

**TO:** Honorable Mayor Fancher and Town Council members  
**FROM:** Eric J. Heil, Town Attorney  
**RE:** Ordinance No. 17-08 Plastic Bag Ban  
**DATE:** October 20, 2017

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**SUMMARY:** Attached is Ordinance No. 17-08 adopting the disposable plastic bag ban and a disposable paper bag fee. The language in Section 8.38.050 provides that for the first year, for Retailers with 4,000 sq.ft. or more of retail space, will be required to remit 80% of the Disposable Paper Bag Fee to the Town and may retain 20% of the Fee, then 100% will be remitted to the Town. Retailers with less than 4,000 sq.ft. of retail space are allowed to retain 100% of the Disposable Paper Bag Fee. This ordinance is provided to you for your information so that you can see the final language which reflects the motion and intent of the Avon Town Council at the October 12, 2017 Council meeting.

*Thank you, Eric*

**ATTACHMENT A:** Ordinance No. 17-08.





**TOWN OF AVON, COLORADO  
ORDINANCE 17-08**

**ADOPTING A NEW CHAPTER 8.38 OF TITLE 8 OF THE AVON  
MUNICIPAL 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 Avon, 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; and

**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; and

**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; and

**WHEREAS**, through the adoption of the Town of Avon 2017-2019 Strategic Plan, the Avon Town Council has made it a priority to consider legislation to end the use of plastic bags in the Town of Avon; and

**WHEREAS**, through the adoption of the Climate Action Plan for the Eagle County Community, the Town aspires to work with other community stakeholders to reduce the community's overall greenhouse gas emissions by 25 percent by 2025, and by a minimum of 80 percent by 2015; and

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

**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 and other retailers 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 AVON, COLORADO** the following:

**Section 1. Recitals Incorporated.** The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

**Section 2. Addition of Section 8.38 to Title 8 of the Avon Municipal Code.** Title 8 of the Avon Municipal Code is hereby amended by the addition of a new Chapter 8.38, to read as set forth in **Exhibit A: Addition of Section 8.38 to Title 8 of the Avon Municipal Code**, attached hereto.

**Section 3. Codification Amendments.** The codifier of the Town's Municipal Code, Colorado Code Publishing, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Avon Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

**Section 4. Severability.** If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term "provision" means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term "application" means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

**Section 5. Effective Date.** This Ordinance shall take effect thirty (30) days after the date of final passage in accordance with Section 6.4 of the Avon Home Rule Charter.


**Section 6. Safety Clause.** The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.


**Section 7. No Existing Violation Affected.** Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall

be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.


**Section 8. Publication.** The Town Clerk is ordered to publish this Ordinance in accordance with Chapter 1.16 of the Avon Municipal Code.


**INTRODUCED AND ADOPTED ON FIRST READING AND REFERRED TO PUBLIC HEARING** on September 12, 2017 and setting such public hearing for October 10, 2017 at the Council Chambers of the Avon Municipal Building, located at One Lake Street, Avon, Colorado.


BY:   
\_\_\_\_\_  
Jennie Fancher, Mayor

ATTEST:   
\_\_\_\_\_  
~~Debbie Hoppe, Town Clerk~~  
Brenda Torres, Deputy Town Clerk

**ADOPTED ON SECOND AND FINAL READING** on October 10, 2017.

BY:   
\_\_\_\_\_  
Jennie Fancher, Mayor

ATTEST:   
\_\_\_\_\_  
~~Debbie Hoppe, Town Clerk~~  
Brenda Torres, Deputy Town Clerk

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Eric J. Heil, Town Attorney

## EXHIBIT A: ADDITION OF CHAPTER 8.38 TO TITLE 8 OF THE AVON MUNICIPAL CODE

### CHAPTER 8.38 DISPOSABLE BAG REQUIREMENTS

- Section 8.38.010 Purpose and intent.**
- Section 8.38.020 Definitions.**
- Section 8.38.030 Restrictions on the distribution of disposable bags.**
- Section 8.38.040 Disposable paper bag fee program.**
- Section 8.38.050 Retention and administration of disposable paper bag fee.**
- Section 8.38.060 Exemptions.**
- Section 8.38.070 Audits.**
- Section 8.38.080 Violations and penalties.**

#### **8.38.010 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.

#### **8.38.020 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 ten cents (\$0.10) 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.

