

PUBLIC HEALTH AND SAFETY

**Chapter 124
PUBLIC HEALTH AND SAFETY**

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[HISTORY: Art. I, adopted by the Board of Trustees (now Mayor and Town Council) of the Town of Frisco 08-27-79, Ord. 79-18; Art. II, adopted by the Mayor and Town Council of the Town of Frisco 08-27-19, Ord. 19-14; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

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GENERAL REFERENCES

- Alcoholic Beverages—See Ch. 53.
- Dogs and Other Animals—See Ch. 79.
- Insertions—See Ch. 87.
- Ordinances—See Ch. 127.
- Signs—See Ch. 180, § 180-20.
- Snowmobiles—See Ch. 153.
- Zoning—See Ch. 180.

ARTICLE I
Nuisances

§ 124-1. Definitions. [Amended 06-03-80, Ord. 80-16; 11-06-90, Ord. 90-15]

As used in this article, the following terms shall have the meanings indicated:

Nuisance means any substance, act, occupation, condition or use of property declared a nuisance by this article or declared a nuisance by the State of Colorado, or by any court or agency thereof, or known as a "nuisance" at common law or which is of such nature and duration as to:

- A. Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.
- B. In any way render the public insecure in life or in the use of property.
- C. Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway or other public place or way.

§ 124-2. Nuisance Prohibited. [Amended 02-10-04, Ord. 04-02]

No person shall make or cause any nuisance to exist and no person being the owner, agent or occupant or having under his control any building, lot or premises or unimproved real estate within the town limits of the Town of Frisco, Colorado, shall maintain or allow any nuisance to be or remain therein.

§ 124-3. Authority to Declare Nuisances. [Amended 06-18-85, Ord. 85-05; 11-06-90, Ord. 90-15]

Any act, condition, substance, occupation or use of property which substantially meets the criteria of a nuisance as defined in § 124-1 above may be declared a nuisance by the Town Council, and nothing in § 124-4 below shall be construed to limit the power of the town to make such declaration. The Director of the Community Development Department or an authorized representative is hereby appointed to administer and implement this article.

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§ 124-4. Enumeration of Nuisances. [Amended 06-03-80, Ord. 80-16; 04-05-82, Ord. 82-07; 03-13-90, Ord. 90-04; 11-06-90, Ord. 90-15; 03-02-93, Ord. 93-03; 07-02-02, Ord. 02-15; 02-10-04, Ord. 04-02; 10-28-08, Ord. 08-14]

The following are declared a nuisance:

- A. Unwholesome businesses. Any offensive, unhealthy or immoral businesses or establishment within the town or within one (1) mile beyond the outer limits of the town as such outer limits are now, or may be hereafter, constituted.
- B. Discharge of liquid waste. The discharge out of or from any place of foul or nauseous liquids or substances of any kind whatsoever into or upon any ground or upon any street, alley or public place.
- C. Idling of motor vehicles. The idling of a motor vehicle of any kind for more than fifteen (15) minutes within the Town of Frisco limits, except for emergency vehicles, vehicles engaged in traffic operations, vehicles being serviced, vehicles that must idle to operate auxiliary equipment and vehicles in traffic congestion.
- D. Abandoned telecommunication facility.
- E. Removal of dead animals. The body of any animal which has not been properly disposed of within twenty-four (24) hours after death.
- F. Stagnant pond. Any cellar, vault, drain, sewer, pond or water or other place in this town that shall be nauseous or offensive to others or injurious to public health through an accumulation or deposit of nauseous, offensive or foul water or other substances.
- G. Open wells and cisterns. Any well or cistern on any property, whenever a chemical analysis or other proper test or the location of the same shows that the water of said well or cistern is probably contaminated, impure or unwholesome. Open wells and cisterns shall be adequately covered with a locked lid or other covering weighing at least sixty (60) pounds.
- H. Sinkholes or other depressions in the surface of land which have subsided or collapsed due to inadequate underground support.
- I. Handbills, posters, placards, and garage sale signs. Any handbill, poster, placard, painted or printed matter, or garage sale sign which shall be stuck, posted or pasted upon any public or private house, store or other buildings or upon any fence, power pole, telephone pole or other structure without the permission of the owner, agent or occupant thereof.
- J. Unused appliances. Any unused refrigerator, washer, dryer, freezer or other appliance within any yard or lot or carport or residential area without the door of the same being removed.

