

ORDINANCE NO. 2

SERIES OF 2023

**AN ORDINANCE OF THE TOWN OF CARBONDALE, COLORADO
AMENDING ARTICLE 7 OF CHAPTER 7 OF THE CARBONDALE
REVISED MUNICIPAL CODE REGARDING CARRYOUT BAG
REGULATIONS.**

WHEREAS, the Carbondale Board of Trustees adopted Ordinance No. 12, Series of 2011 (“the 2012 Bag Ordinance”) which banned the use of plastic bags at grocers larger than 3,500 square feet and imposed a fee on single-use bags beginning May 1, 2012; and

WHEREAS, the 2012 Bag Ordinance and efforts to educate the public and supply reusable bags have dramatically reduced the use of disposable bags in Carbondale; and

WHEREAS, pursuant to HB 21-1162, the State of Colorado legislature recently adopted a statewide single-use carryout bag ban and fee that are similar to Carbondale’s, but which law contains differences in definitions, timing, and certain other requirements; and

WHEREAS, pursuant to the new state law, the Town retains authority to implement ordinances are more stringent than the state’s bag requirements; and

WHEREAS, the Town wishes to maintain in place its plastic bag ban and fees which apply to large markets for the remainder of 2023, and thereafter integrate the Town’s ordinance with the new state law; and

WHEREAS, the Town does not wish to impose local sales tax on retail delivery fees and carryout bag fees enacted by the Town or the State of Colorado that would otherwise be taxable under the Code; and

WHEREAS, the Town adopts this ordinance with the intent to exempt such fees from local sales and use tax; and

WHEREAS, the Board of Trustees finds that further limiting the use of disposable carryout bags in coordination with Colorado state laws will mitigate the harmful effects of such materials on our natural environment.

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

SECTION 1. Article 7 of Chapter 7 of the Town of Carbondale Revised Municipal Code shall be repealed and replaced in its entirety, to read as follows:

ARTICLE 7. – Disposable Carryout Bag Regulations

Sec. 7-7-10 – Definitions.

- (a) The Town adopts and incorporates by reference the definitions contained in the Plastic Pollution Reduction Act, C.R.S. § 25-17-503, as such may be amended from time to time.
- (b) For the time period extending from January 1, 2023 through December 31, 2023, the Town shall apply the ban and fee on disposable carryout bags set forth below in Sec. 7-7-20 to “grocers” as defined below:

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, dairy products or other perishable items. Grocer does not mean:

- (1) A temporary vending establishment for fruits, vegetables, packaged meats and dairy;
- (2) A Vendor at farmer's markets or other temporary events;
- (3) A location where food items are not the majority of sales for that business; or
- (4) A location where the facility is less than Three Thousand Five Hundred (3,500) square feet.

This definition of “grocer” shall sunset and be of no further force and effect after January 1, 2024, after which time Section 7-7-20(b) of this Code shall control.

Sec. 7-7-20. – Fees and Prohibitions on single-use carryout bags.

- (a) Prior to January 1, 2024, the Town shall retain its plastic bag regulation of grocers in the following manner:

- (1) No grocer shall provide a disposable plastic bag to a customer at the point of sale.

- (2) A grocer may provide a customer with one or more recycled paper carryout bags at the point of sale only if the customer pays a carryout bag fee of twenty cents per recycled paper carryout bag. For each carryout bag fee collected pursuant to this subsection 7-7-20(a), the grocer shall:

- (I) Remit 60% of the first ten cents of the fee and 100% of the remaining ten cent fee (for clarity, 80% of the total 20 cent fee) to the Town and the Town shall use the remitted fee to pay:

- (A) Its administrative and enforcement costs incurred as a result of this section; and

- (B) For any recycling, composting, or other waste diversion programs and related outreach and education activities.

(II) Retain 40% of the first ten cents of the fee (for clarity, 20% of the total 20 cent fee) which portion of the fee does not count as revenue for the purpose of calculating sales tax.

(II) Any grocer may choose to voluntarily remit 100% of the 20 cent fee to the Town.

(3) The carryout bag fee set forth in subsection (a)(2) of this section does not apply to a customer that provides evidence to the store that the customer is a participant in a federal or state food assistance program.

(4) This subsection 7-7-20 (a) shall sunset and be of no further force and effect after December 31, 2023, after which time sub-section 7-7-20(b) of this Code shall control.

