

**ORDINANCE NO. 2
SERIES 2015**

**AN ORDINANCE ADOPTING A NEW CHAPTER 13 OF TITLE 5 OF THE
VAIL TOWN CODE ESTABLISHING DISPOSABLE BAG
REQUIREMENTS, INCLUDING A DISPOSABLE PAPER BAG FEE AND
PROVIDING FOR THE COLLECTION AND DESIGNATION OF SUCH
FEE.**

WHEREAS, the Town of Vail, Colorado (the "Town") is a home rule municipality existing pursuant to the laws of the Colorado Constitution, the Colorado Revised Statutes and the Town's Home Rule Charter;

WHEREAS, the Town has a duty to protect the natural environment, the economy and health of its citizens and guests and the Town is committed to environmental protection and stewardship;

WHEREAS, reducing the use of disposable bags has a positive impact on the local environment of the Town, including reducing the potential for pollution in the environment, greenhouse gas emissions, litter, harm to wildlife, water consumption, energy consumption and solid waste generation;

WHEREAS, as the Eagle County landfill reaches permitted capacity, it is becoming more difficult and expensive to site, permit and develop new landfill capacity, and plastic bags create operational problems at the Eagle County Materials Recovery Facility;

WHEREAS, through the adoption of the Environmental Sustainability Strategic Plan, the Town has established goals of reducing the waste going to the landfill by 25 percent by 2019, and reducing community greenhouse gas emissions by 20 percent by 2020;

WHEREAS, diverting plastic waste from the landfill is a cost effective and efficient ways of reducing greenhouse gas emissions resulting from energy and petroleum products used in processing;

WHEREAS, the Town Council believes that the best alternative to the continued use of disposable bags is to promote the use of more durable, reusable bags; and

WHEREAS, the Town Council finds and determines that prohibiting disposable plastic bags and requiring a charge for the use of disposable paper bags at grocers would help address the environmental and health problems associated with such use, would relieve Town taxpayers of the costs incurred by the Town in conjunction therewith, and would be in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO, THAT:

Section 1. Title 5 of the Vail Town Code is hereby amended by the addition of a new Chapter 13, to read as follows:

**CHAPTER 13
DISPOSABLE BAG REQUIREMENTS**

5-13-1: PURPOSE AND INTENT:

The purposes of this Chapter are to protect the public health, safety and welfare, to address the environmental problems associated with disposable bags, and to relieve the Town taxpayers of the costs imposed upon the Town associated with disposable bags. The intent of the Chapter is to encourage the use of reusable bags.

5-13-2: DEFINITIONS:

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

DISPOSABLE PAPER BAG: 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 PAPER BAG FEE: a Town fee of \$.10 imposed and required to be paid by each consumer making a purchase from a Town Grocer for each disposable paper bag used during the purchase.

DISPOSABLE PLASTIC BAG: a bag made from either non-compostable plastic or compostable plastic provided by a Business to a customer at the point of sale for the purpose of transporting goods. The term "Disposable Plastic Bag" does not include:

1. Bags provided by pharmacists to contain prescription drugs;
2. 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;
3. Reusable Bags;
4. Disposable Paper Bags; or

5. 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, regardless of whether the items are prepackaged;
 - c. Contain or wrap flowers, potted plants, or other items where dampness may be a problem; or
 - d. Contain unwrapped prepared foods or bakery goods.

GROCER: a retail business that is located in a permanent building in the Town containing at least four thousand (4,000) square feet of retail space, that operates year round as a full-line, self-service market offering for sale staple foodstuffs, meats, produce, or other perishable items for off-premise human consumption, but does not include businesses at which foodstuffs are an incidental part of the business.

INCIDENTAL: when food sales comprise no more than two percent (2%) of the gross sales of the business in the Town as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.

REUSABLE BAG: a bag that:

1. Is designed and manufactured to withstand repeated uses over a period of time;
2. Is made from a material that can be cleaned and disinfected regularly;
3. Is at least two and one-quarter (2.25) mils thick if made from plastic; and
4. Has the capability of carrying a minimum of eighteen pounds.

