

ORDINANCE NO. 12
Series of 2011

**AN ORDINANCE OF THE TRUSTEES OF THE TOWN OF CARBONDALE,
AMENDING TITLE 7 OF THE CARBONDALE TOWN CODE TO ADD A NEW
CHAPTER 7.21 ENTITLED: "DISPOSABLE CARRYOUT BAG REGULATIONS."**

WHEREAS, the Board of Trustees has a duty to protect the public health, safety and welfare, including the natural environment and the health of its citizens and visitors; and

WHEREAS, the Board of Trustees finds that the use of all single-use shopping bags (plastic and paper) have 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 disposable carryout bags, very few disposable carryout bags are recycled, and these bags last decades in the landfill, taking up valuable landfill space; and

WHEREAS, numerous studies have documented the prevalence of single-use plastic 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, the Town of Carbondale's taxpayers must bear the brunt of clean-up costs of this litter; and

WHEREAS, of all single-use bags, plastic bags have the greatest impact on litter and wildlife; and

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

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

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

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

WHEREAS, studies document that banning plastic bags and placing a mandatory fee on paper bags will dramatically reduce the use of both types of bags; and

WHEREAS, the Board of Trustees believes that residents and visitors should use reusable carryout bags and that a fee on the distribution of paper 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, the Town's Environmental Board commits to returning to the Board of Trustees within one year of the implementation date of this ordinance to discuss the successes of the ordinance and provide suggestions for future programs; and

WHEREAS, it is in the best interest of the health, safety and welfare of the citizens and visitors of Carbondale to reduce the cost to the Town of solid waste disposal, and to protect our environment and our natural resources by banning the use of disposable single use plastic bags and to mandate a fee for the use of paper bags at grocery stores.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTESS OF THE TOWN OF CARBONDALE, COLORADO:

Section 1.

Title 7 of the Municipal Code of the Town of Carbondale is hereby amended by the addition of a new Chapter 7.21, which Chapter shall read as follows:

Chapter 7.21

DISPOSABLE CARRYOUT BAG REGULATIONS

7.21.010 Definitions.

For purposes of this Chapter, the following terms shall have the meanings ascribed to them:

Disposable Paper Bag. The term Disposable Paper Bag means a bag made predominately of paper that is provided to a customer by a Grocer at the point of sale for the purpose of transporting goods.

Disposable Plastic Bag. The term Disposable Plastic Bag means any bag that is less than two and one-quarter mil thick and is made predominately of plastic derived from petroleum or from bio-based sources, provided to a customer at the point of sale for the purpose of transporting goods. Disposable Carryout Bag does not mean:

(a) Bags used by consumers inside stores to:

- (1) Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;
- (2) Contain or wrap frozen 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;

- (5) 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.
- (b) Bags provided by pharmacists to contain prescription drugs;
- (c) Newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;

Grocer. The term Grocer means a retail establishment or business located within Carbondale Town limits in a permanent building, operating year round, that is a full-line, self-service market and which sells a line of staple foodstuffs, meats, produce, household supplies, or dairy products or other perishable items. Grocer does not mean:

- (a) Temporary vending establishment for fruits, vegetables, packaged meats and dairy.
- (b) Vendors at farmer's markets or other temporary events.
- (c) Location where foodstuffs is not the majority of sales for that business.
- (d) Location where the facility is less than 3500 sq. ft.

Reusable Bag. The term Reusable Bag means a bag that is:

- (a) Designed and manufactured to withstand repeated uses over a period of time; and
- (b) Is made from a material that can be cleaned and disinfected regularly; and
- (c) That is at least 2.25 mil thick if made from plastic; and
- (d) Has a minimum lifetime of seventy five uses; and
- (e) Has the capability of carrying a minimum of eighteen pounds.

Disposable Paper Bag Fee. The term Disposable Paper Bag Fee means a Town fee imposed and required to be paid by each consumer making a purchase from a Grocer for each Disposable Paper Bag used during the purchase.

7.21.020 Prohibitions

On and after the effective date:

- (a) No Grocer shall provide a Disposable Plastic Bag to a customer at the point of sale.
- (b) Nothing in this section shall preclude persons or Grocers from making Reusable Bags available for sale or for no cost to customers.

7.21.030 Paper Bag Fee Requirements

(a) Grocers shall collect from customers, and customers shall pay, at the time of purchase, a Disposable Paper Bag Fee of \$0.20 for each Disposable Paper Bag provided to the customer.

(b) Grocers shall record the number of Disposable Paper Bags provided and the total amount of Disposable Paper Bag Fee charged on the customer transaction receipt.

(c) A Grocer shall not refund to the customer any part of the Disposable Paper Bag Fee, nor shall the grocer advertise or state to customers that any part of the Disposable Paper Bag Fee will be refunded to the customer.

(d) A Grocer shall not exempt any customer from any part of the Disposable Paper Bag Fee for any reason except as stated in Section 7.21.070, below.

7.21.040 Voluntary Opt In

- (a) Any store or business with a Town of Carbondale business license may voluntarily opt in to the Disposable Carryout Bag Reduction Program and apply the ban and Disposable Paper Bag Fee to its business by applying with the Town of Carbondale Finance Department.

7.21.050 Retention, remittance, and transfer of the Disposable Paper Bag Fee

(a) A Grocer may retain 25% of each Disposable Paper Bag Fee collected up to a maximum amount of one thousand dollars (\$1000) per month within the first twelve (12) months of the effective date of this ordinance and one hundred dollars (\$100) per month for all months thereafter.