RETAILER: means any person, corporation, partnership, business, facility, vendor, organization or individual that sells or provides merchandise, goods or materials, including, without limitation, clothing, food, or personal items of any kind, directly to a customer. "Retailer" includes, without limitation, any department store, grocery store, hardware store, pharmacy, liquor store, restaurant, catering truck, convenience store, and any other retail store or vendor.

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-fourth (2.25) mils thick if made from plastic; and
4. Has the capability of carrying a minimum of eighteen (18) pounds.

**8.38.030 RESTRICTIONS ON THE DISTRIBUTION OF DISPOSABLE BAGS.**

- A. Effective May 1, 2018, all Retailers shall only offer either a Reusable Bag or a Disposable Paper Bag to a consumer pursuant to the fees established in section 8.38.050 of this chapter.
- B. Effective May 1, 2018, it shall be unlawful for any Retailer to provide Disposable Plastic bags to customers at any point of sale. Nothing in this section shall prohibit persons or Retailers from making reusable bags available to customers for sale or without cost.
- C. Violations of this Section shall subject the offending person and/or business to the penalties set forth in section 8.38.080 of this chapter.

**8.38.040 DISPOSABLE PAPER BAG FEE PROGRAM.**

- A. Effective May 1, 2018, a consumer making a purchase from a Retailer shall pay at the time of purchase a Disposable Paper Bag Fee of ten cents (\$0.10) for each Disposable Paper Bag used during a purchase.
- B. Retailers 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 Retailer may provide a rebate or in any way reimburse a customer for any part of the Disposable Paper Bag Fee.
- D. No Retailer may exempt a customer from any part of the Disposable Paper Bag Fee for any reason except as provided in section 8.38.060 of this chapter.
- E. Nothing in this Chapter shall prohibit Retailers 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, prior to its respective effective date, by providing notice to the Town of Avon and collecting the Disposable Paper Bag Fee pursuant to this Chapter.

**8.38.050 RETENTION AND ADMINISTRATION OF DISPOSABLE PAPER BAG FEE.**

- A. Upon the effective date, Retailers shall be required to remit the Disposable Paper Bag Fee to the Town and may retain a portions of the Disposable Paper Bag Fee as follows:
  - 1. For the first twelve (12) months following the effective date of the Disposable Paper Bag Fee, each Retailer that is located in a permanent building in the Town containing at least four thousand (4,000) square feet of retail space may retain twenty percent (20%) of the Disposable Paper Bag Fee to be taken as a Retailer credit against the Disposable Paper Bag Fee due to the Town. The remaining eighty percent (80%) of the Disposable Bag Fee shall be remitted to the Town. Thereafter the entirety of all collected Disposable Bag Fees shall be remitted to the Town.
  - 2. Each Retailer that operates in less than four thousand (4,000) square feet of retail space may retain one hundred percent (100%) of the Disposable Paper Bag Fee.
- B. A Retailer that elects to retain a portion of the Disposable Paper Bag Fee shall execute an agreement provided by the Town requiring the Retailer to uses the Disposable Paper Bag Fee revenues only for the purposes stated in sub-section D. below.
- C. The portion of the Disposable Paper Bag Fee revenue received by the Town shall be deposited as revenue in a designated waste reduction and reusable line item within the Town's budget to be used for the purposes stated in sub-section D. below.
- D. The Disposable Paper Bag Fee shall be used exclusively for the following purposes:
  - 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 Avon 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;
  - 8. Providing educational information to customers about the Disposable Paper Bag Fee;
  - 9. Training Retailer staff in the implementation and administration of the Disposable Paper Bag Fee;
  - 10. Improving or altering infrastructure to allow for the administration, collection, implementation, and reporting of the Disposable Paper Bag Fee; and
  - 11. Paying for the administration of the Disposable Paper Bag Fee Program.
- E. A Retailer 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 Retailers 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 Retailer and does not change the nature of the Disposable Paper Bag Fee from a fee to a tax.

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

**8.38.060 EXEMPTIONS.**

- A. A Retailer 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 Colorado Revised Statutes section 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 Colorado Revised Statutes section 12-47-103(2).

**8.38.070 AUDITS.**

- A. Each Retailer 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 Retailer 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 Retailer 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.

**8.38.080 VIOLATIONS AND PENALTIES.**

Any person violating any of the provisions of this Chapter shall be deemed to have committed a civil infraction for each and every day or portion thereof during which any infraction is committed, continued or permitted and shall be subject to the penalties contained in Chapter 1.09 of this Code.