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- K. Vacant buildings. Any uninhabited building that is not properly secured to prevent normal entry.
- L. (Reserved)
- M. Inoperable vehicle. Any automobile, truck, trailer or self-propelled vehicle designed for carrying passengers which is incapable of moving under its own power and is not completely enclosed by a fitted vehicle cover, completely enclosed by a building or solid fenced enclosure six (6) feet in height, or on the premises of a business enterprise when the keeping of such vehicle is related to the operation of such business enterprise.
- N. Accumulation of garbage, trash or junk. Any accumulation of garbage, trash or junk, including but not limited to building and construction materials that endanger the public health, safety and welfare.
- O. Fire, smoke, and odor from burning. Any fire, smoke or odor that endangers the health, safety or welfare of the community.
- P. Standing dead trees. Any standing dead tree that is either (i) greater in height (as measured in feet) than the distance (as measured in feet) between any part of the trunk and the nearest point of any property line of the real property on which it is located; or (ii) located within fifteen (15) feet of any building as measured on a horizontal line between any part of the tree and the nearest point of any building.
- Q. Mountain pine beetle and beetle-infested trees. The mountain pine beetle (*Dendroctonus ponderosae*) is hereby declared to be a public nuisance. All species and varieties of live pine trees infested by the mountain pine beetle; all species and varieties of pine trees that are dead or dying and all dead pine wood to which the bark is attached which, because of their condition, may serve as a breeding place for the mountain pine beetle.

§ 124-5. Complaints.

Complaints of nuisances may be made to the Police Department, Building Inspector or any other town official. Whenever possible any complaint shall state the nature of such nuisance, the location, including the street address, the name of the owner, agent or occupant of the building or lot, if known, and the name and address of the complainant.

§ 124-6. Inspections. [Amended 03-02-84, Ord. 84-02; 04-11-06, Ord. 06-17]

- A. Whenever necessary to make an inspection to enforce this article, or whenever an authorized representative of the town has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a nuisance, the Building Inspector, police officer or other authorized representative of the town shall first present proper credentials and shall request entry. If entry is

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refused, such person shall give the owner or occupant, or if the owner or occupant cannot be located after a reasonable effort he shall leave at the building or premises, a written notice of intent to inspect not sooner than twenty-four (24) hours' written notice of intention to inspect after the time specified in the notice of intention to inspect. The notice shall state that the property owner has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by the Municipal Judge of the Town of Frisco or a judge of any other court having jurisdiction.

- B. In addition to, or in lieu of, the procedures described in subsection A above, the Building Inspector, a police officer or other authorized representative of the town may appear before the Municipal Judge of the Municipal Court of the Town of Frisco and, presentation of an affidavit upon showing probable cause, shall obtain a search warrant entitling him, the Building Inspector, a police officer or some other authorized representative of the town to enter said building or upon such premises. For purposes of this section, probable cause exists when the supporting affidavit alleges sufficient facts to warrant a person of reasonable caution to believe that a nuisance, as defined by this Article, is located or maintained on the premises to be searched. In determining whether probable cause for issuance of a search warrant exists, the Municipal Court Judge shall consider the totality of the facts and circumstances known to the affiant, and due consideration shall be given to the affiant's experience and training in evaluating the existence or probable existence of a nuisance. In determining whether probable cause exists for issuance of the search warrant, the Municipal Court Judge shall make a practical, commonsense decision as to whether, given the totality of the circumstances set forth in the affidavit, there is a fair probability that evidence of a nuisance will be found in a particular place.
- C. After obtaining a search warrant, the Building Inspector, police officer or other authorized representative of the town may enter the subject building or premises using such reasonable force as may be necessary to gain entry. It shall be unlawful for any owner or occupant of said building or premises to resist reasonable force used by any authorized agent acting pursuant to this article.
- D. Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this article, the Building Inspector, police officer or other authorized representative of the town, upon a presentation of proper credentials or identification in the case of an occupied building or premises, or possession of said credentials in the case of an unoccupied building or premises, may enter into any building or upon any premises within the jurisdiction of the Town of Frisco. In said emergency situation, such person may use such reasonable force as may be necessary to gain entry into said building or upon said premises. It is unlawful for any owner or occupant of the building or premises to deny entry to the Building Inspector, or to any police officer or other authorized representative of the town, or to resist reasonable force used by such person acting pursuant to this subsection.