5-13-3: RESTRICTIONS ON THE DISTRIBUTION OF DISPOSABLE BAGS.

A. Effective August 1, 2015, all Grocers shall only offer either a Reusable Bag or a Disposable Paper Bag to a consumer pursuant the fees established in Section 5-13-5.

B. Effective August 1, 2015, it shall be unlawful for any Grocer to provide Disposable Plastic Bags to customers at any point of sale. Nothing in this Section shall prohibit persons or Grocers from making Reusable Bags available to customers for sale or without cost.

C. Violations of this Section shall be subject the offending person and/or business to the penalties set forth in Section 5-13-9.

5-13-4: RESERVED.

5-13-5: DISPOSABLE PAPER BAG FEE PROGRAM

A. Effective August 1, 2015, a consumer making a purchase from a Grocer shall pay at the time of purchase a Disposable Paper Bag Fee of \$.10 for each Disposable Paper Bag used during a purchase.

B. Grocers shall record the number of disposable paper bags provided to any given customer and the total amount of the Disposable Paper Bag Fee charged to the customer on the customer transaction receipt.

C. No Grocer may provide a rebate or in any way reimburse a customer for any part of the Disposable Paper Bag Fee.

D. No Grocer may exempt a customer from any part of the Disposable Paper Bag Fee for any reason except as provided in Section 5-13-7.

E. Nothing in this Chapter shall prohibit Grocers from providing incentives for the use of reusable bags through credits or rebates for customers who bring their own bags to the point of sale for the purpose of carrying away goods.

F. Nothing in this Chapter shall prohibit customers from using bags of any type that the customers bring into the store or from carrying away goods purchased by such customers that are not placed in a bag.

G. Any store or business in the Town may voluntarily opt to participate in the Disposable Paper Bag Fee Program by providing notice to the Town of Vail Community Development Department and collecting the Disposable Paper Bag Fee pursuant to this Chapter.

5-13-6: RETENTION AND ADMINISTRATION OF DISPOSABLE PAPER BAG FEE

A. For the first twelve (12) months following the effective date of the Disposable Paper Bag Fee, each Grocer may retain twenty percent (20%) of the Disposable Paper Bag Fee as a collection and remittance expense ("Vendor Fee") to be taken as a Grocer credit against the Disposable Paper Bag Fee due to the Town. Thereafter the entirety of all collected Disposable Bag Fees shall be remitted to the Town.

B. Any Vendor Fee retained by a Grocer shall be used to:

1. Provide educational information to customers about the Disposable Paper Bag Fee;

2. Train staff in the implementation and administration of the Disposable Paper Bag Fee; and

3. Improve or alter infrastructure to allow for the administration, collection, implementation, and reporting of the Disposable Paper Bag Fee.

C. The remaining portion of the Disposable Paper Bag Fee shall be paid to the Town and shall be deposited as revenue in a designated waste reduction and reusable line item within the Town's budget for the following purposes such as but not limited to:

1. Producing and providing reusable bags to Town residents and guests;

2. Educating Town residents, businesses and guests about the impacts of waste on the Town's environmental health, the importance of reducing the number of disposable bags entering the waste stream, and the impact of disposable bags on the Town's waterways and the environment;

3. Creating public educational campaigns to raise awareness about waste reduction and recycling;

4. Funding programs and infrastructure that allows the Vail community to reduce waste and recycle;

5. Purchasing and installing equipment designed to minimize waste pollution, including recycling containers and waste receptacles;

6. Funding community cleanup or collection events and other activities to reduce waste;

7. Maintaining a public website for the purpose of educating the Town's residents and guests on waste reduction efforts; and

8. Paying for the administration of the Disposable Paper Bag Fee Program.

D. A Grocer shall pay and the Town shall collect the Disposable Paper Bag Fee at the same time and pursuant to all applicable provisions of the Town's sales tax code, and consistent with all applicable sales tax provisions regarding sales tax administration, collection and enforcement. The Town shall provide the necessary forms for Grocers to file individual returns with the Town separate from the Town's sales tax forms to demonstrate compliance with the Disposable Paper Bag fee. Notwithstanding the fact that the Disposable Paper Bag Fee will be collected in the same time and manner used for the collection of sales tax, such process is for the convenience of the Grocer and does not change the nature of the Disposable Paper Bag Fee from a fee to a tax.

