ORDINANCE NO. 1340
Series of 2010

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TELLURIDE, COLORADO PROHIBITING THE USE OF DISPOSABLE PLASTIC BAGS AND MANDATING CERTAIN STANDARDS AND A FEE FOR THE USE OF PAPER BAGS.

WHEREAS, the Town of Telluride, Colorado ("Town" or "Telluride") has a duty to protect the natural environment, the economy and the health of its citizens and visitors; and

WHEREAS, the use of disposable plastic bags has a significant impact on the local environment of the Town, such as contributing to unsightly litter on the streets, sidewalks, waterways, clogging sewers and drainage systems and endangering marine life; and

WHEREAS, there is currently no viable option for the commercial recycling of disposable plastic shopping bags; and

WHEREAS, the use and ultimate disposal of disposable plastic bags into our waste stream creates a burden on the Town's solid waste disposal process; and

WHEREAS, it is well documented that disposable plastic bags have significant environmental impacts each year, including the use of over 12 million barrels of oil for such bags in the United States of America; and

WHEREAS, the alternative use of paper bags in place of disposable plastic bags also has a significant impact on our local environment involving the use of wood products and other natural resources to produce the paper bags; and

WHEREAS, the Town believes that residents and visitors should use reusable carryout bags in all instances and that a Town fee on the distribution of paper bags by Town grocers is appropriate to fund the Town's efforts to educate residents, businesses, and tourists about the impact of trash on the regional environmental health and of the implementation of the paper bag fee, to fund the use of reusable carryout bags and to fund Town and community cleanup events and other activities that reduce trash in the environment; and

WHEREAS, it is in the best interest of the health, safety, and welfare of the citizens and visitors of Telluride to reduce the cost to the Town of solid waste disposal, and to protect our environment and our natural resources by banning the use of disposable plastic shopping bags and to mandate certain standards and a fee for the use of paper bags.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF TELLURIDE, COLORADO as follows:

Section 1.

The Recitals of this Ordinance, as set forth above, are hereby incorporated into this Ordinance as Town Council findings of fact and conclusions of law.

Section 2.

The Telluride Municipal Code is hereby amended to include a new Article 7, ("Prohibition on Disposable Plastic Bags and Mandating Certain Standards and a Fee for the Use of Permitted Paper

Bags") within Title 7 ("Health, Sanitation and Animals") as set forth in Exhibit A, attached to this Ordinance and hereby incorporated herein by reference.

Section 3.

This ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided and the same shall be construed and concluded under such prior ordinances.

Section 4.

The provisions of this ordinance are severable and the invalidity of any section, phrase, clause or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

Section 5.

This ordinance shall become effective upon the date of publication of notice of its passage in a newspaper of general circulation within the Town of Telluride.

Section 6.

A public hearing on the ordinance shall be held on the 5th day of October, 2010, in the Town Council Chambers, Rebekah Hall, 113 W. Columbia, Telluride, Colorado.

INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Telluride, Colorado on the 14th day of September, 2010.

TOWN OF TELLURIDE

By: Stuart Fraser
Stuart Fraser
Mayor

ATTEST

Mary Jo Schillaci
Mary Jo Schillaci
Town Clerk

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Telluride, Colorado this 5th day of October, 2010.

TOWN OF TELLURIDE

By: Stuart Fraser
Stuart Fraser
Mayor

ATTEST

Mary Jo Schillaci
Mary Jo Schillaci
Town Clerk

APPROVED AS TO FORM:

Kevin J. Geiger, Town Attorney

STATE OF COLORADO)
)
COUNTY OF SAN MIGUEL) ss.
)
TOWN OF TELLURIDE)

I, Mary Jo Schillaci, the Town Clerk of the Town of Telluride, Colorado (the "Town"), do hereby certify:

(i) The foregoing pages are a true and correct copy of an Ordinance (the "Ordinance") passed and adopted by the Town Council (the "Council") of the Town at a regular meeting of the Council held on October 5, 2010.

(ii) The Ordinance was duly moved and seconded and the Ordinance was adopted at the Town Council meeting of October 5, 2010, by an affirmative vote of a majority of the members of the Council as follows:

Name	"Yes"	"No"	Absent	Abstain
Stuart Fraser, Mayor	✓			
Bob Saunders, Mayor Pro-Tem	✓			
Thom Carnevale	✓			
David Oyster		✓		
Brian Werner	✓			
Chris Myers	✓			
Ann Brady		✓		

(iii) The Ordinance was approved and authenticated by the signature of the Mayor, sealed with the Town seal, attested by the Town Clerk and recorded in the minutes of the Council.

(iv) There are no bylaws, rules or regulations of the Council that might prohibit the adoption of said Ordinance.