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- E. For purposes of the above Subsection D, an emergency situation shall include, but not be limited to, any situation where there is imminent danger of loss of life, limb or property.

§ 124-7. Abatement. [Amended 04-05-82, Ord. 82-07; 03-02-84, Ord. 84-02; 04-11-06, Ord. 06-17; 04-08-08, Ord. 08-07]

- A. Each and every nuisance declared or defined by any ordinance of the town or otherwise is hereby prohibited. If any nuisance is found to exist upon property owned by the town, the town shall abate such nuisance as soon as is practicable.
- B. If any nuisance found to exist on public or private property shall cause such imminent danger to life, limb, property or health as to require immediate abatement, any such nuisance may be summarily abated by action of the Building Inspector, Chief of Police or such other authorized representative of the town. The costs of such abatement shall be charged and recovered as provided by section 124-8.
- C. Upon the discovery of any nuisance on public or private property in the town that is not abated pursuant to subsections A or B above, the Chief of Police, Building Inspector, or other authorized representative of the town, may, in the exercise of his discretion, notify in writing, the owner of the property on which the nuisance is discovered and require said owner to abate the same in such reasonable time and manner as prescribed. The reasonable time for abatement shall not exceed fourteen (14) days, unless extended for good cause at the reasonable discretion of the person issuing the notice. Such notice shall be signed by the official issuing the same, state that if the nuisance is not abated within the time period stated in the notice, then the town will seek an abatement order from the Municipal Court and will assess the cost of such abatement, together with an additional five percent assessment for inspection and incidental costs, and an additional ten percent assessment for the costs of collection, as a lien against the property to be collected in the same manner as real estate taxes against the property.
- D. Service of notice. If written notice to abate is given, it shall be served by:
 - 1. Posting a copy of the notice in a conspicuous place on the premises upon which said nuisance exists; and
 - 2. By mailing a copy of the notice by first class United States mail, to the last known address of the owner of said premises as reflected in the Summit County real estate or tax assessment records. At the time of mailing of said notice, the Town shall obtain a certificate of mailing from the United States Post Office.
- E. Abatement Order. If the person notified in accordance with Subsection C and D above shall neglect or refuse to comply with the notice to abate the nuisance within the time specified, such person shall be guilty of a violation of this article

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and the, Town Attorney may apply to the Municipal Court for an abatement order as follows:

1. The application shall be accompanied by an affidavit or testimony establishing to the satisfaction of the Court, based on a preponderance of the evidence, that a nuisance as defined by this article exists on the subject property, and that the town has complied with the notice requirements of subsection C and D above, and that the owner has failed to abate the identified nuisance upon the property.
2. The town shall give notice to the owner of the subject premises of its application for the abatement order in the manner as provided above in subsection D.
3. The notice of application for an abatement order shall include a copy of the town's application and its affidavit or a summary of its anticipated testimony in support of its application, as well as the time, date, and place at which the town will appear before the Municipal Court to request entry of the abatement order.
4. At the stated time, date, and place, the Municipal Court Judge shall hold a hearing to review the application for abatement order, the affidavit, if any, and any testimony or other evidence offered by the town in support of the application, as well as any testimony or other evidence presented by the owner, if present.
5. Thereafter, the Municipal Court is authorized to enter an order authorizing the town to enter upon such property, abate the nuisance and recover its costs as provided by section 124-8.
6. Upon the Municipal Court's issuance of an order authorizing the abatement of a nuisance, the Building Inspector, Chief of Police or other authorized representative of the town shall abate said nuisance or cause the same to be abated, employing such forces and persons as may be necessary to abate said nuisance or cause the same to be abated, including the employees of the town, either by contract or otherwise. All other town officials and employees are authorized and directed to render such assistance to the Building Inspector, Chief of Police or other authorized representative of the town as may be required for the abatement of such nuisance.
7. Any officer or employee of the Town of Frisco who shall be authorized herein to abate any nuisance specified in this article shall have authority to engage the necessary assistance and incur the necessary expenses thereof. The town or any of its representatives shall proceed in all abatement cases with due care and without any unnecessary destruction of property, except that in the case of a mountain pine beetle infested tree or pine tree that is dead or dying and all dead pine wood to which the bark is attached, as described in

