



TOWN OF FAIRFAX

STAFF REPORT

August 6, 2014

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*

SUBJECT: Introduction and first reading, by title only, of Ordinance No. 784, an Ordinance of the Town Council of the Town of Fairfax Amending Title 8 ("Health And Safety") of the Town Code By Adding Chapter 8.19 ("Paper Bag Reduction" To Reduce Paper Bag Waste By Imposing a Ten Cent Charge at the Point of Sale"). CEQA: exempt per § 14 C.C.R. §§ 15061(b)(3), 15307, and 15308

RECOMMENDATION

Introduce by title only and waive the first reading of Ordinance No. 784, an Ordinance of the Town Council of the Town of Fairfax Amending Title 8 ("Health And Safety") of the Town Code By Adding Chapter 8.19 ("Paper Bag Reduction" To Reduce Paper Bag Waste By Imposing a Ten Cent Charge at the Point of Sale"). CEQA: exempt per § 14 C.C.R. §§ 15061(b)(3), 15307, and 15308.

DISCUSSION

In 2008, the Fairfax voters approved an ordinance reducing the use of plastic bags in Town. The ordinance requires affected businesses to provide recycled paper bags and/or reusable bags to customers. However, the ordinance does not require a mandatory charge for paper bags, but does allow businesses to sell reusable bags.

At its July 16, 2014 meeting, the Council directed staff to prepare an ordinance with the following key provisions:

- \$0.10 mandatory charge for paper bags with the ability for the Council to increase the charge by resolution on an annual basis (charge effective January 1, 2015)
- Exemption for those customers participating in a State supplemental food program
- Only applies to grocery stores and those retail establishments larger than 5,000 square feet inclusive of any outdoor sales space

As the State is considering a bill (SB270) that will require a 10-cent charge for paper bags unless the Council introduces its own ordinance by September 1, 2014, the introduction of this ordinance would meet that deadline and allow the Town to control the requirements for mandatory bag charges.

FISCAL IMPACT

None

ATTACHMENT

Ordinance No. 784

36 **WHEREAS**, the broad use of paper checkout bags and their typical disposal creates an
37 impediment to achievement of the Town’s waste reduction, energy conservation, air quality,
38 water conservation and quality, and other conservation goals; and

39 **NOW, THEREFORE**, the Town Council of the Town of Fairfax does ordain as follows:

40 **SECTION 1:** Chapter 8.19 is added to the Fairfax Town Code as follows:

41 “CHAPTER 8.19 PAPER BAG REDUCTION

42 8.19.010. Short Title.

43 This Ordinance shall be entitled the “Paper Bag Reduction Ordinance.”

44 8.19.020. Definitions.

45 For the purposes of this chapter, the following words shall have the following meanings:

46 CHECKOUT BAG. A carryout bag intended to convey or protect goods, products or
47 packaged food products provided by a store to a customer at the point of sale. A “checkout bag”
48 does not include a “product bag” or a bag provided by a pharmacy pursuant to Chapter 9
49 (commencing with Section 4000) of Division 2 of the California Business and Professions Code
50 to a customer purchasing a prescription medication.

51 PERSON. An individual, trust, firm, joint stock company, corporation, cooperative,
52 partnership, or association.

53 PAPER BAG. A checkout bag that is made entirely or mostly from paper.

54 PRODUCT BAG. Any bag without handles used exclusively to carry produce, meats, or
55 other food items such as bulk foods to the point of sale inside a store or to prevent such food
56 items from coming into direct contact with other purchased items.

57 RECYCLABLE PAPER BAG. A paper bag that is 100% recyclable overall and contains a
58 minimum of 40% post-consumer recycled content.

59 REUSABLE BAG. A checkout bag with handles that is specifically designed and
60 manufactured for multiple reuse and is either made of cloth or other machine washable fabric.

