

Ordinance No. 24

Series of 2011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, AMENDING TITLE 13 OF THE ASPEN MUNICIPAL CODE TO ADD A NEW CHAPTER 13.24 ENTITLED: "WASTE REDUCTION FEE."

WHEREAS, The City Council has a duty to protect the natural environment and the health of its citizens and visitors; and

WHEREAS, the use of disposable, single use bags has a significant impact on the local environment, including contributing to litter on the streets, sidewalks and public spaces, and polluting waterways; and

WHEREAS, the use and disposal of paper and plastic disposable bags into the City of Aspen and Pitkin County waste stream creates a burden on the City of Aspen's waste disposal resources; and

WHEREAS, it is documented and known that disposable plastic bags have significant environmental impacts, including the use of energy for processing and transporting; and

WHEREAS, it is known and documented that disposable paper bags made from virgin materials 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, 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, the Aspen City Council believes that residents and visitors should use reusable bags instead of single use bags when shopping, and that a fee on the distribution of paper and plastic bags is appropriate to fund the City's cleanup efforts and campaigns to educate residents, businesses, and visitors about the impact of single use items on the City's environmental health; and

WHEREAS, the fee imposed by this act is necessary to reduce the environmental, public health, economical, and societal costs resulting from the production, use, and discard of single-use, disposable carryout bags; and

WHEREAS, despite recycling and voluntary solutions to control pollution from disposable carryout bags, very few disposable carryout bags are recycled, and take up valuable landfill space or are discarded in the environment.

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

**Section 1.**

That Title 13 of the Municipal Code of the City of Aspen is hereby amended by the addition of a new Chapter 13.24, which chapter shall read as follows:

## Chapter 13.24

### WASTE REDUCTION FEE

#### 13.24.010 Definitions.

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

*Disposable Carryout Bag.* The term Disposable Carryout Bag means a bag of any material, commonly plastic or paper, which is provided to a consumer at the point of sale to carry purchases. Disposable Carryout Bag does not mean:

- (a) A carryout bag designed and intended for multiple reuse
- (b) 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;
- (c) Bags provided by pharmacists to contain prescription drugs;
- (d) 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 Aspen City 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 under 3500 sq. ft.

*Waste Reduction Fee.* The term Waste Reduction Fee means a City fee imposed and required to be paid by each consumer making a purchase from a Grocer for each Disposable Carryout Bag used during the purchase.

#### 13.24.020 Disposable Carryout Bag fee requirements

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

(b) Grocers shall record the number of Disposable Carryout Bags provided and the total amount of fee charged for the Disposable Carryout Bags on the customer transaction receipt.

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

(d) A Grocer shall not exempt any customer from any part of the Disposable Carryout Bag fee for any reason.

(e) Any store or business with a City of Aspen business license may voluntarily opt in and apply this fee to its business by applying with the City of Aspen Environmental Health Department.

### **13.24.030 Retention, remittance, and transfer of the Waste Reduction Fee**

(a) A Grocer may retain 5% of each Disposable Carryout 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 Waste Reduction 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 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 amount of each fee collected by a Grocer shall be paid to the City of Aspen Finance Department and shall be deposited in the Waste Reduction and Recycling Account.

(e) A Grocer shall pay and the City of Aspen shall collect this fee at the same time as the City Sales Tax. The City shall provide the necessary forms for Grocers to file individual returns with the City, separate from the required City Sales Tax forms, to demonstrate compliance with the provisions of the fee.

- (1) If payment of any amounts to the City 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 13.24.040.

(f) The Waste Reduction Fee shall be administered by the City of Aspen Environmental Health Department.

(g) Funds deposited in the Waste Reduction and Recycling Account shall be used for the following projects, in the following order of priorities:

- (1) Campaigns conducted by the City of Aspen 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 City'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 City of Aspen 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 Aspen 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) The Fees shall not be used to supplant funds appropriated as part of an approved annual budget.
- (i) No Waste Reduction Fee 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.

#### **13.24.030 Required Signage for Grocers.**

Every business subject to the collection of the fee shall display a sign in a location outside or inside of the business, viewable by customers, alerting customers to the City of Aspen imposed fee.

#### **13.24.040 Audits and Violations**

(a) Each Grocer licensed pursuant to the provisions of this Chapter shall maintain accurate and complete records of the fees collected, the number of Disposable Carryout 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 City Manager during regular business hours in order for the City to verify compliance with the provisions of this chapter. All such information shall be treated as confidential commercial documents.

(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 City of Aspen 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 City of Aspen 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) \$150 for the third and all subsequent offenses.

(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) calendar 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 Waste Reduction Fee to the City 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. Severability.**

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 Existing Litigation.**

This ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances amended as herein provided, and the same shall be construed and concluded under such prior ordinances.

## **Section 4.**

A public hearing on this ordinance will be held the 12<sup>th</sup> day of September 2011 at 5:00 PM in the City Council chambers, 130 S. Galena.

**Section 5 Effective Date.**

This ordinance shall take effect on May 1, 2012.

**INTRODUCED, READ AND ORDERED PUBLISHED** as provided by law, by the City Council of the City of Aspen on the 22<sup>nd</sup> day of August 2011.

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**Michael C. Ireland, Mayor**

**ATTEST:**

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**Kathryn Koch, City Clerk**

**FINALLY**, adopted, passed and approved this \_\_\_ day of \_\_\_, 2011.

\_\_\_\_\_  
**Michael C. Ireland, Mayor**

**ATTEST:**

**APPROVED AS TO FORM:**

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**Kathryn Koch, City Clerk**

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**John Worcester, City Attorney**