

TOWN OF NEDERLAND, COLORADO

ORDINANCE NUMBER 737

AN ORDINANCE AMENDING CHAPTER 7 OF THE NEDERLAND MUNICIPAL CODE BY THE ADDITION OF A NEW ARTICLE VII, TO BE ENTITLED “WASTE MINIMIZATION”

WHEREAS, The Board of Trustees (“The Board”) has a duty to promote the health, safety, and welfare of its citizens; and

WHEREAS, The Board has made a commitment to preserving resources and protecting the natural environment through the adoption of Resolution 2011-21 and the Nederland 2020 Vision Statement; and

WHEREAS, the use of all single-use disposable bags (plastic and paper) has severe environmental impacts 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 single-use disposable bags, very few single-use disposable bags are recycled, and these bags can last decades or more in the landfill, taking up valuable landfill space; and

WHEREAS, numerous studies have documented the prevalence of single-use disposable bags littering the environment, blocking storm drains and endangering wildlife; and

WHEREAS, approximately two billion (2,000,000,000) single-use plastic bags are used annually in Colorado but less than five percent (5%) are recycled; and

WHEREAS, it is known and documented that disposable paper bags are not environmentally sound alternatives to disposable plastic bags because the production of these types of bags contributes to natural resource depletion, greenhouse gas emissions, and waterborne wastes; and

WHEREAS, the production of disposable paper bags results in greater greenhouse gas emissions, atmospheric acidification, water consumption, and ozone production than single-use plastic bags; and

WHEREAS, the Town of Nederland’s taxpayers must bear the burden of clean-up costs of litter from single-use disposable bags; and

WHEREAS, from an overall environmental and economic perspective, the best alternative to single-use plastic and paper bags is to shift to reusable bags for shopping; and

WHEREAS, there are several alternatives to single-use disposable bags readily available in the Town of Nederland; and

WHEREAS, The Board aims to conserve resources, reduce greenhouse gas emissions, waste, and litter, and to protect the public health and welfare, including wildlife, all of which increase the quality of life for the Town's residents and improve the experience of visitors; and

WHEREAS, evidence indicates that a vast majority of single-use disposable bags are used for the bagging and carryout of products purchased from retail establishments; and

WHEREAS, studies document that placing a mandatory fee on single-use disposable bags will dramatically reduce the use of both types of bags; and

WHEREAS, the Town of Nederland believes that residents and visitors should use reusable carryout bags and that a fee on the distribution of single-use bags by grocers is appropriate to fund the Town's efforts to educate residents, businesses, and visitors about the impact of trash on the regional environmental health and to fund the use of reusable carryout bags, Town cleanup events and infrastructure and programs that reduce waste in the community; and

WHEREAS, it is in the best interest of the health, safety and welfare of the citizens and visitors of Nederland to reduce the cost to the Town of solid waste disposal and to protect our environment and our natural resources by mandating a fee on disposable single use bags.

NOW THEREFORE, BE IT ORDAINED by the Board of Trustees of the Town of Nederland, Colorado, as follows:

Section 1. Regulations Adopted. Chapter 7 of the Nederland Municipal Code is hereby amended by the addition of a new Article VII, to be entitled "Waste Minimization", which shall read in its entirety as follows:

ARTICLE VII

WASTE MINIMIZATION

SECTIONS:

7-141: SHORT TITLE

7-142: PURPOSE

7-143: FINDINGS

7-144: INTENT

7-145: AUTHORITY

7-146: DEFINITIONS

7-147: EXEMPTIONS

7-148: DISPOSABLE BAG FEE REQUIREMENTS

7-149: RETENTION, REMITTANCE, AND TRANSFER OF DISPOSABLE BAG FEE

7-150: REQUIRED SIGNAGE AT RETAIL STORES

7-151: REQUIREMENT FOR DISPOSABLE PAPER BAGS

7-152: AUDITS AND VIOLATIONS

7-153: HEARINGS

7-154: CRIMINAL SANCTIONS

7-141: SHORT TITLE: This Article shall be known and may be cited as the "Waste Minimization Ordinance."

7-142: PURPOSE: It is the purpose of this Article to protect the public health and safety and to implement the Town's Sustainability Action Plan, the 2013 Comprehensive Plan, the Boulder County Zero Waste Plan, and the objectives set forth in the Nederland 2020 Vision Statement.

7-143: FINDINGS: The Board finds as follows:

1. The Town, through its policies, programs, and laws, supports efforts to reduce the amount of waste that must be land-filled and pursues "zero waste" as a long term goal by emphasizing waste prevention efforts;
2. That 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;
3. 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;
4. Approximately two billion (2,000,000,000) single use plastic bags are used annually in Colorado but less than five percent (5%) are recycled; and

5. It has been determined that single-use paper bags are not a sustainable alternative to single-use plastic bags due to their production requiring more resources and causing greater waste and emissions than that of plastic bags.
6. The Town's taxpayers bear the costs associated with the effects of disposable bags on the solid waste stream, drainage, litter and wildlife.
7. Studies document that charging a mandatory fee on Disposable Bags can dramatically reduce the use of these bags.
8. The Town of Nederland 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.

