ORDINANCE NO. 1797
SERIES 2020

AN ORDINANCE IMPOSING A DISPOSABLE BAG TAX OF TWENTY-FIVE CENTS PER BAG BEGINNING JANUARY 1, 2022 AND PROVIDING FOR THE SUBMISSION OF THE ORDINANCE TO A VOTE OF THE REGISTERED ELECTORS AT THE REGULAR ELECTION TO BE HELD NOVEMBER 3, 2020

WHEREAS, the City of Louisville (the "City") is a Colorado home rule municipal corporation duly organized and existing under laws of the State of Colorado and the City of Louisville Home Rule Charter (the "City Charter"); and

WHEREAS, the members of the City Council of the City (the "City Council") have been duly elected and qualified; and

WHEREAS, Article X, Section 20 of the Colorado Constitution, also referred to as the Taxpayer's Bill of Rights ("TABOR"), requires voter approval for any new tax, any increase in any tax rate, the creation of any debt, and the spending of certain funds above limits established by TABOR; and

WHEREAS, pursuant to Article 12 and Section 4-8 of the City Charter, the City Council may authorize the imposition of new taxes by ordinance and upon approval of the registered electors of the City; and

WHEREAS, pursuant to Section 7-6 of the City Charter, the City Council may submit any measure to a vote of the registered electors of the City, without receipt of any petition; and

WHEREAS, the City Council has by resolution called a special election to be held on November 3, 2020 as a coordinated election pursuant to the Uniform Election Code of 1992, as amended; and

WHEREAS, TABOR requires that the City submit ballot issues, as defined in TABOR, to the City's registered electors on specified election days before action can be taken on such ballot issues; and

WHEREAS, November 3, 2020, is one of the election dates at which TABOR ballot issues may be submitted to the registered electors of the City pursuant to TABOR; and

WHEREAS, the City's Sustainability Action Plan identifies several strategies aimed at "achieving zero waste and managing resources responsibly and effectively," and external strategies developed to achieve this goal include "promoting recyclable substitutes/replacements for single-use, throw-away items" such a disposable bags; and

WHEREAS, the estimated total of disposable bags distributed in the City is approximately 4.5 million bags or 25 tons per year; and

WHEREAS, the City Council finds that use of 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 bags, many disposable bags ultimately are disposed of in landfills, litter the environment, block storm drains, and endanger wildlife; and

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

WHEREAS, the City Council finds that adoption of this ordinance referring to the voters at the November 3, 2020 election the TABOR ballot issue set forth herein concerning the imposition of a disposable bag tax, will protect the public health, safety, and welfare, and provide revenues necessary to implement the City's sustainability-related initiatives and further the goals set forth in the City's Sustainability Action Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO:

Section 1. A special municipal election will be held in the City of Louisville, County of Boulder, State of Colorado on Tuesday, November 3, 2020, between the hours of 7:00 a.m. and 7:00 p.m. (the "Election").

Section 2. Pursuant to the applicable provisions of the laws of the State of Colorado and the City Charter, the City Council hereby submits to the registered electors of the City at the Election the ballot issue specified in Section 3 of this ordinance.

Section 3. The following ballot issue, certified in substantially the form set forth below, is hereby referred to the registered electors of the City and shall appear on the ballot of the Election:

BALLOT ISSUE NO. _____

DISPOSABLE BAG TAX

SHALL CITY OF LOUISVILLE TAXES BE INCREASED BY $2,000,000 IN THE FIRST FULL FISCAL YEAR AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER, BY IMPOSING, EFFECTIVE JANUARY 1, 2022, A NEW TAX ON DISPOSABLE BAGS PROVIDED TO A CUSTOMER BY A RETAILER AT THE RATE OF UP TO TWENTY-FIVE CENTS ($0.25) PER BAG, WITH THE TAX REVENUES BEING USED TO PAY FOR OR REIMBURSE THE CITY FOR DIRECT AND INDIRECT COSTS INCURRED FOR ADMINISTERING THE TAX OR EXPENDED BY THE CITY FOR OTHER SUSTAINABILITY-RELATED INITIATIVES AND PROGRAMS, WITH THE AMOUNT OF