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§124-4(Q), abatement of the public nuisance shall necessarily consist of complete destruction of the tree or wood.

§ 124-8. Costs of Abatement. [Amended 03-02-84, Ord. 84-02; 04-11-06, Ord. 06-17]

- A. The person or persons responsible for any nuisance within the town shall be liable for and pay and bear all costs and expenses of the abatement of said nuisance. The actual costs of abatement, together with an additional five-percent assessment for inspection and incidental costs and an additional ten-percent assessment for costs of collection, shall be assessed against the owner of any private property upon which a nuisance was abated and such costs and expenses may be collected by the town in any action at law, referred for collection by the Town Attorney or assessed against the property as hereinafter provided.
- B. The Town Treasurer shall mail notice of the assessment by registered mail to such owner at his address as shown in the Summit County tax assessor's records and such costs shall be paid to the Town Treasurer within thirty (30) days thereafter. Service shall be complete upon depositing the notice within the United States mail, postage prepaid for registered mail. The notice shall notify such owner that work has been performed pursuant to this Article, stating the date of performance of the work, the nature of the work and demanding payment of the costs thereof, as certified by the Town Treasurer, including an additional five-percent assessment for inspection and other incidental costs in connection therewith and an additional ten-percent assessment for costs of collection. Such notice shall also state that if said amount is not paid within thirty (30) days after mailing the notice, it shall become an assessment on and a lien against the property of said owner, will be certified by the Town Clerk to the County Treasurer as an assessment against such property, and will be collected in the same manner as a real estate taxes upon the property.
- C. Failure to pay such assessment within such period of thirty (30) days shall cause such assessment to become a lien against such property until paid and shall have priority over all liens, except general taxes and prior special assessments.
- D. The Town Clerk shall certify any assessment not paid when due to the County Treasurer, who shall collect the assessment, including the five-percent assessment for inspection and incidental costs and the additional ten-percent assessment for costs of collection, in the same manner as other taxes are collected.

§ 124-8.1. (Reserved)ⁱ

§ 124-8.2. (Reserved)ⁱⁱ

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§ 124-9. Remedies.

- A. No remedy provided herein shall be exclusive, but the same shall be cumulative, and the taking of any action hereunder, including the charge or conviction of a violation of this article in the Municipal Court of the Town of Frisco, shall not preclude or prevent the taking of another action hereunder to abate or enjoin any nuisance found to exist.
- B. Whenever a nuisance exists, no remedy provided for herein shall be exclusive of any other charge or action, and when applicable the abatement provisions of this article shall serve as and constitute a concurrent remedy over and above any charge or conviction of any municipal offense or any other provision of law. Any application of this article that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under the municipal ordinances or any other provision of law.

§ 124-10. Violations and Penalties. [Amended 08-05-80, Ord. 80-20; 02-07-89, Ord. 89-01]

- A. Whenever in any section of this article the doing of any act is required, prohibited or declared to be unlawful and no definite or penalty is provided for a violation thereof, any person, firm or corporation who shall be convicted of a violation of any such section shall, for each offense, be punishable as provided in Article 1, General Provisions, Article I.
- B. Any person who shall have possession or control of any private ground or premises, whether he is owner thereof or not, in or upon which any such nuisance shall exist or may be found, whether such nuisance has been heretofore or shall be hereafter created, shall be deemed guilty of a separate offense, as the author of a nuisance, for every period of twenty-four (24) hours' continuance of such nuisance after due notice is given to abate the same.ⁱⁱⁱ