E. Disposable Paper Bag Fees shall not supplant funds appropriated as part of an approved annual budget.

F. No Disposable Paper Bag Fees 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 this Chapter without regard to fiscal year limitation.

5-13-7: EXEMPTIONS.

A. A Grocer may provide a Disposable Paper Bag to a customer with no fee if the customer provides proof that he or she is a participant in a federal or state Food Assistance Program.

B. A retail liquor store, as defined in C.R.S. § 12-47-103(31), may provide a Disposable Paper Bag to a customer with no fee if the Disposable Paper Bag is provided for the containment of carry-out alcoholic beverages as defined in C.R.S. § 12-47-103(2).

5-13-8: AUDITS.

A. Each Grocer shall maintain accurate and complete records of the Disposable Paper Bag Fees collected under the provisions of this Chapter and the number of Disposable Paper Bags provided to customers, and shall also maintain such books, accounts, invoices, or other documentation 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 the foregoing records available for inspection and audit by the Town during regular business hours so that the Town may verify compliance with the provisions of this Chapter. To the extent permitted by law, all such records shall be treated as confidential commercial information.

5-13-9: VIOLATIONS AND PENALTIES.

A. It is unlawful for any Grocer to refuse or neglect to collect the Disposable Paper Bag Fee set forth in this Chapter.

B. Any person or business that refuses or neglects to comply with this Chapter shall be subject to the following penalties:

1. Upon the first violation, a penalty assessment in the amount of fifty dollars (\$50.00);

2. Upon a second violation in the same calendar year of the first violation, a penalty assessment in the amount of one hundred dollars (\$100.00); and

3. Upon a third or subsequent violation in the same calendar year of the earlier violations, a penalty assessment of three hundred dollars (\$300.00).

C. Each violation of this Chapter shall constitute a separate offense and shall be punished accordingly.

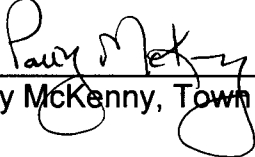
Section 2. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not effect the validity of the remaining portions of this ordinance; and the Town Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause

or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

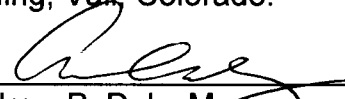
Section 3. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper for the health, safety and welfare of the Town of Vail and the inhabitants thereof.

INTRODUCED, READ ON FIRST READING, APPROVED, AND ORDERED PUBLISHED ONCE IN FULL ON FIRST READING this 17th day of February, 2015 and a public hearing for second reading of this Ordinance set for the 3rd day of March, 2015, in the Council Chambers of the Vail Municipal Building, Vail, Colorado.

ATTEST:

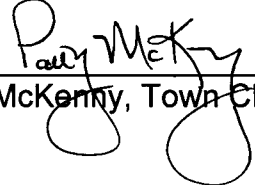

Patty McKenny, Town Clerk

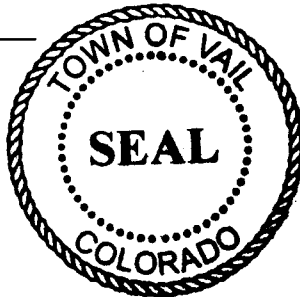



Andrew P. Daly, Mayor

READ AND APPROVED ON SECOND READING AND ORDERED PUBLISHED this 3rd day of March, 2015.

ATTEST:


Patty McKenny, Town Clerk




Andrew P. Daly, Mayor