(b) Prior to January 1, 2024, a store, including a small store, as defined under the state law (with the exception of grocers regulated above in sub-section 7-7-20(a) while that sub-section remains in effect) may provide a customer with one or more disposable plastic bags or recycled paper carryout bags at the point of sale only if the customer pays a carryout bag fee of twenty cents per disposable plastic bag or recycled paper carryout bag. On and after January 1, 2024, no store, including a small store, as defined under the state law, shall provide a disposable plastic bag to a customer at the point of sale. For each carryout bag fee collected pursuant to this subsection (b), a store, including a small store, shall:

(1) Remit 60% of the first ten cents of the fee and 100% of the remaining ten cent fee (for clarity, 80% of the total 20 cent fee) to the Town and the Town shall use the remitted fee to pay:

(A) Its administrative and enforcement costs incurred as a result of this section; and

(B) For any recycling, composting, or other waste diversion programs and related outreach and education activities.

(2) Retain 40% of the first ten cents of the fee (for clarity, 20% of the total 20 cent fee) which portion of the fee does not count as revenue for the purpose of calculating sales tax.

(3) Any store, including small store, may choose to voluntarily remit 100% of the 20 cent fee to the Town.

(4) The carryout bag fee set forth in this subsection (b) does not apply to a customer that provides evidence to the store that the customer is a participant in a federal or state food assistance program.

(c) A retail food establishment need not comply with this Article if the retail food establishment:

(1) Prepares or serves food in individual portions for immediate on- or off-premises consumption; and

(2) Is not a grocery store or convenience store.

Sec. 7-7-30. – Provision of carryout and reusable bags.

(a) In providing carryout bags for a fee pursuant under this Article, a grocer, store, or small store shall:

(1) For each customer provided a carryout bag for a fee, provide on the customer's transaction receipt a record of the number of carryout bags provided as part of the transaction and the total amount of fees charged for the carryout bags provided, itemized by type of carryout bag;

(2) Not refund to the customer any portion of the carryout bag fee, either directly or indirectly, or advertise or otherwise convey to customers that any portion of the carryout bag fee will be refunded;

(3) Conspicuously display a sign in a location inside or outside the store, which sign alerts customers about the carryout bag fee; and

(4) Beginning on April 20, 2023 for the first quarter of 2023, a market, grocer, store, or small store shall pay to the Town's Finance Department on a quarterly basis the total amount of carryout bag fees collected in the previous quarter. The Town shall provide the necessary forms for markets, grocers, stores or small stores to file individual returns with the Town, separate from the required Town sales tax forms, to demonstrate compliance with the provisions of this Article. Upon the approval of the Finance Director, a grocer, market, store or small store whose quarterly bag fees due to the Town are less than \$30.00 may file and pay these fees annually instead of quarterly.

(b) Nothing in this section shall preclude persons, markets, grocers, stores, or small stores from making reusable bags available for sale or for no cost to customers.

Sec. 7-7-40. - Audits and violations.

(a) Each market, grocer, store, or small store shall maintain accurate and complete records of the carryout bag fees collected, the number of 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 market, grocer, store, or small store 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 market, grocer, store, or small store 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 Article. All such information shall be treated as confidential commercial documents.

(c) Violation of any of the requirements of this Article shall subject a market, grocer, store, or small store 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 market, store, or small store 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 market, store, or small store.

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

(A) Fifty dollars (\$50.00) for the first offense;

(B) One hundred dollars (\$100.00) 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.

(4) No more than one (1) penalty shall be imposed upon a market, store, or small store within a seven (7) calendar day period.

(5) A market, store, or small store 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 market, store, or small store 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 carryout 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 \$10.00 late fee.

(2) A penalty of ten (10) percent of total due.

(3) Interest charge of one and one half (1.5) percent of total penalty per month.

SECTION 2. The Board of Trustees hereby finds, determines, and declares that this ordinance is necessary for the immediate preservation of the public peace, health and safety.

SECTION 3. This Ordinance shall take effect on April 1, 2023 after posting and publication in accordance with the Carbondale Home Rule Charter.

SECTION 4. All ordinances heretofore passed and adopted by the Board of Trustees of Carbondale, Colorado, are hereby repealed to the extent that said ordinances, or parts thereof, are in conflict herewith.

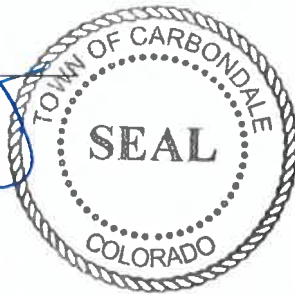
INTRODUCED, READ AND PASSED this 14th day of February, 2023 by a vote of 7 to 0.

THE TOWN OF CARBONDALE


Ben Bohmfalk, Mayor

ATTEST:


Cathy Derby, Town Clerk



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