§ 124-11. Aquatic Nuisance Species – Declaration; Prohibition; Impoundment and Inspection; Duty to Report. [Added 05-12-09, Ord. 09-10]

- A. Definitions. As used in this Section, unless the context otherwise requires:
 - 1. *Aquatic nuisance species* means exotic or nonnative aquatic wildlife or any plant species that have been determined by the State of Colorado Board of Parks and Outdoor Recreation in the Department of Natural Resources to pose a significant threat to the aquatic resources or water infrastructure of the state, including but not limited to the aquatic nuisance species commonly known as the “Zebra Mussel” and “Quagga Mussel.”
 - 2. *Conveyance* means a motor vehicle, vessel, trailer, or any associated equipment or containers, including, but not limited to, live wells, ballast tanks, and bilge areas that may contain or carry an aquatic nuisance species.

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3. *Decontaminate* means to wash, drain, dry or chemically or thermally treat a conveyance in accordance with rules promulgated by the State of Colorado Board of Parks and Outdoor Recreation in the Department of Natural Resources in order to remove or destroy an aquatic nuisance species.
 4. *Equipment* means an article, tool, implement, or device capable of containing or transporting water.
 5. *Inspect* means to examine a conveyance pursuant to procedures established by the Marina by regulation in order to determine whether an aquatic nuisance species is present and includes examining, draining, or chemically treating water in the conveyance.
 6. *Marina* means the Frisco Bay Marina.
 7. *Qualified peace officer* means a Town of Frisco police officer or Code Enforcement officer or a Level Two U.S. Fish and Wildlife Service certified watercraft inspector.
- B. Powers and duties of the Marina.
1. In order to prevent, control, contain, monitor and, whenever possible, eradicate aquatic nuisance species from the waters of the Town and waters adjacent to the Town, the Marina Manager or his designee is hereby authorized to establish, operate and maintain an aquatic nuisance species check station in order to inspect and decontaminate conveyances pursuant to this Subsection B and to Subsection C below.
 2. Upon a reasonable belief that an aquatic nuisance species may be present, the Marina Manager or his designee may:
 - a. Require the owner or operator of a conveyance to decontaminate the conveyance by use of the Marina's aquatic nuisance species check station pursuant to use policies for the same established by the Marina Manager, which use policies may include the establishment of a fee for decontamination services not to exceed the cost to the Marina of performing the services; or
 - b. Arrange for the impoundment, inspection and decontamination of the conveyance pursuant to Subsection C below.
 3. The Marina Manager or his designee may monitor the waters of the Town and waters adjacent to the Town for the presence of aquatic nuisance species.

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- C. Inspection of conveyances – impoundment and decontamination.
1. Every qualified peace officer is authorized to enforce this Section. Each such officer shall have a reasonable belief that a conveyance may contain an aquatic nuisance species before the officer orders the impoundment, inspection and/or decontamination of a conveyance.
 2. Every qualified peace officer is authorized to stop, impound, inspect for the presence of aquatic nuisance species, and order or arrange for the decontamination of a conveyance:
 - a. Prior to a vessel being launched onto waters of the Town or onto waters adjacent to the Town through facilities owned or controlled by the Town;
 - b. Prior to departing from the waters of the Town or from waters adjacent to the Town through facilities owned or controlled by the Town, or from a vessel staging area in or about the Marina;
 - c. That is visibly transporting any aquatic plant material; or
 - d. Upon a reasonable belief that an aquatic nuisance species may be present.
 3. Any impoundment and inspection and decontamination of a conveyance may continue for a maximum period of two (2) hours to permit the Town adequate time to inspect and decontaminate the conveyance and to ensure that any aquatic nuisance species has been completely eradicated from the conveyance and is no longer living.
 - a. After such two (2) hour period, the conveyance shall be returned to the person transporting the same with notice that the conveyance is either approved or disapproved to be placed in the waters of the Town or waters adjacent to the Town through facilities owned or controlled by the Town.
 - b. Any person who receives notice, pursuant to subparagraph a above, of disapproval to place a conveyance in Town waters or in waters adjacent to the Town through facilities owned or controlled by the Town may waive the two-hour impoundment/inspection/decontamination time limit and request that the Town continue its decontamination efforts. The Town shall grant or deny such request in its sole and absolute discretion.
 - c. Any person whose vessel has been inspected and decontaminated under this subpart C shall pay a fee for such services not to exceed the cost to the Marina and the Town of performing such services.

