

# **SAMPLE ORDINANCES TO EXPAND BAG FEES AND BANS: OPT-IN AND REMOVING EXEMPTIONS**

Some municipalities and retailers would like to see the bag fees and bans in HB21-1162 extended to more retailers. By expanding the number of retailers complying with bag fees and bans, even more bags are eliminated, and more retailers may realize bag-purchasing cost savings. The City of Steamboat Springs adopted ordinances to extend provisions of bag fee/bans in two ways. The first was an opt-in strategy adopted when their ordinance only applied to the four largest retailers in the city, the second, to go into effect January 1, 2023, will extend the provisions of HB21-1162 to all retailers in the city. Both model ordinances can be found below and be adapted to other municipalities.

## **Sample ordinance #1: Allowing voluntary opt-in to bag fees and bans**

The City of Steamboat Springs adopted ordinance language that allowed businesses not required to participate in the City's original bag fee/ban to opt-in. This ordinance allowed any business wanting to realize bag cost savings and reduce single-use bags to charge the same fee for bags which large retailers were required to charge without being subject to tax on the fee. Some retailers did opt-in to Steamboat's bag fee program. Communities wanting to allow opt-ins for small businesses under HB21-1162 could consider adopting similar language.

### **City of Steamboat Springs: Sec. 19-203. - Voluntary opt in**

*Any store or business may voluntarily opt-in to the waste reduction program and apply the ban and waste reduction fee to its business by applying with the City of Steamboat Springs City Manager's office and consenting to abide by the terms of this article. Any store or business voluntarily opting in is not required to remit any portion of the Waste Reduction Fee back to the City under section 19-204 below, but will agree to use the fee exclusively to provide training for staff, provide educational information for customers regarding the waste reduction fee, encourage the use of reusable bags, and provide reusable bags free of cost to customers.*

*(Ord. No. 2699, § 1, 5-21-19; Ord. No. 2789, § 1, 1-5-21)*

## **Sample ordinance #2: Extension of HB21-1162 to all retailers**

The Steamboat Springs City Council voted in the fall of 2022 to extend the fee/ban requirements of HB21-1162 to all retailers in the City starting January 1, 2023. By doing this, retailers in the city will all benefit from the cost-savings associated with purchasing fewer bags for customers, the city will reduce overall bag demand even more, and customers will have less confusion about where they must pay for bags. See approved ordinance on next page.

**CITY OF STEAMBOAT SPRINGS, COLORADO**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER 19, ARTICLE IV, OF THE STEAMBOAT SPRINGS REVISED MUNICIPAL CODE, PERTAINING TO DISPOSABLE PLASTIC CARRYOUT BAGS; PROVIDING AN EFFECTIVE DATE AND REPEALING ALL CONFLICTING ORDINANCES.**

**WHEREAS**, the City Council adopted Ordinance No. 2699 in 2019 which banned the use of plastic bags at markets larger than 10,000 square feet and imposed a fee on single-use bags beginning October 1, 2019; and

**WHEREAS**, the Ordinance and efforts to educate the public and supply reusable bags has been effective in dramatically reducing the use of single-use plastic bags in Steamboat Springs; and

**WHEREAS**, the State of Colorado adopted a single-use carryout bag ban and fee similar to the City's but somewhat different in its definitions, timing, and requirements in 2021 under HB 21-1162; and

**WHEREAS**, under the new state law, the City is allowed to implement ordinances that are more stringent than the state's law beginning in July of 2024; and

**WHEREAS**, the City wishes to maintain in place its plastic bag ban at large markets for the year 2023 and integrate the City's ordinance with the new state law; and

**WHEREAS**, the City Council finds that limiting the use of single-use plastic bags in coordination with the State of Colorado will mitigate the harmful effects of such materials on our natural environment.

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

Section 1. Chapter 19, Article IV, of the City of Steamboat Springs Revised Municipal Code shall be replaced in its entirety to read as follows:

**ARTICLE IV. - SINGLE-USE CARRYOUT BAGS**

**Sec. 19-200 – Definitions.**

- a) The City adopts the State of Colorado's definitions under the Plastic Pollution Reduction Act at C.R.S. § 25-17-503 as may be amended from time to time.
- b) For the time period January 1, 2023 to July 1, 2024, the City shall apply its ban and fee on Single-use plastic carryout bags to "markets" as defined below:

The term "market" means a retail establishment or business located within Steamboat Springs City Limits in a permanent building, operating year round, that is a self-service market and which sells items including, but not limited to, a line of staple foodstuffs, meats, produce, household supplies, personal care items, or dairy products or other perishable items. Market does not mean:

- (1) Temporary vending establishment for fruits, vegetables, packaged meats and dairy.
- (2) Vendors at farmer's markets or other temporary events.
- (3) A retail establishment selling only incidental foodstuffs or small snack items.
- (4) Location where the facility is less than ten thousand (10,000) square feet.