(v) The members of the Council were present at the meeting and voted on the passage of such Ordinance as set forth above.

(SEAL)

Mary Jo Schillaci
Town Clerk

EXHIBIT A

Article 7
Prohibition on Disposable Plastic Bags and Mandating Certain Standards and a Fee for the Use of Permitted Paper Bags.

Sec. 7-7-10. Definitions.

The following words and phrases as used in this Article shall have the following meaning:

Advanced Recovery Fee (ARF) means the Town fee of $.10 imposed and required to be paid by each consumer making a purchase from a Town Grocer for each Permitted Paper Bag used during the purchase.

Business means any commercial enterprise or establishment, including sole proprietorships, joint ventures, partnerships, corporations or any other legal entity whether for profit or not for profit and includes all employees of the business and any independent contractors associated with the business.

Disposable Plastic Bag means 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" shall not include:

(a) Bags used by consumers inside stores to:

(1) Package bulk items, such as fruit, vegetables, nuts, grains, candy, or small hardware items;

(2) Contain or wrap frozen foods, meat, or fish, whether prepackaged or not;

(3) Contain or wrap flowers, potted plants, or other items where dampness may be a problem; and,

(4) Contain unwrapped prepared foods or bakery goods;

(b) Bags provided by pharmacists to contain prescription drugs or bags provided by a medical marijuana center to provide the product to the patient;

(c) 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;

(d) Reusable Carryout Bags;

(e) Non-Permitted Paper Bags and Permitted Paper Bags, as defined in this Article 7; or

(f) Bags provided to the consumer for the purpose of transporting a partially consumed bottle of vinous liquor (wine) pursuant to the provisions of C.R.S. § 12-47-421.

Grocer means a retail establishment or Business within Town limits that is a full-line, self-service market with a retail market area in excess of 2000 square feet and which sells a line of staple foodstuffs, meats, produce, household supplies, or dairy products or other perishable items.

Non-Permitted Paper Bags means a paper bag provided by a Business to a customer at the point of sale for the purpose of transporting goods, which does not meet the standards of a "Permitted Paper Bag" as defined in this Article 7.

Permitted Paper Bags means a paper bag provided by a Grocer to a customer at the point of sale for the purpose of transporting goods, which is subject to the Town's Advanced Recovery Fee (ARF), and that meets all of the following requirements:

(a) The bag is manufactured from a minimum of forty percent (40%) recycled content;

(b) The bag contains no old growth fiber; and

(c) The bag is one hundred percent (100%) recyclable.

Reusable Carryout Bag means a bag that is specifically intended for multiple reuse and is made of cloth, fiber, or other machine washable fabric that is at least 2.25 millimeters thick.

Town Waste Reduction and Reusable Carryout Bag Program means a Town program to fund a public education campaign to educate residents, businesses, and tourists about the impact of trash on the regional environmental health and of the implementation of the ARF, to fund the use of Reusable Carryout Bags and to fund other Town and community cleanup events and other activities that reduce trash in the environment.

Waste Reduction and Reusable Carryout Bag Line Item means a line item created in the annual budget by the Town of Telluride from the Town proceeds of the ARF to fund the Town Waste Reduction and Reusable Carryout Bag Program to fund a public education campaign to educate residents, businesses, and tourists about the impact of trash on the regional environmental health and of the implementation of the ARF, to fund the use of Reusable Carryout Bags and to fund other Town and community cleanup events and other activities that reduce trash in the environment.

Sec. 7-7-20. Implementation of the Advanced Recovery Fee (ARF) on Grocers.

(a) Effective January 1, 2011, all Town Grocers shall implement the requirements of the Town's Advanced Recovery Fee (ARF) as set forth below in Section 7-7-40. Except for the limited period of time between January 1, 2011 and March 1, 2011 for the continued use of Disposable Plastic Bags as set forth below in Section 7-7-30, effective January 1, 2011 all Town Grocers shall only offer either a Reusable Carryout Bag or a Permitted Paper Bag to a consumer with such Permitted Paper Bag offered to a customer provided the Grocer is in compliance with the terms and conditions of the ARF.

(b) Violation of the requirements set forth in this section shall subject the offending Person and/or Business to the penalties set forth below in Section 7-7-70.

Sec. 7-7-30. Town Wide Prohibition on Disposable Plastic Bags.

(a) Effective March 1, 2011 Disposable Plastic Bags shall not be sold or distributed, retail or wholesale, within Town limits by any Business. The Town also encourages all Businesses to refrain from purchasing any additional Disposable Plastic Bags before the effective date of the Town prohibition on Disposable Plastic Bags.

