

**TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
ORDINANCE 21-01**

AN ORDINANCE AMENDING CHAPTER 124 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, CONCERNING PUBLIC HEALTH AND SAFETY, BY AMENDING ARTICLE II THEREOF, CONCERNING A DISPOSABLE BAG FEE, TO ESTABLISH A PROHIBITION ON THE USE OF PLASTIC BAGS AND CERTAIN PAPER BAGS, AND TO AMEND PROVISIONS CONCERNING FEES FOR THE USE OF PERMITTED DISPOSABLE BAGS

WHEREAS, the Town of Frisco has previously adopted a disposable bag fee through Ordinance 19-14; and

WHEREAS, the use of disposable bags has significant impacts on the environment on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, water consumption, and solid waste generation; and

WHEREAS, despite the previously imposed disposable bag fee, many disposable bags are still used in the Town of Frisco and are ultimately disposed of in landfills, litter the environment, block storm drains, and endanger wildlife; and

WHEREAS, studies and the experience of other Colorado municipalities document that banning the use of plastic bags and retaining a mandatory fee on paper bags will dramatically reduce the use of both types of bags; and

WHEREAS, the Town Council wishes to protect the local natural environment by banning the use of disposable single use plastic bags and retaining a disposable bag fee for disposable single use paper bags.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO:

Section 1. That Article II of Chapter 124, titled "Disposable Bag Fee" is hereby amended to read in its entirety as follows:

ARTICLE II

DISPOSABLE BAGS AND DISPOSABLE BAG FEE

§ 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.

B The Disposable Bag Fee ~~adopted~~ established by this Article is necessary to address the environmental problems many negative environmental impacts associated with Disposable Bags and to relieve Town taxpayers of 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 ~~using~~ prohibiting Disposable Bags by paying for the

mitigation, educational, replacement, and related 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 ~~charge 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. PurposePurposes.

~~It is the purpose~~The purposes of this Article are: (i) to protect the public health, safety, and welfare; (ii) to protect the natural environment and wildlife; (iii) and 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 124-1920, 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. 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: 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.

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.

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.
- 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 \$1,000 per month to and through August, 2020, 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 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 ~~Disposable Bags~~paper bags; and
 8. Improve infrastructure to increase ~~disposable bag~~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 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 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.

§ 124-19124-18. 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.

§ 124-20124-19. 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:
 - 1. Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items like nails, nuts, and screws;
 - 2. Contain or wrap frozen or fresh foods, meat, or fish;
 - 3. Contain or wrap flowers, potted plants, or other items where dampness may be a problem; and
 - 4. 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.

§ 124-21124-20. 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.

§ 124-22124-21. 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.
- 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.

§ 124-23124-22. 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.

Section 2. That the Finance Director shall develop and implement the administrative and financial processes for the collection of the Disposable Bag Fee imposed by this Ordinance.

Section 3. 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 Frisco and the inhabitants thereof.

Section 4. This Ordinance shall become effective in accordance with the home rule charter of the Town of Frisco.

INTRODUCED, PASSED ON FIRST READING AND PUBLICATION AND POSTING ORDERED THIS 12TH DAY OF JANUARY, 2021.

ADOPTED ON SECOND AND FINAL READING AND PUBLICATION BY TITLE ORDERED THIS 26TH DAY OF JANUARY, 2021.

TOWN OF FRISCO, COLORADO

Hunter Mortensen, Mayor

Attest:

Deborah Wohlmuth, CMC, Town Clerk