

ORDINANCE NO. 20-_____

AN ORDINANCE CREATING A NEW ARTICLE 15 (SINGLE USE PLASTIC BAG FEES) OF CHAPTER 6 (NEIGHBORHOOD VITALITY/COMMUNITY HEALTH) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO THE IMPOSITION AND COLLECTION OF A TEN CENT (\$0.10) FEE ON SINGLE USE PLASTIC BAGS AND PROVIDING FOR REMEDIES FOR THE VIOLATION THEREOF

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

Section 1. Article 15 (Single Use Plastic Bag Fees) of Chapter 6 (Neighborhood Vitality/Community Health) of the Code of the City of Colorado Springs 2001, as amended, is created to read as follows:

ARTICLE 15: SINGLE USE PLASTIC BAG FEES

- 6.15.101: LEGISLATIVE INTENT AND PURPOSE:**
- 6.15.102: DEFINITIONS:**
- 6.15.103: SINGLE USE PLASTIC BAG FEE REQUIREMENTS:**
- 6.15.104: RETENTION, REMITTANCE AND TRANSFER OF DISPOSABLE BAG FEE:**
- 6.15.105: REQUIRED SIGNAGE FOR RETAIL STORES:**
- 6.15.106: EXEMPTIONS:**
- 6.15.107: AUDITS AND VIOLATIONS:**
- 6.15.108: APPEALS AND HEARINGS:**
- 6.15.109: REMEDIES, COST OF COLLECTION AND LIENS:**

- 6.15.110: SEVERABILITY:**

6.15.101: LEGISLATIVE INTENT AND PURPOSE:

- A. It is the purpose of this article to protect the public health and safety.
- B. Findings: The City Council finds as follows:
 - 1. The City supports efforts to reduce the amount of waste that must be land-filled and the pursuit of waste prevention efforts;
 - 2. The use of single use plastic bags has severe impacts on the environment on a local and global scale, including greenhouse gas

emissions, litter, harm to wildlife, atmospheric acidification, water consumption, and solid waste generation;

3. Despite recycling and voluntary solutions to control pollution from single use plastic bags, many single use plastic bags ultimately are disposed of in landfills, litter the environment, block stormwater and drainage infrastructure, and endanger wildlife;

4. Colorado Springs consumers use millions of single use plastic bags from retail stores each year; and

5. The City's taxpayers bear costs associated with the effects of single use plastic bags on the solid waste stream, stormwater and drainage infrastructure, litter, and wildlife.

C. Intent. The single use plastic bag fee is a necessary funding source to address the environmental problems associated with single use plastic bags and to relieve City taxpayers of the costs imposed upon the City associated with the use of single use plastic bags. The City Council intends that the requirements of this article will assist in offsetting the costs associated with using single use plastic bags to pay for the cleanup, mitigation, educational, replacement, and administrative efforts of the City.

6.15.102: DEFINITIONS:

The following terms, as used in this article, shall have the meaning hereinafter designated, unless the context specifically indicates otherwise or unless the meaning is excluded by express provision:

CUSTOMER: Any person who makes a retail purchase from a retail store.

FEE: The single use plastic bag fee as described below and referred to in this article.

RECYCLED PAPER BAG: A paper bag that is one hundred percent (100%) recyclable and contains at least forty percent (40%) post-consumer recycled content.

RETAIL STORE: Any business open to the public that is 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 restaurants or other businesses where retail sales are clearly secondary and incidental to the primary activity occurring within the business or any temporary vendors or temporary events.

REUSABLE CARRYOUT BAG: Reusable carryout bag means a bag that:

- A. Is designed and manufactured to withstand repeated uses over a period of time;
- B. Is made from cloth, fiber, or other fabric or material that can be cleaned and disinfected regularly, and must be machine-washable;
- C. Has handles;
- D. If made from plastic material, cannot be plastic film where thickness is two (2) mils or less;
- E. Has a minimum lifetime of one hundred and twenty-five (125) uses; and
- F. Has the capability of carrying a minimum of twenty-two (22) pounds.

SINGLE USE PLASTIC BAG: Any plastic bag, other than a recycled paper bag, a biodegradable bag made of organic material or a reusable carryout bag, that is not exempted by this article, and that is provided to a customer by a retail store at the point of sale for the purpose of transporting goods.

SINGLE USE PLASTIC BAG FEE: A City fee imposed and required to be paid by each customer making a purchase from a retail store for each single use plastic bag used during the purchase assessed for the purpose of mitigating the impacts of single use plastic bags.