7-144: INTENT: The disposable bag fee is necessary to address the environmental problems associated with disposable bags and to relieve taxpayers of the costs imposed upon the Town associated with the use of disposable bags. The Board intends that the requirements of this chapter will assist in offsetting the costs associated with using disposable bags to pay for the mitigation, educational, replacement, and administrative efforts of the Town.

7-145: AUTHORITY: The Town of Nederland hereby finds, determines and declares that it has the power to adopt this Article pursuant to:

1. The Town's general police powers under CRS 31-15-401, to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease;
2. The Town's authority under CRS 31-15-501, to regulate the conduct of businesses and to prohibit business practices that are offensive or unwholesome, such as those that have an irreparable and deleterious effect on the environment.

7-146: DEFINITIONS: The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

CUSTOMER: Any person who makes a retail purchase from a Retail Store.

DISPOSABLE BAG: Except as provided in Section 7-147, 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.

WASTE MINIMIZATION PUBLIC OUTREACH PLAN: A program to be put in place by the Town to raise awareness and educate both residents and visitors on waste minimization and 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 "Nederland 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.

REMITTED PERCENT: The percent of each Disposable Bag Fee that is remitted by Retail Stores to the Town.

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.

RETAINED PERCENT: The percent of each Disposable Bag Fee that is retained by Retail Stores.

REUSABLE BAG: Any bag meeting the following criteria:

1. A bag that is at least 2.25 millimeters thick.
2. Is made from a material that can be cleaned and disinfected regularly;
3. Has a minimum lifetime of 75 uses; and
4. Has the capability of carrying a minimum of 18 pounds.

WASTE MINIMIZATION: Coordinated efforts to divert waste away from landfills and towards alternative means of disposal such as recycling and compost.

7-147: EXEMPTIONS: 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 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. 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 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. 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. 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. Bags provided by pharmacists to contain prescription drugs.
- G. 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.

7-148: DISPOSABLE BAG FEE REQUIREMENTS:

- A. For each Disposable Bag (paper or plastic) provided to a customer, Retail Stores shall collect from customers, and customers shall pay, at the time of purchase, a Disposable Bag Fee of \$0.10.
- B. Retail Stores shall record the number of Disposable Bags provided and the total amount of Disposable Bag Fees charged on the customer transaction receipt.
- C. 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.
- D. A Retail Store shall not exempt any customer from any part of the Disposable Bag Fee for any reason except as stated in Section 7-147.

7-149: RETENTION, REMITTANCE, AND TRANSFER OF THE DISPOSABLE BAG FEE:

- A. A Retail Store may retain 50 percent of each Disposable Bag Fee.
- 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 7-150, "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 bags; and
 8. Improve infrastructure to increase plastic bag recycling.
- C. The Retained Percent shall not be classified as revenue for the purposes of calculating 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 Nederland.
- E. 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.
- 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 Section 2-176 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 Remitted Percent of 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 and support waste minimization at Nederland businesses and public places, 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 Nederland community to reduce waste;
 - d. Purchase and install equipment designed to minimize bag pollution, including, recycling containers, and waste receptacles;
 - e. Fund community cleanup events and other activities that reduce litter;
 - f. Maintain a public website that educates residents on the progress of waste minimization efforts in the community; 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.

7-150: 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 Nederland's Disposable Bag Fee.

7-151: REQUIREMENTS FOR DISPOSABLE PAPER BAGS: No Food Store shall provide any paper bag that is not a Recycled Paper Bag. "Recycled Paper Bag" means a paper bag that is 100 percent recyclable and contains at least 40 percent post-consumer recycled content.

7-152: AUDITS AND VIOLATIONS:

- 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 calendar days after the date of the notice. The Retail Store may request a hearing on the assessment as provided in Section 7-153 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.

7-153: 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 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 Town Administrator shall conduct the hearing under the procedures prescribed by Article IX of Chapter 2 , except that the Town Administrator 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.

7-154: PENALTIES AND CRIMINAL SANCTIONS:

- 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 Chapter IX of Chapter; 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 (verify relevant section of 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 Nederland Municipal Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 4. The Board 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 Nederland and the inhabitants thereof.

Section 5. This ordinance shall be published and become effective June 1, 2015; provided, however, that the Waste Minimization Public Outreach Plan has been approved by the Board and implemented not later than June 1, 2015. If the Waste Minimization Public Outreach Plan has not been approved and implemented prior to June 1, 2015, 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 Waste Minimization Public Outreach Plan has been approved and implemented by the Town.