

CITY COUNCIL COMMUNICATION FORM

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THROUGH: Tom Leeson, Deputy City Manager
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DATE: November 17, 2020

ITEM: One-year Review of the Plastic Bag Ban

<input checked="" type="checkbox"/>	DIRECTION
<input checked="" type="checkbox"/>	INFORMATION
<input type="checkbox"/>	ORDINANCE
<input type="checkbox"/>	MOTION
<input type="checkbox"/>	RESOLUTION
<input type="checkbox"/>	PROCLAMATION

I. REQUEST/ISSUE & BACKGROUND INFORMATION:

The Steamboat Springs City Council passed an ordinance which banned single use plastic bags and placed a 20 cent fee on paper bags in large grocery stores, in May 2019. Impacted stores included City Market, Walmart, Safeway, and Walgreens. The bag ban and fee went into effect on October 1, 2019. This item is a one-year review of the bag ban and fee.

Reduction in Single Use Bags: Prior to the bag ban, store managers provided information on the number of single use plastic bags used each year. Combined, the stores used 3,802,400 single use plastic bags per year. This works out to approximately 316,866 bags per month. After the plastic bag ban and fee, stores reported using 455,865 single use paper bags over a 12-month period. This number is likely inaccurate, however, in that the emergency ordinance passed in April waiving the bag fee resulted in reports of bag usage that were significantly different than other reported months. Staff has assumed that this meant that the stores reported some, but not likely all, of the paper bags used during this time period. Another way of identifying the total bags used per year is to look at the average monthly bag usage for the months where

the bag fee was in effect and being reported accurately. Bag usage from October 2019-March 2020, and July 2020 – September 2020, averaged 48,288 bags per month. This is an 85% reduction from the previous monthly average of 316,866 bags per month.

If we assume bag usage in April, May and June of 2020 was the average amount, then estimated total bag usage is 579,455 for the 12 month period – still an 85% reduction in the number of single use bags used in a 12 month period from the 3.8 million bags previously reported by stores. Note that this annual bag estimate is potentially high given that sales tax reports show that April, May and June are 3 of the 5 months with the lowest amount of sales tax generated by groceries.

Costs for Stores for Disposable Bags: Prior to the plastic bag ban, stores provided plastic bags, and at times paper bags, free to customers. The stores reported that plastic bags costs at that time were 1.1 cents at the low end and 1.5 cents at the high end and that paper bag costs ranged from 3 cents on the low end to 5 cents on the high end. Switching from plastic bags to paper bags increased the per bag costs for stores, however the overall reduction in disposable bag use ultimately decreased the total cost of single use bags for the stores. Using the low cost per bag for plastic, and the high cost per bag for paper, the total costs for bags for stores was:

3,800,000 plastic bags at 1.1 cents per bag = \$41,800
579,455 paper bags at 5 cents per bag = \$28,973

This is an estimated savings of \$12,827 per year. However, the reality is likely somewhat different, in that Covid-19 resulted in a higher demand for paper bags and as a result the cost of paper bags fluctuated for stores and between stores in the spring and early summer.

Bag Fee Revenues: Original revenue projections were based on projected reductions in disposable bag usage, as shown in the table below.

20 cent fee Net Fee Revenue (fee minus retainage)
25% retainage
Month Year
50% use \$ 23,765 \$285,180
30% use \$ 14,259 \$171,108
15% use \$ 7,130 \$ 85,560

Disposable bag usage has reached the 15% usage level, and the paper bag fee resulted in \$70,955 in revenues to the city between October 1, 2020 and September 30, 2020. This is lower than anticipated at this usage level, largely

due to the emergency ordinance in April that resulted in no fees being required in April, May and June, 2020.

Use of Bag Fees: The City has utilized bag fee revenues as follows:

Reusable bags (24,400 bags):	\$34,980
Launch education/outreach:	\$19,661
2020 education/outreach:	\$ 2,473
Administrative expense:	\$ 710
Projects:	\$ 3,028

The project cost listed above consists of costs associated with mulching trees that were brought to the rodeo grounds after the large windstorm. Additional projects that will be expenses to the [Waste Reduction and Recycling Account] WARR fund include the installation of a reusable water bottle filler at the new 7th street restroom, as well as additional costs associated with tree mulching from the blowdown.

Business Retainage of Fees: The ordinance allows businesses to retain 25% of the fees collected, and to utilize these retained fees on a short list of approved items. The ordinance requires stores to report on the use of fees for specific items. Approved items include:

- Provide educational information about the bag fee to customers
- Provide required signage regarding fee
- Train staff in the implementation and administration of the fee
- Improve or alter infrastructure to allow for the implementation, collection, administration of the fee
- Collect, account for, and remit the fee to the city
- Develop and display informational signage to inform consumers about the fee
- Provide and encourage the use of reusable bags

Over the past year, City Market has never retained any of the paper bag fees. Safeway as utilized all of their retained bag fees on the cost to collect, account for, and remit the fee to the city, however has not provided any detail or backup on this usage, and Walmart and Walgreens have never provided any reporting on the use of the fee.

The original intent of the business retainage was to assist stores with implementing the bag fee, and then to enable them to support the ongoing goal of promoting the use of reusable bags through providing funds for ongoing education, signage, and reusable bag giveaways. This original intent has clearly not been realized. As a result, staff recommends changing the way that business retainage is handled.