6.15.103: SINGLE USE PLASTIC BAG FEE REQUIREMENTS:

- A. For each single use plastic bag provided to a customer, retail stores shall collect from customers and customers shall pay, at the time of purchase, a single use plastic bag fee of ten cents (\$0.10).
- B. Retail stores shall record the number of single use plastic bags provided and the total amount of single use plastic bag fees charged on the customer transaction receipt.
- C. A retail store shall not refund to the customer any part of the single use plastic bag fee, nor shall the retail store advertise or state to customers that any part of the single use plastic bag fee will be refunded to the customer.
- D. A retail store shall not exempt any customer from any part of the disposable bag fee for any reason except as stated in City Code section 6.15.106.

6.15.104: RETENTION, REMITTANCE AND TRANSFER OF DISPOSABLE BAG FEE:

A. A retail store may retain forty percent (40%) of each single use plastic bag fee collected, which is the “retained percent.”

B. The retained percent may only be used by the retail store to:

1. Provide educational information about the single use plastic bag fee to customers;
2. Provide the signage required by section 6.15.105;
3. Train staff in the implementation and administration of the fee;
4. Improve or alter infrastructure to allow for the implementation, collection and administration of the fee;
5. Collect, account for and remit the fee to the City;
6. Develop and display informational signage to inform consumers about the fee, encourage the use of reusable bags or promote recycling of single use plastic bags; and
7. Improve infrastructure to increase single use plastic bag recycling.

C. The retained percent shall not be classified as revenue for the purposes of calculating sales tax.

D. The amount of the single use plastic bag fee collected by a retail store in excess of the retained percent shall be paid to the City and shall be used only as set forth in subsection G of this section to mitigate the effects of single use plastic bags in the City.

E. A retail store shall pay and the City shall collect all single use plastic bag fees. The City shall provide the necessary forms for retail stores to file with the City to demonstrate compliance with the provisions of this chapter. If payment of any amount 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 6.15.107.

F. The single use plastic bag fee shall be administered on behalf of the City by the Mayor, or the Mayor’s designee. The Mayor is authorized to adopt interpretive administrative regulations pursuant to City Code section 1.2.314, to implement this article, prescribe forms and provide methods of payment and collection and otherwise implement the requirements of this article.

G. Funds from the single use plastic bag fee shall be used only for the expenditures that are intended to mitigate the effects of single use plastic bags, including, without limitation, the following:

1. Administrative costs of the City associated with developing and implementing the single use plastic bag fee.
2. Activities of the City to:
 - a. Fund community and City-sponsored cleanup events in the City's parks, rights-of way and other public properties owned by the City;
 - b. Provide reusable carryout bags to residents and visitors;
 - c. Educate residents, businesses and visitors about the impact of single use plastic bags on the City's environmental health, the importance of reducing the number of single use plastic bags entering the waste stream and the expenses associated with mitigating the effects of single use plastic bags on the City's drainage and stormwater system, transportation system, wildlife and environment;
 - d. Fund programs and infrastructure that allow the Colorado Springs community to reduce waste associated with single use plastic bags;
 - e. Purchase and install equipment designed to minimize bag pollution, including recycling containers and waste receptacles associated with single use plastic bags;
 - f. Fund other activities that reduce trash associated with single use plastic bags;
 - g. Mitigate the effects of single use plastic bags on the City's drainage and stormwater system, transportation system, wildlife and environment; and
 - h. Maintain a public website that educates residents on the progress of waste reduction efforts associated with single use plastic bags.

H. Single use plastic bag fees collected in accordance with this article shall be used only for the purposes set forth herein and for no other general government purposes.

I. Single use plastic bag fees collected in accordance with this article shall be expended for the uses and purposes set forth in subsection G of this section without regard to any otherwise applicable fiscal year limitation. No single use plastic bag fee funds shall be used for any purpose not authorized in this article.

6.15.105: REQUIRED SIGNAGE FOR RETAIL STORES:

Every retail store subject to the collection of the single use plastic bag fee shall display a sign in a location outside or inside of the business, viewable by customers, alerting customers to the City's single use plastic bag fee.

6.15.106: EXEMPTIONS:

The single use plastic bag fee imposed by this article does not apply to:

A. A single use plastic bag provided by a retail store if the customer provides evidence that he or she is a participant in a federal or state food assistance program.

B. Any bag brought into a retail store by a customer and used to transport goods from the retail store.

C. A bag used by consumers inside retail stores: to package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items like nails, washers, nuts, screws, shelf pins, and dowels; contain or wrap frozen or fresh foods, meat, or fish; contain or wrap flowers, potted plants, or other items where dampness may be a problem; or contain unwrapped prepared foods or bakery goods.

D. A bag used to protect purchased items from damaging or contaminating other purchased items when placed in a single use plastic or other bag.

E. A bag no larger than seven (7) inches × nine (9) inches used for loose small retail items, including, but not limited to, jewelry, buttons, beads, ribbon, herbs and spices, and similar items.