THE TAX BEING ALLOWED TO BE INCREASED OR DECREASED WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE AMOUNT OF THE TAX DOES NOT EXCEED $0.25 PER BAG, IN ACCORDANCE WITH ANY ORDINANCES HEREAFTER APPROVED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE; AND WITH THE CITY COUNCIL BEING AUTHORIZED TO MAKE SUCH CHANGES TO THE DISPOSABLE BAG TAX PROGRAM AS MAY BE IMPLEMENTED BY ORDINANCES HEREAFTER ADOPTED BY THE CITY COUNCIL, INCLUDING CHANGING WHICH RETAILERS MUST COLLECT THE TAX, PROVIDING FOR OR REPEALING EXEMPTIONS FROM THE TAX OR TAX CREDITS, OR CHANGING THE RATE OF THE TAX, SO LONG AS THE TAX DOES NOT EXCEED TWENTY-FIVE CENTS ($0.25) PER BAG; AND SHALL THE CITY BE AUTHORIZED TO COLLECT AND SPEND SUCH REVENUE AS A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X SECTION 20 OF THE COLORADO CONSTITUTION, AND SHALL ORDINANCE NO. 1797, SERIES 2020, WHICH IMPOSES THE TAX, BE APPROVED?

YES _____

NO _____

Section 4. If a majority of the registered electors voting at the Election vote "yes" in response to the ballot issue specified in Section 3 of this ordinance, the issue shall be deemed to have passed and the Louisville Municipal Code shall be amended as set forth in Section 5 of this ordinance.

Section 5. Title 3 of the Louisville Municipal Code is hereby amended by a new Chapter 3.34 to read as follows:

TITLE 3 – REVENUE AND FINANCE

Chapter 3.34 – Disposable Bag Tax

Sec. 3.34.010. Purpose and legislative intent.

The purpose of this Chapter is to protect the public health, safety, and welfare and implement the City's Sustainability Action Plan, as the same may be amended time to time by the City Council. The City Council finds the disposable bag tax set forth herein is reasonable and necessary to address the environmental problems associated with disposable bags and to relieve the City's taxpayers the costs imposed upon the City associated with the use of disposable bags. The purpose of this tax is to increase the revenue base for the City to pay or reimburse the City for direct and indirect costs incurred or expended by the City for administration of the disposable bag tax and to provide revenues for other sustainability-related initiatives of the City. Revenues from the tax shall be

deposited in the general fund and shall be available to pay for the expenses as set forth in this Chapter.

Sec. 3.34.020. Definitions.

As used in this Chapter, unless the context clearly demonstrates otherwise, words and phrases shall have the meanings as defined in Section 3.20.020 of this Code. In addition, the following words and phrases shall have the following meanings:

A. *Disposable bag* means a bag that is not a reusable bag. Disposable bag does 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;

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

(e) A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recyclable paper bag or reusable bag.

2. Bags provided by pharmacists to contain prescription drugs.

3. Newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold in packages containing multiple bags for uses such a food storage, garbage, pet waste, or yard waste bags.

B. *Disposable bag tax* means the tax imposed by this Chapter and required to be paid by each consumer making a purchase from a retailer for each disposable bag used during the purchase.

C. *Food store* means a retail establishment or business located within the City in a permanent building, operating year round, that is a full-line, self-service market and that sells a line of staple foodstuffs, meats, produce, or dairy products or other perishable items.

D. *Recycled paper bag* means a paper bag that is one hundred percent (100%) recyclable and contains at least forty percent (40%) post-consumer recycled content.