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4. Notwithstanding any provision to the contrary, no motor vehicle shall be impounded or decontaminated pursuant to this Section when such vehicle is merely drawing or towing a conveyance.
 5. Compliance with the inspection and decontamination procedures set forth in Subsections B and C of this Section is an express condition of operation of any conveyance on waters of the Town or on waters adjacent to the Town when access to such waters is provided through facilities owned or controlled by the Town.
- D. Prohibition of aquatic nuisance species. It shall be unlawful to:
1. Possess, import, export, ship or transport an aquatic nuisance species;
 2. Release, place, plant, or cause to be released, placed, or planted into the waters of the Town or waters adjacent to the Town an aquatic nuisance species;
 3. Refuse to comply with a proper order issued under this Section;
 4. Place a conveyance into the waters of the Town, or in waters adjacent to the Town through facilities owned or controlled by the Town, that has not been inspected and approved by the Marina Manger or his designee by use of the aquatic nuisance species check station at the Marina or otherwise granted approval to be placed into such waters, or that has been affirmatively disapproved for placement into Town waters or waters adjacent to the Town pursuant to Subparagraph C.3.a. above.
- E. Duty to report. A person who knows that an aquatic nuisance species is present at a specific location shall immediately report such knowledge and all pertinent information to the Marina Manger or his designee.

ARTICLE II DISPOSABLE BAGS AND DISPOSABLE BAG FEE [Added 08-27-19, Ord. 19-14; Amended 01-26-21, Ord. 21-01]

§ 124-12. Intent.

- A. The Town is concerned about the impact that single-use, plastic bags have on the surrounding rivers, lakes, forests, and wildlife. Paper bags made with no recycled materials have a similar detrimental impact on the environments in which they are produced. This Article's intent is to mitigate the impact of these bags on the Town's environment by banning plastic bags and requiring any paper bags used by Restaurants and Retail stores in Town to be at least forty percent (40%) postconsumer recycled product.

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- B. The Disposable Bag Fee established by this Article is necessary to address the many negative environmental impacts associated with Disposable Bags and to defray the costs imposed upon the Town associated with the use of Disposable Bags. The Town Council intends that the requirements of this Article will assist in offsetting the costs associated with prohibiting Disposable Bags by paying for the mitigation, educational, replacement, and administrative efforts of the Town.
- C. The Disposable Bag Fee established by this Article is not designed to raise revenues to defray the general expenses of Town government, but rather is a fee imposed for the purpose of defraying the costs of the particular Town services and programs described in this Article.
- D. The Disposable Bag Fee imposed by this Article will be paid by those persons who, through the continued use of Disposable Bags, are contributing to the public health and environmental problems the Town is addressing with this Article.

§ 124-13. Purposes.

The purposes of this Article are: (i) to protect the public health, safety, and welfare; (ii) to protect the natural environment and wildlife; (iii) to implement both the Town's 2019-2020 Strategic Plan, including its Climate Action Plan, initiatives to promote reusable products, and the Town's Comprehensive Plan.

§ 124-14. Definitions.

As used in this Article, 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: means any person who makes a retail purchase from a Retail Store.

Disposable bag: means, except as provided in Section 124-19, 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: means the Town fee imposed by this Article 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. On and after September 1, 2021, the term "Disposable Bag" means any paper bag that is provided to a customer at a Retail Store or Restaurant that contains at least 40 percent postconsumer recycled content.

Disposable bag fee public outreach plan: means 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 informational sessions and communications with Retail Stores to explain the Disposable Bag Fee and the Retail Store's obligations.

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Finance director: means the Finance Director of the Town of Frisco, or such person's designee.

Paper bag: means any bag made of paper product containing less than forty percent (40%) postconsumer recycled product.

Plastic bag: means any bag made of a thin, flexible plastic material, especially but not limited to one with handles supplied by a store to carry goods purchased there.