F. A bag provided by pharmacists to contain prescription drugs.

G. 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.

H. A recycled paper bag.

6.15.107: AUDITS AND VIOLATIONS:

A. Each retail store shall maintain accurate and complete records of the single use plastic bag fees collected, the number of single use plastic 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 (3) 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 City during regular business hours for the City to verify compliance with the provisions of this article. If the retail store refuses to permit entry and inspection of such records when requested, the City may make application to any Judge of the Municipal Court for the issuance of an inspection warrant and/or subpoena for records from the retail store or any other person the City believes may have knowledge of the fees owed. The application shall identify the premises upon which entry is sought and the inspection purpose for which entry is desired, state the facts giving rise to the need for an inspection and otherwise conform with the requirements of CMCR 241. Any warrant issued pursuant to the application shall command the owner or occupant to permit entry by the City for the purpose stated. In the event any retail store or person so served with an inspection warrant or subpoena fails to respond thereto, the Judge may proceed against the person as in cases of contempt.

C. If any person fails, neglects or refuses to collect the single use plastic bag fee or underpays the single use plastic bag fee, the City 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 City shall serve upon the delinquent retail store all notices required to be given under the provisions of this article in writing and, if mailed, shall be postpaid by certified or registered mail, "Return Receipt Requested", directed to the last address of the retail store on file with the City. Written notice shall include such estimated fees, penalties and interest, constituting a Notice of Final Determination, Assessment and Demand for Payment ("Notice of Determination") due and payable within thirty (30) days after the date of the notice. The retail store may request a hearing on the assessment as provided in section 6.15.108. The Chief Financial Officer shall designate the City staff making the Notice of Determination and shall not participate in the process of making a Notice of Determination unless appealed by a retail store.

D. If payment of any amount of the single use plastic bag 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 following amounts:

1. If any part of the deficiency in payment of the single use plastic bag fee is due to negligence or intentional disregard of the ordinances or

of authorized rules and regulations of the City, but without intent to defraud, there shall be added a penalty of ten percent (10%) of the total amount of the deficiency, and in such case interest shall be collected at the rate as specified in subsection 3 below, on the amount of the deficiency from the time the return was due, from the person required to file the return, which interest and penalty addition shall become due and payable within twenty (20) days after written notice and demand is made to the person by the City;

2. If any part of the deficiency is due to fraud with the intent to evade the single use plastic bag fee, then there shall be added a penalty of one hundred percent (100%) of the total amount of the deficiency and in such case, the whole amount of the fee unpaid, including additions, shall become due and payable twenty (20) days after written notice and demand is made by the City, and an additional three percent (3%) per month on the amount shall be added from the date the fee was due until paid.

3. If a person neglects or refuses to make a return in payment of the single use plastic bag fee or to pay any plastic bag fee as required under subsection (C) of this section, the City shall add the sum of fifteen dollars (\$15.00) for failure or ten percent (10%) of the delinquent fee, whichever is greater, and interest on the delinquent fee at the rate imposed below plus one-half percent (1/2%) per month from the date when due, not exceeding eighteen percent (18%) interest in the aggregate.

4. Interest charges shall be permitted for the total amount of the deficiency, including penalty charges. When interest is permitted to be charged under the provisions of this article, the annual rate of interest shall be that established by the State Commissioner of Banking pursuant to Colorado Revised Statutes section 39-21-110.5.

5. The Chief Financial Officer is authorized to waive, for good cause shown, any penalty assessed in this article and interest imposed in excess of six percent (6%) per annum.

6.15.108: APPEALS AND HEARINGS:

A. A retail store aggrieved by the Notice of Determination of the City of the single use plastic bag fee, penalty or charge to be paid may appeal the amount of the determination to the Chief Financial Officer of the City. Within thirty (30) days of the due date on the Notice of Determination from the City, a written notice of appeal must be filed with the Chief Financial Officer and shall contain the following information:

1. A statement of the fee assessed by the determination to the retail store;
2. The fee the retail store believes should have been applied to the retail store;
3. The methodology used by the retail store to determine the fee the retail store believes should have been applied to the retail store in accord with this article;
4. Any other information the retail store feels is relevant to the retail store's appeal.

A legible photocopy of the Notice of Determination shall be attached to the notice of appeal shall contain an address to which the correspondence may be sent to the retail store by certified or registered mail, "Return Receipt Requested."