E. *Retailer* shall have the meaning set forth in Section 3.20.020 of this Code, except that, for the purposes of this Chapter, "retailer" does not include:

1. Temporary vending establishments for fruits, vegetables, packaged meats, and dairy;

2. Vendors at farmer's markets or other temporary events;

3. Businesses at which foodstuffs are an incidental part of the business. Food sales will be considered "incidental" if such sales comprise no more than two percent (2%) 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.

F. *Reusable bag* means a bag that is:

1. Designed and manufactured to withstand repeated uses over a period of time;

2. Made from a material that can be cleaned and disinfected regularly;

3. At least 2.25 mil thick if made from plastic;

4. Has a minimum lifetime of seventy-five (75) uses; and

5. Has the capability of carrying a minimum of eighteen (18) pounds.

Sec. 3.34.030. Imposition and amount of tax; vendor liable for tax; vendor's fee.

A. In addition to any other tax imposed by law, there is levied and shall be paid and collected a disposable bag tax of twenty-five cents ($0.25) per bag.

B. Each retailer within the City shall collect, remit, and pay the tax for each disposable bag provided to a customer.

C. Retailers shall record the number of disposable bags provided and the total amount of disposable bag taxes charged on the customer transaction receipt.

D. A Retailer shall not refund to the customer any part of the disposable bag tax, nor shall a retailer advertise or state to customers that any part of the disposable bag tax will be refunded to the customer.

E. A retailer shall not exempt any customer from any part of the disposable bag tax for any reason except as set forth in Section 3.34.120, "Exceptions."

F. A retailer may retain ten cents ($0.10) of each disposable bag tax collected as a vendor's fee, which shall not be classified as revenue for the purpose of calculating sales tax, and which may be used for the following purposes:

1. Provide educational information about the disposable bag tax to customers;

2. Provide the signage required by Section 3.34.100;

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

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

5. Collect, account for, and remit the tax to the City;

6. Develop and display informational signage to inform customers about the tax, encourage the use of reusable bags, or promote the recycling of plastic bags; and

7. Improve infrastructure to increase plastic bag recycling.

Sec. 3.34.040. Taxes collected are held in trust.

All sums of money paid by a person as the disposable bag tax imposed by this Chapter are public monies that are the property of the City. The person required to collect and remit the tax shall hold such monies in trust for the sole use and benefit of the City until paying them to the City.

Sec. 3.34.050. Licensing; filing of returns; recordkeeping.

A. Every person with a duty to collect the tax imposed by this Chapter shall obtain a license as set forth in Section 3.20.402 of this Code to collect the tax,

report such taxes collected on forms prescribed by the Finance Director, and remit such taxes to the City in accordance with the required reporting period for sales taxes and file such returns as provided in Section 3.20.406 of this Code. Any due date, payment date, or deadline for paying tax due, providing information, or taking other action that falls on a Saturday, Sunday, or legal holiday recognized by either the federal government or State of Colorado shall be extended to the first business day following such weekend or holiday.

B. Date of payment shall be evidenced by the postmark date if mailed or by the date the City receives confirmation that the funds have been received through ACH payment; otherwise, date of payment shall be evidenced by the date on the receipt issued by the City cashier. For good cause shown, and upon written request of the taxpayer, the Finance Director may extend the time for making returns and paying tax due. The request must be received by the Finance Director no later than two (2) days prior to the date the return is due. The Finance Director may also, upon advance written request of the taxpayer and in the Finance Director's sole discretion, authorize the filing of returns and payment of taxes at such intervals as will better accommodate the convenience of the taxpayer. The Finance Director may grant such request if it is determined, in the Finance Director's sole discretion, that the collection of the tax will not be jeopardized, that the realization of amounts owed will not be delayed, and that administrative hardship to the City will not be caused by reason of the granting of such request. Authorization for such alternate method of reporting may be revoked by the Finance Director if the taxpayer becomes delinquent or if the Finance Director otherwise determines in the Finance Director's sole discretion that such alternative method will jeopardize collection of the tax, result in delay of amounts owed, or otherwise cause administrative hardship to the City. Immediately following notice of such revocation, the taxpayer shall file returns and pay tax as otherwise required by this Chapter.