This definition shall sunset and be deleted from the City's code on July 1, 2024.

**Sec 19-201 – Fees and Prohibitions on single-use carryout bags.**

- (a) Prior to July 1, 2024, the City shall retain its plastic bag regulation of markets in the following manner:
- (1) No market shall provide a disposable plastic bag to a customer at the point of sale.
  - (2) A market 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 (1)(a), the market shall:
    - (I) Remit, in accordance with section 19-202, 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 City and the City 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.
    - (III) Any store may choose voluntarily to remit 100% of the 20 cent fee to the City.
  - (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 section 19-201(a) shall sunset and be deleted from the City's code on July 1, 2024.

(b) Prior to December 31, 2023, a store, including a small store, as defined under the state law (with the exception of markets regulated above in section 19-201(a)) may provide a customer with one or more recycled paper carryout bags or single-use plastic carryout bags at the point of sale only if the customer pays a carryout bag fee of twenty cents per recycled paper carryout bag or single-use plastic carryout bag. Subject to Section 19-201(c), after January 1, 2024, a store, including a small store, shall not provide a single use-plastic carryout bag to a customer, but may provide a recycled paper carryout bag 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 (b), a store, including a small store, shall:

- (I) Remit, in accordance with section 19-202, 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 City and the City 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.
- (III) Any store, including small store, may chose voluntarily to remit 100% of the 20 cent fee to the City.
- (IV) The carryout bag fee set forth in subsection (b) 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.

(c) Beginning January 1, 2024, and ending June 1, 2024, a store, including a small store, may provide a customer with a single-use plastic carryout bag at the point of sale for the carryout bag fee described in subsection only if the single-use plastic carryout bag is within the store's or small store's remaining inventory. This subsection 19-201 (c) shall sunset and be deleted from the City's code on June 1, 2024.

(d) A retail food establishment may continue to provide a single-use plastic carryout bag 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. 19-202. – Provision of carryout and reusable bags.**

(a) In providing carryout bags for a fee pursuant under this Article, a market, 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, store, or small store shall pay to the City's Finance Department on a quarterly basis the total amount of carryout bag fees collected in the previous quarter. The City shall provide the necessary forms for markets to file individual returns with the City, separate from the required City sales tax forms, to demonstrate compliance with the provisions of this Article.

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

**Sec. 19-203. - Audits and violations.**

(a) Each market, store, or small store shall maintain accurate and complete records of the waste reduction fees collected, the number of recycled paper 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, 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, store, or small store 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 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, store, or small store to the penalties set forth in this section.

(1) If it is determined that a violation has occurred, the City of Steamboat Springs 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 City of Steamboat Springs 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 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 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 (5) percent of total due, not to exceed ten dollars (\$10.00) each month.

(2) Interest charge of one (1) percent of total penalty per month.

Section 2. The City Council hereby finds, determines, and declares that this ordinance is necessary for the immediate preservation of the public peace, health and safety.

Section 3. Pursuant to Section 7-11 of the Charter of the City of Steamboat Springs, Colorado, the second publication of this ordinance may be by reference, utilizing the ordinance title.

Section 4. This ordinance shall take effect on January 1, 2023.

Section 5. All ordinances heretofore passed and adopted by the City Council of the City of Steamboat Springs, Colorado, are hereby repealed to the extent that said ordinances, or parts thereof, are in conflict herewith.

Section 6. A public hearing on this ordinance shall be held on \_\_\_\_\_, 2022 at 5:00 P.M. at \_\_\_\_\_ and remotely via zoom at <https://us02web.zoom.us/j/985289877> and telephone: Dial 1-888-475-4499 (US toll-free), Enter Meeting ID: 985 289 877.

**INTRODUCED, READ AND ORDERED PUBLISHED**, as provided by law, by the City Council of the City of Steamboat Springs, at its regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ 2022.

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**Robin Crossan, President  
Steamboat Springs City Council**

**ATTEST:**

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**Julie Franklin  
City Clerk**

**FINALLY READ, PASSED AND APPROVED** this \_\_\_\_ day of \_\_\_\_ 2022.

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**Robin Crossan, President  
Steamboat Springs City Council**

**ATTEST:**

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**Julie Franklin  
City Clerk**