(b) The retained percent is limited to allowable use for the Grocer to:

- (1) Provide educational information about the Disposable Paper Bag Fee to customers;
- (2) Train staff in the implementation and administration of the fee; and
- (3) Improve or alter infrastructure to allow for the implementation, collection and administration of the fee.

(c) The portion of the fees retained by a Grocer pursuant to this ordinance shall not be classified as revenue for the purposes of calculating sales tax;

(d) The remaining portion of each Disposable Paper Bag Fee collected by a Grocer shall be paid to the Town of Carbondale Finance Department and shall be deposited in the Disposable Bag Fee Fund.

(e) A Grocer shall pay and the Town of Carbondale shall collect all Disposable Paper Bag Fees at the same time as the Town Sales Tax. The Town shall provide the necessary forms for Grocers to file individual returns with the Town, separate from the required Town Sales Tax forms, to demonstrate compliance with the provisions of this ordinance.

- (1) If payment of any amounts to the Town is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due as described in Section 7.21.080.

(f) The Disposable Paper Bag Fee shall be administered by the Town of Carbondale Finance Department.

(g) Funds deposited in the Disposable Bag Fee Fund shall be used for the following projects, in the following order of priorities:

- (1) Campaigns conducted by the Town of Carbondale and begun within 365 days of the effective date of this act, to:
 - (A) Provide reusable carryout bags to residents and visitors; and
 - (B) Educate residents, businesses, and visitors about the impact of trash on the Town's environmental health, the importance of reducing the

number of disposable carryout bags entering the waste stream, and the impact of disposable carryout bags on the waterways and the environment.

- (2) Ongoing campaigns conducted by the Town of Carbondale to:
 - (A) Provide reusable bags to both residents and visitors; and
 - (B) Create public educational campaigns to raise awareness about waste reduction and recycling;
 - (C) Funding programs and infrastructure that allows the Carbondale community to reduce waste and recycle.
 - (D) Purchasing and installing equipment designed to minimize trash pollution, including, recycling containers, and waste receptacles;
 - (E) Funding community cleanup events and other activities that reduce trash;
 - (F) Maintaining a public website that educates residents on the progress of waste reduction efforts; and
 - (G) Paying for the administration of this program.
- (h) No Disposable Paper Bag Fee collected in accordance with this ordinance shall be used to supplant funds appropriated as part of an approved annual budget.
- (i) No Disposable Paper Bag Fee collected in accordance with this ordinance shall revert to the General Fund at the end of the fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in Subsection (g) of this Section without regard to fiscal year limitation.

7.21.060 Required Signage for Grocers.

Every Grocer subject to the collection of the Disposable Paper Bag Fee shall display a sign in a location outside or inside of the business, viewable by customers, alerting customers to the Town of Carbondale imposed ban and fee.

7.21.070 Exemptions

A Grocer may provide a Disposable Paper Bag to a customer at no charge to that customer if the customer provides evidence that he or she is a participant in a Colorado Food Assistance Program.

7.21.080 Audits and Violations

- (a) Each Grocer licensed pursuant to the provisions of this Chapter shall maintain accurate and complete records of the Disposable Paper Bag Fees collected, the number of Disposable Paper 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 Grocer to keep and preserve all such documents and records, including any electronic information, for a period of three (3) years from the end of the calendar year of such records.

(b) If requested, each Grocer shall make its records available for audit by the Town Manager during regular business hours in order for the Town to verify compliance with the provisions of this chapter. All such information shall be treated as confidential commercial documents to the extent authorized by Colorado's statutory open records laws.

(c) Violation of any of the requirements of this act shall subject a Grocer to the penalties set forth in this Section.

(1) If it is determined that a violation has occurred, the Town of Carbondale shall issue a warning notice to the Grocer for the initial violation.

(2) If it is determined that an additional violation of this Chapter has occurred within one year after a warning notice has been issued for an initial violation, the Town of Carbondale shall issue a notice of infraction and shall impose a penalty against the retail establishment.

(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) \$50 for the first offense

B) \$100 for the second offense

C) For the third and all subsequent offenses there shall be a mandatory Court appearance and such penalty as may be determined by the Court pursuant to Section 1.04.080.

(4) No more than one (1) penalty shall be imposed upon a Grocer within a seven (7) calendar day period.

(5) A Grocer shall have fifteen (15) calendar days after the date that a notice of infraction is issued to pay the penalty.

(6) The penalty shall double after fifteen (15) calendars days if the Grocer does not pay the penalty; or fails to respond to a notice of infraction by either denying or objecting in writing to the infraction or penalty.

(d) If payment of any amounts of the Disposable Paper Bag Fee 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 five percent (5%) of total due, not to exceed ten dollars (\$10) each month.

(2) Interest charge of one percent (1%) of total penalty per month.

Section 2.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

Section 3

Except as specifically amended hereby, the Carbondale Municipal Code shall continue in full force and effect.

Section 4

The Board of Trustees hereby 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 Carbondale and the inhabitants thereof.

Section 5

This Ordinance shall be published pursuant to Section 3-3 of the Carbondale Home Rule Charter and become effective on May 1, 2012.

INTRODUCED, READ AND ORDERED PUBLISHED by the Board of Trustees of the Town of Carbondale on the _____ day of _____, 2011.

TOWN OF CARBONDALE

Stacey Patch Bernot, Mayor

ATTEST:

Cathy Derby, Town Clerk