B. The retail store shall have the burden of proof on the appeal.

C. The Chief Financial Officer shall notify the retail store in writing of the time and place for the appeal hearing ten (10) days prior thereto. In all cases, the hearing shall be held in Colorado Springs, Colorado. Following the hearing, the Chief Financial Officer shall have the authority to determine the facts, affirm the fee, modify the fee by reducing the fee or refer the matter back for redetermination of the appropriate fee to the City staff making the Notice of Determination. The Chief Financial Officer shall decide the appeal within ninety (90) days of receipt of the notice of appeal and shall send that determination by certified or registered mail, "Return Receipt Requested," to the retail store at the address indicated on the notice of appeal. In the event of referral back to the City staff making the Notice of Determination, City staff shall make a redetermination of the fee within thirty (30) days from the date of the Chief Financial Officer's referral, and shall send the City staff's determination by certified or registered mail, "Return Receipt Requested," to the owner at the address indicated on the notice of appeal. If the City staff upholds the original fee, then the City staff's determination upholding the fee shall be deemed a final agency action. If the City staff reduces or increases the fee, then the new fee determined shall be appealable under the same procedure as identified above for an initial appeal. In the event of an appeal to the Chief Financial Officer, if the Chief Financial Officer affirms or modifies the fee, then the Chief Financial Officer's fee determination shall be deemed a final agency action. Appeals to the Chief Financial Officer may be filed only once in connection with any fee or determination, except upon a showing by the retail store of changed circumstances resulting in a higher fee. Any of the time limits under this subsection (C) may be extended upon the agreement of the retail store and the Chief Financial Officer.

D. Any retail store that is aggrieved by the final determination of an appeal by the Chief Financial Officer, or the City staff's determination upholding a referred fee, as set forth above, may appeal that final agency action to the District Court pursuant to CRCP 106(a)(4).

E. A hearing officer may be appointed by the City Attorney pursuant to City Code section 1.2.409 to perform all duties which are required of the Chief Financial Officer under this section 6.15.108.

6.15.109: REMEDIES, COST OF COLLECTION, AND LIENS:

A. Any single use plastic bag fee or other fee, penalty or charge due to the City under this article which is not paid when due, or any violation of any of the requirements contained within this article, may be recovered or subject to penalties by the City in an action at law, in addition to any other remedy permitted by law.

B. When any retail store or other person liable for the payment of a single use plastic bag fee imposed by this article has issued to the City three (3) or more checks dishonored by the drawee on account of insufficient funds or for any reason whatsoever, then the Chief Financial Officer may require that the retail store or other person pay any fees collected for or due to the City or any penalty or interest due to the City by cash or funds in the other form that will in the discretion of the Chief Financial Officer guarantee payment of the fee, penalty or interest to the City.

C. The fee imposed by this article, together with the interest and penalties as provided and the costs of collection which may be incurred, shall be and until paid, remain a first and prior lien superior to all other liens upon the tangible personal property sold, purchased, stored, used, distributed or consumed, as well as upon the real property, goods, merchandise, furniture and fixtures, tools, equipment, cash, bank accounts and accounts receivable, of any retail store, or used by any retail store in conducting the retail business under lease, title retaining contract or other contract arrangement, within the City. Any lien certified pursuant to this article shall remain a first and prior lien superior to all other liens upon the tangible personal property sold, purchased, stored, used, distributed or consumed, as well as upon the real property and shall take precedence on all the property over other liens or claims of whatsoever kind or nature, except that a lien upon real property shall be subject to a valid mortgage or other liens of record on and prior to the recording of notice as required.

6.15.110: SEVERABILITY:

Should any one or more sections of provisions of this article be judicially determined invalid or unenforceable, that determination shall not affect, impair

or invalidate the remaining provisions of this article. City Council expressly intends that the various provisions of this article are severable.

Section 2. Any retail store or person violating Article 15 (Single Use Plastic Bag Fees) of Chapter 6 (Neighborhood Vitality/Public Health) of the Code of the City of Colorado Springs 2001, as amended, shall be subject to the remedies, as applicable, provided in Section 107 (Audits and Violations), Section 108 (Appeals and Hearings) and Section 109 (Remedies, Cost of Collection and Liens) of Article 15 (Single Use Plastic Bag Fees) of Chapter 6 (Neighborhood Vitality/Public Health) of the Code of the City of Colorado Springs 2001, as amended.

Section 3. This ordinance shall be submitted and referred to the vote of the registered qualified electors of the City to be held at a Special Municipal Election held as part of the Coordinated Election conducted by mail ballot on November 3, 2020.

Section 4. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter and its approval by a majority vote of the registered qualified electors of the City at the Special Municipal Election held as part of the Coordinated Election conducted by mail ballot on November 3, 2020.

Section 5. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____
day of _____, 2020.

Finally passed: _____

Council President

Mayor's Action:

- Approved on _____.
- Disapproved on _____, based on the following objections:

Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

Council President

ATTEST:

Sarah B. Johnson, City Clerk