Retail store: means 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: means a bag made of canvas, woven polypropylene, or similar types of durable materials.

Restaurant: means an establishment that stores, prepares, or packages food for human consumption or serves or otherwise provides food for human consumptions 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

§ 124-15. Prohibited Disposable Bags.

Except where specifically exempted by provisions of this article, the following types of Disposable Bags are hereby prohibited from use in Retail Stores and Restaurants: Plastic Bags, and Paper Bags containing less than 40 percent postconsumer recycled content.

§ 124-16. Disposable Bag Fee Established.

For each allowed 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 \$0.25. The Disposable Bag Fee shall be remitted by the Retail Store to the Town in accordance with Section 124-17 of this Article. The Town Council may annually evaluate and change by resolution the amount of the Disposable Bag Fee, the amount of the Retained Percent, or both the amount of the Disposable Bag Fee and the amount of the Retained Percent.

§ 124-17. 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.

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- 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 124-19.

§ 124-18. 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 \$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 124-18, “Required Signage”;
 - 3. Train staff in the implementation and administration of the fee;
 - 4. Improve or alter infrastructure or computer programs 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 and/or promote the recycling of paper bags; and
 - 8. Improve infrastructure to increase Disposable Bag recycling.
- C. The Disposable Bag Fee shall be exempt from the Town of Frisco 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 Frisco.
- 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 Finance Director before the twentieth day of each month for the preceding month. All sums of money collected by Retail Stores for the Disposable Bag Fee imposed by this article minus the “Retained Percent” are intended exclusively for use as outlined in Subsection G. Each Retail Store required to

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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 Finance Director. The Finance Director is authorized to adopt administrative rules to implement this Article, prescribe forms and provide methods of payment and collection, and otherwise implement requirements of this Article.
- 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 Frisco 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 Article shall be used only for general municipal or governmental purposes or spending.
- I. Disposable Bag Fees collected in accordance with this Article 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 Article.

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§ 124-19. 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 Frisco's Disposable Bag Fee.

§ 124-20. Exemptions.

The Disposable Bag Fee imposed by this Article 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.
- 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.
- 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;
- 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.
- 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.
- G. Bags provided by pharmacists to contain prescription drugs.
- 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.
- I. Disposable Bags provided at Farmers Markets, temporary vendors, Restaurants, and any other business that is not defined as a Retail business.

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§ 124-21. 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 Article, 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 Finance Director during regular business hours for the Town to verify compliance with the provisions of this Article. 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 Finance Director 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 Finance Director 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 30 calendar days after the date of the notice. The Retail Store may request a hearing on the assessment as provided in Section 124-21 of this Article.
- 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; and
 - 2. Interest charge of one percent of total penalty per month.

§ 124-22. Hearings.

- A. A Retail Store may request a hearing on any proposed fee imposed under this Article after receiving a Notice of Final Determination, by filing a written request for hearing within 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 Finance Director may prescribe.

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- B. The Finance Director 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.

§ 124-23. Violation and Penalties.

- A. On and after September 1, 2021 it is unlawful to:
1. Sell, provide, distribute, or give away to a customer a plastic bag except as provided in Section 124-20; or
 2. Sell, provide, distribute, or give away to a customer in a Retail store or Restaurant a paper bag that does not contain at least forty percent (40%) postconsumer recycled content.
- B. It is unlawful for any person to violate any provision of this Article.
- C. Every person found liable for such a violation shall be punished as provided in Section 1-14 of this Code.

ⁱEditor's Note: Former § 124-8.1, Licensing of pine beetle exterminators required; methods for extermination, added 04-05-82, Ord. 82-07; amended 03-20-84, Ord. 84-02; and repealed 11-06-90, Ord. 90-15.

ⁱⁱEditor's Note: Former § 124-8.2, License fee; expiration and renewal; resolution, as added 04-05-82, Ord. 82-07; amended 03-20-84, Ord. 84-02; and repealed 11-06-90, Ord. 90-15.

ⁱⁱⁱEditor's Note: Former Subsection C which immediately followed this subsection which was added 04-05-82, Ord. 82-07 and dealt with imposition of additional penalties; and repealed 11-06-90, Ord. 90-15.