C. A taxpayer engaged in business at two or more locations within the City may file one disposable bag tax return for all such locations, when accompanied by a supplemental schedule showing the tax due for each location.

Sec. 3.34.060. Books and records to be preserved.

It is the duty of every taxpayer to keep and preserve records pertaining to the disposable bag tax imposed by this Chapter in accordance with and for the time periods set forth in Section 3.20.070 of this Code ("Duty to keep records"). If the taxpayer does not provide files in an organized format and the City's auditors must go through the taxpayer's files, folders, boxes, or other documents or records, in any form, in order to obtain records for audit, or if the taxpayer fails to provide information in a timely fashion, the City shall be entitled to charge an hourly fee for time spent organizing, gathering, or in any way assembling the taxpayer's records for audit. Such fee shall be set by the City Manager, or the Finance Director

as the Manager's designee, and shall be based on the actual labor costs incurred by the City for such time spent.

Sec. 3.34.070. Interest and penalties for failure to file tax return or pay tax.

Penalties and interest for failure of a person to collect the tax imposed by this Chapter or to make a return and remit the correct amount of tax required by this Chapter and the procedures for enforcing such penalties shall be as set forth in Section 3.20.430 of this Code ("Penalties and interest for failure to file tax return or pay tax.").

Sec. 3.34.080. Refunds.

Procedures for refunds for overpayment of taxes paid under this Chapter are as set forth in Section 3.20.420 of this Code.

Sec. 3.34.090. Assessment and enforcement of tax liability; liens; dispute resolution; hearings; appeals.

A. The procedure for assessment of taxes under this Chapter shall be as set forth in Section 3.20.425 of this Code.

B. The tax imposed by this Chapter, together with all interest and penalties pertaining thereto, is a first and prior lien on tangible personal property in which the person responsible to collect and remit the tax has an ownership interest, subject only to valid mortgages or other liens of record at the time or and prior to the recording of a notice of lien as provided in Section 3.20.460 of this Code.

C. The provisions of Sections 3.20.060 ("Statute of limitations"), 3.20.400 ("Authority of Finance Director"), 3.20.455 ("Cost of collection"), 3.20.465 ("Foreclosure by distraint"), 3.20.470 ("Jeopardy assessment"), 3.20.475 ("Recovery by action at law"), 3.20.480 (Certification of delinquent tax to County"), and 3.20.485 (Other remedies; compromise") of this Code govern the authority of the Finance Director to collect the taxes, penalties, and interest imposed by this Chapter and to impose the cost of collection of the same.

D. The provisions of 3.20.500 ("Tax disputes"), 3.20.510 ("Procedure for refund of disputed tax"), 3.20.520 ("Administrative hearings"), and 3.20.530 ("Time limitation for hearing requests") of this Code govern disputes and hearings for the same that arise under this Chapter.

E. A taxpayer aggrieved by the final decision of the Finance Director after a hearing may have the same reviewed by the District Court. The procedure of review shall be in accordance with Rule 106 of the Colorado Rules of Civil Procedure. The petition or complaint for District Court review must be filed within 30 days from the date of the final decision of the Finance Director. Any party,

including the City, may appeal the final order or decision of the Finance Director and, also, the decision of the District Court (or such other tribunal having jurisdiction), using all judicial, appellate, and extraordinary proceedings available.

Sec. 3.34.100 Required signage for retailers.

Every retailer subject to the collection of the disposable bag tax shall display a sign in a location outside or inside of the business, viewable by customers, alerting customers to the City's disposable bag fee.

Sec. 3.34.110 Requirement for disposable paper bags.

No retailer shall provide any paper bag that is not a recycled paper bag.

Sec. 3.34.120 Exemptions.