Each of the communities that has adopted some form of fee on plastic or paper and plastic bags has allowed the stores to retain a portion of the fee. The retained fee is intended to assist the stores with implementing their portion of the program. Aspen allows grocers to retain 25% of the fee, up to a maximum of \$1000 per month in each of the first twelve months, and \$100 per month thereafter. Breckenridge's ordinance allows retail stores to retain 50% of each fee collected, up to a maximum of \$1,000 per month for the first 12 months and \$100 per month thereafter. Avon's ordinance allows retailers containing at least 4,000 square feet of retail space to retain 20% of the fee for the first twelve months and then none thereafter.

Staff recommend that council modify the ordinance to change business retainage to \$100 per month, with no further reporting required. This follows the Aspen and Breckenridge models.

II. SUMMARY AND ALTERNATIVES:

This is a one-year review of the plastic bag ban and paper bag fee. Overall, the bag ban and fee have:

- Reduced single use bag usage by 85%
- Decreased the overall cost of single use bags for stores
- Resulted in \$74,378 revenues to the WARR account
- Resulted in funding the launch of the program, the giveaway of reusable bags, ongoing education and outreach, and two waste reduction and recycling projects.

The business retainage portion of the ordinance was intended to co-opt stores into carrying out ongoing efforts surrounding the use of reusable bags. This has not happened, and the stores have either not kept the retainage, or have not provided adequate, or even any, of the required reporting for these dollars.

Staff recommends that council modify the ordinance to address these two issues. Options include:

- Following Aspen and Breckenridge's model of allowing stores to retain \$100 per month, with no additional reporting required.
- Modifying Aspen and Breckenridge's model by allowing stores to keep a different amount, with no additional reporting required.
- Following Avon's model and removing the business retainage entirely.

III. STAFF RECOMMENDATION:

Staff feels that the ordinance has accomplished the primary objectives of reducing the usage of single use disposable bags, however the business retainage portion of the ordinance is not working as intended and has resulted in reporting issues and inconsistencies. Staff recommends that council modify

the ordinance to address these two issues. Specifically, staff recommends that city council modify the ordinance following Aspen and Breckenridge's model of allowing stores to retain \$100 per month, with no additional reporting required.

IV. FISCAL IMPACT:

Total bag fee revenues from October 2019 through September 2020 totaled \$74,378, which included \$70,955 in bag fees and \$3,422 in bag sales to lodging properties. Total expenses during this time period were \$60,852. At this point, the WARR fund has fully repaid the General Fund for the initial funding for launch expenses.

2021 budgeted revenues are \$85,000 and budgeted expenses are \$85,000. Anticipated expenditures include supporting community recycling events, composting education, recycling signage and education, a recycling and composting multifamily pilot project, and smaller waste reduction and recycling projects that could, depending on Covid, include zero waste at community events or the installation of additional water bottle filling stations throughout the community.

V. LEGAL ISSUES:

Several Colorado municipalities including Avon, Aspen, Telluride, and Crested Butte have successfully passed prohibitions or bans on plastic bags. These bans have been implemented despite a state statute, the application of which to plastic bags is unclear. The statute (excerpted below) may preempt cities from regulating plastic bags, however, no city has been challenged on this basis to date and the consensus is that the intent of the statute in 1993 was to promote uniformity and a market for recycling. Indeed, the state's solid waste program manager recently told the Colorado Sun newspaper that the state does not enforce this section of the statute. (See <https://coloradosun.com/2019/03/07/colorado-plastic-ban-law-cities/> for more details).

"Local government preemption. No unit of local government shall require or prohibit the use or sale of specific types of plastic materials or products or restrict or mandate containers, packaging, or labeling for any consumer products." (C.R.S. § 25-17-104).

Staff is advised that the Colorado Municipal League intends to sponsor legislation in the 2021 state legislative session to confirm local government power to regulate plastic bags. Staff will monitor this legislation and other developments relevant to the City regulatory authority regarding this ordinance.

Apart from the preemption issue, the City may choose to impose a fee on plastic bags modeled on those imposed by other municipalities including the City of Aspen and the City of Boulder. Aspen's paper bag fee, imposed as part of a regulatory program, was upheld by the Colorado Supreme Court in a decision issued last year, Colorado Union of Taxpayers Found. v. City of Aspen. The Court determined that because the fee is not a tax it was exempt from TABOR requirements.

Aspen's paper bag fee was not a tax under the Court's analysis because it was not imposed to raise revenue for the general expense of government. Instead, Aspen's fee had a primary purpose of defraying reasonable direct and indirect costs of providing a service or regulating an activity. In Aspen, the fee funds education campaigns, provision of reusable bags, infrastructure to improve recycling, and community clean up days among other related programming. The attached draft code language for Steamboat's implementation of a plastic bag ban and a paper bag fee closely tracks Aspen's ordinance and fee implementation strategy.

VI. CONFLICTS OR ENVIRONMENTAL ISSUES:

Implementation of the plastic bag ban and paper bag fee has resulted in an 85% decrease in the use of single use disposable bags in the four impacted grocery stores.

VII. CONSISTENCY WITH COUNCIL GOALS AND POLICIES:

This item is a requested follow up to a new ordinance. It fits within environmental sustainability portion of the city's vision and mission.

ATTACHMENTS:

1. One-Year Review of the Plastic Bag Ban and Paper Bag Fee Powerpoint