(b) Violation of the requirements set forth in this section shall subject the offending Person and/or Business to the penalties set forth below in Section 7-7-70.

Sec. 7-7-40. Establishment of Advanced Recovery Fee (ARF).

(a) A consumer making a purchase from a Grocer shall pay at the time of purchase an Advanced Recovery Fee (ARF) of $.10 for each Permitted Paper Bag used during the purchase. A Grocer shall not advertise or hold out or state to the public or to a customer directly or indirectly that the reimbursement of the ARF or any part thereof to be collected by the Grocer will be assumed or absorbed by the Grocer or otherwise refunded to the customer. All Grocers shall indicate on the consumer transaction receipt the number of Permitted Paper Bags provided and the total amount of ARF charged.

(b) Each Grocer shall retain $.05 of each $.10 ARF collected as a collection and remittance expense (also known as a "Vendor Fee") to be taken as a Grocer credit against the ARF due the Town.

(c) The total portion of the ARF retained by the Grocer as a Vendor Fee under this Section shall not be classified as revenue and shall be tax-exempt. The ARF retained as a Vendor Fee by the Grocer shall be excluded from the definition of Retail Sales as defined under Telluride Municipal Code Section 4-2-20.

(d) The remaining amount of each ARF collected by a Grocer shall be paid to the Town of Telluride Finance Department and shall be deposited as revenue in the Waste Reduction and Reusable Carryout Bag Line Item. A Grocer shall pay and the Town of Telluride shall collect this ARF at the same time and pursuant to all applicable provisions of the Town Sales Tax, pursuant to the provisions of the Telluride Municipal Code Chapter 4, Article 2 and consistent with all applicable Sales Tax provisions regarding administration, collection, and enforcement as the same now apply to the ARF, to the extent not modified in this section. The Town shall provide the necessary forms for Grocers to file individual returns with the Town, separate from the required Town Sales Tax forms, to demonstrate compliance with the provisions of the ARF. Notwithstanding the fact that the ARF will be collected at the same time and following a similar procedure as used for the Town Sales Tax, such manner of collection contemporaneous with the Town Sales Tax is for the convenience of the Grocer and does not change the nature of the ARF from a fee to a tax.

(e) If payment of any amounts to the Town for the ARF is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due and owing to the Town pursuant to Telluride Municipal Code Sections 4-2-390 and 4-2-400.

(f) Any Town Business may voluntarily opt in and apply the ARF to its business.

Sec. 7-7-50. Establishment of the Town Waste Reduction and Reusable Carryout Bag Program.

Notwithstanding any other provision of this Article, not more than two percent (2%) of the ARF revenues annually deposited into the Waste Reduction and Reusable Carryout Bag Line Item may be retained by the Town to offset fee collection costs and as an administration and management fee. After deduction of the Town's two percent (2%) administration and management fee, the Waste Reduction and Reusable Carryout Bag Line Item shall be used solely for the purposes of

funding the Town Waste Reduction and Reusable Carryout Bag Program, which has a stated purpose and limitation of funding a public education campaign to educate residents, businesses, and tourists about the impact of trash on the regional environmental health and of the implementation of the ARF, to fund the use of Reusable Carryout Bags and to fund Town and community cleanup events and other activities that reduce trash in the environment.

Sec. 7-7-60. Required Signage for Grocers.

Every Grocer that is subject to the collection of the ARF shall display a sign in a location viewable by customers stating that "The Town of Telluride prohibits the sale or distribution of Disposable Plastic Bags in an effort to help protect our environment from excess litter, resource consumption and greenhouse gases. The Town of Telluride encourages the use of Reusable Carryout Bags in all instances. If you do not have a Reusable Carryout Bag or choose not to purchase a Reusable Carryout Bag, a 100% recyclable paper bag is available subject to a $.10 per bag fee. Town proceeds from the fee shall be used to further promote this program."

Sec. 7-7-70. Enforcement and Penalties for Violation.

Any Person and/or Business upon conviction of a violation of any provision of this Article, shall be subject to the following penalties:

(a) Upon the 1st violation, a one (1) time only written warning notice that a violation has occurred shall be issued by the Town to the Person and/or Business. No monetary penalty shall be imposed for the 1st violation.

(b) Upon a subsequent violation and conviction, the Town shall impose a penalty on the Person and/or Business. The penalty shall not exceed:

(1) $50.00 for the 1st violation after the written warning;

(2) $100.00 for the 2nd violation in the same calendar year of the 1st violation; and,

(3) $300.00 for the 3rd and each subsequent violation in the same calendar year of the earlier violations.

(c) No more than one (1) penalty shall be imposed upon a Person and/or Business within a seven (7) day period.