The provision of disposable bags to a customer who is a participant in a federal or state food assistance program is from the imposition of tax levied by Section 3.34.030. The burden of proving that any taxpayer is exempt from collecting or paying sales tax shall be on the taxpayer.

Sec. 3.34.130 Unlawful acts.

It shall be unlawful for any retailer, consumer or any other person subject to this Chapter:

A. To fail to make any required return by the due date;

B. To make any false or fraudulent return or other filing under this chapter;

C. To make any false statements in any return or in any other filing permitted or required by this chapter;

D. To fail to make payment to the finance director by the due date of any taxes collected or due the City, or any interest or penalty due the City;

E. To evade the collection or payment of any taxes collected or due the city or the payment of interest or penalty due the City;

F. To fail to pay by the due date such tax, interest, penalty;

G. To aid or abet another in any attempt to evade payment of such tax, interest, or penalty;

H. To issue to the City a check in payment of any taxes collected or due the City or in payment of penalty or interest due the City, which check is dishonored by the drawee of the check. In any prosecution for a violation of this subsection, introduction of the check dishonored by the drawee, bearing notice of such dishonor from the drawee, shall constitute in evidence a prima facie showing that such check was issued by the drawer at a time when the drawer had on deposit with the drawee insufficient funds to allow the drawee to honor the check on presentment; or

I. To violate any other provision of this Chapter.

Sec. 3.34.140 Violation; penalty.

A. It is unlawful to violate any of the provisions of this Chapter. Any person convicted of violating any of the provisions of this Chapter shall be subject to the general penalty provisions set forth in Section 1.28.010 of this Code, unless otherwise expressly provided in this chapter.

B. Each and every 24-hour period of violation of this chapter constitutes a distinct and separate violation of this Chapter, subject to the penalties prescribed in Section 1.28.010 of this Code.

C. Prosecution of any person for violation of this Chapter shall not reduce, eliminate or suspend any person's obligation to fulfill the requirements of this chapter or make payment of any taxes, penalties, fines or interest due hereunder and shall not limit the ability of the city to proceed under this Chapter to collect taxes under a civil suit or other method of collection.

Section 6. City tax revenues are estimated to increase by up to $2,000,000 the first full fiscal year in which the tax provided for in this ordinance is in effect. However, the revenues from said sales and use tax may be collected and spent, regardless of whether said revenues, in any year after the first full year in which said sales and use tax is in effect, exceed the estimated dollar amount stated above, and without any other limitation or condition, and without limiting the collection or spending of any other revenues or funds by the City of Louisville, under Article X, Section 20 of the Colorado Constitution or any other law.

Section 7. The provisions of this ordinance shall take effect, following passage and approval thereof as provided in Section 4, on January 1, 2022.

Section 8. If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council and the registered voters of the City hereby declare that they would have passed and approved this ordinance and each part hereof irrespective of the fact that any one part be declared invalid. The tax established by this measure is intended to be authorized under any lawful means of taxation.

Section 9. The repeal or modification of any provision of the Municipal Code of the City

of Louisville by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 10. Pursuant to Article XX of the Colorado Constitution and the City Charter, all state statutes that might otherwise apply in connection with the provisions of this ordinance (including, without limitation C.R.S. § 31-11-111) are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this ordinance and such statutes. Any such inconsistency or conflict is intended by the City Council and shall be deemed made pursuant to the authority of Article XX of the Colorado Constitution and the City Charter.

Section 11. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, PASSED ON FIRST READING, AND ORDERED PUBLISHED this 14th day of July, 2020.

Ashley Stolzmann, Mayor

ATTEST:

Meredyth Muth, City Clerk

CITY OF LOUISVILLE SEAL COLORADO

APPROVED AS TO FORM:

Kelly PC
City Attorney

PASSED AND ADOPTED ON SECOND AND FINAL READING, this 28th day of July, 2020.

Ashley Stolzmann, Mayor

ATTEST:

Meredyth Muth, City Clerk