple bags for uses such as food storage, garbage, pet waste, or yard waste.

5-12-12: AUDITS AND COLLECTION OF THE DISPOSABLE BAG FEE:

A. Each Retail 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 Chapter, 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 Retail 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 Retail Store shall make its records available for audit by the Financial Services Manager during regular business hours for the Town to verify compliance with the provisions of this Chapter. All such information shall be treated as confidential commercial documents.

C. If any person fails, neglects, or refuses to collect or pay the Disposable Bag Fee, or underpays the Disposable Bag Fee, the Financial Services Manager 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 Financial Services Manager shall serve upon the delinquent Retail Store personally, by electronic mail or by first class mail directed to the last address of the Retail Store on file with the Town, 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 ~~20~~ 30 calendar days after the date of the notice. The Retail Store may request a hearing on the assessment as provided in Section 5-12-13 of this Chapter.

D. If payment of any amount of the Disposable Bag Fee due to the Town 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 percent of total due;

2. Interest charge of one percent of total penalty per month.

5-12-13: HEARINGS:

A. A Retail Store may request a hearing on any proposed fee imposed under this Chapter after receiving a Notice of Final Determination, by filing a written request for hearing within ~~20~~ 30 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 Retail Store seeks and such other information as the Financial Services Manager may prescribe.

B. The Financial Services Manager shall conduct the hearing under the procedures prescribed by Chapter 19 of Title 1 of this Code , except that the Financial Services Manager shall notify the Retail Store in writing of the time and place of the hearing at least ten days before it is scheduled, unless the Retail Store agrees to a shorter time. The hearing shall be held within 60 days of the date of receipt of the request for a hearing, unless the Retail Store agrees to a later date.

5-12-14: PENALTIES:

A. It is unlawful for any person to violate any provision of this Chapter.

B. The first or second violation of this Chapter within two years, based on the date of the violation, shall be an infraction. Every person found liable for such a violation shall be punished as provided in Section 1-4-1-1 of this Code; provided, however, the maximum penalty for each such violation shall be a fine of $500.00.

C. A third and each subsequent violation of this Chapter within two years, based on the date of violation, shall be a misdemeanor offense. Any person convicted of such a violation shall be punished as provided in Chapter 4 of Title 1 of this Code.

Section 2. The Financial Services Manager shall develop and implement the administrative and financial processes for the collection of the Disposable Bag Fee imposed by this ordinance.

Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 4. The Town Council finds, determines and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 5. This ordinance shall be published and become effective October 1, 2013; provided, however, that the Disposable Bag Public Outreach Plan has been approved by the Town Council and implemented not later than October 1, 2013. If the Disposable Bag Public Outreach Plan has not been approved and implemented prior to October 1, 2013, then the collection of the Disposable Bag Fee and required store signage provisions of this ordinance shall not take effect until the Town Manager certifies that Disposable Bag Public Outreach Plan has been approved and implemented by the Town.

Section 6. The Council may annually evaluate the Disposable Bag Fee as set in 5-12-7 and the Retained Percent as set in 5-12-9 A and adjust these amounts by resolution of the Council.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2013. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of ____, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By_____
John G. Warner, Mayor

ATTEST:

_____

Town Clerk