61 STORE. A public establishment at least 5,000 square feet in size (including outdoor sales or
62 service space) that is devoted exclusively to the retail sale of a commodity or commodities as
63 defined under Town Code § 17.008.020 and located within the geographical limits of the Town
64 or a supermarket, food, or grocery store located within the geographical limits of the Town.

65 8.19.030. Checkout Bag Charge.

66 (A) No store shall provide a Paper Bag or a Reusable Bag to a customer at the point of sale,
67 unless the customer is charged at least ten cents (\$0.10) per checkout bag. The Town Council
68 may increase the Checkout Bag Charge by adoption of a resolution to that effect if it determines
69 that a charge in a greater amount is necessary to accomplish the goals of this Chapter.

70 (B) All stores must indicate on the customer receipt the number of checkout bags provided and
71 the total amount charged for checkout bags.

72 (C) All stores must post signage clearly indicating the per bag charge for checkout bags.

73 (D) No store shall rebate or otherwise reimburse a customer any portion of the minimum charge
74 required by subsection (A), except as otherwise provided in this chapter.

75 (E) Exceptions.

76 (1) A store may provide Reusable Bags to customers at no cost only when combined
77 with a time-limited promotional program, not to exceed 12 days per year.

78 (2) All stores must provide at the point of sale, free of charge, either reusable bags or
79 recyclable paper bags or both, at the store's option, to any customer participating either in the
80 California Special Supplemental Food Program for Women, Infants, and Children pursuant to
81 Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the
82 Health and Safety Code or in the Supplemental Food Program pursuant to Chapter 10
83 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code.

84 (3) Any owner or operator of a store may petition the Town Manager, or his or her duly
85 authorized designee, for a full or partial waiver of the requirements of this section, for a period of
86 up to one year, if the owner or operator can demonstrate that application of this section would
87 create undue hardship or practical difficulty for the store not generally applicable to other stores
88 in similar circumstances.

89 (F) All monies collected by a store for checkout bags under this chapter may be used by the store
90 for any lawful purpose.

91 (G) Violation of the requirements set forth in subdivision (A) of this section shall subject the
92 store or store owner to penalties set forth in Municipal Code § 8.19.050.

93 18.19.040 Implementation.

94 (A) The Town shall provide a copy of this chapter to every new store that applies for a business
95 license in the Town. Thirty days before this chapter becomes operative, the Town shall mail or
96 deliver a copy of it to every store within the Town.

97 (B) The Town Manager or his or her designee will have primary responsibility for enforcement
98 of this chapter. The Town Manager or his or her designee is authorized to promulgate

99 regulations and to take any and all other actions reasonable and necessary to enforce this chapter,
100 including, but not limited to, creating forms, investigating violations, issuing fines, and entering
101 the premises of any store during business hours.

102 (C) The Town Council may increase the ten cent (\$0.10) minimum charge by resolution.

103 18.19.050 Penalties.

104 (A) Any person who violates this chapter shall be guilty of an infraction, punishable in
105 accordance with Chapter 1.08 of the Town Code.

106 (B) Administrative Citation and fine may also be imposed in accordance with Chapter 1.10. The
107 Town may impose Administrative fines for violation of this chapter as follows:

108 (1) In an amount not exceeding \$100 for the first violation;

109 (2) In an amount not exceeding \$200 for the second violation in the same year; and

110 (3) In an amount not exceeding \$500 for each subsequent violation in the same year.

111 (C) The Town Attorney may seek legal, injunctive, or other equitable relief to enforce this
112 chapter. The remedies and penalties provided in this section are cumulative and not exclusive.

113 8.19.060 Operative Date.

114 This chapter is effective 30 days after adoption, with enforcement of the provisions of this
115 chapter commencing on January 1, 2015.

116 8.19.070 No Conflict with State or Federal Law.

117 Nothing in this chapter is intended to create any requirement, power or duty that is in conflict
118 with any federal or state law.”

119 **SECTION 2:** CEQA. The Town of Fairfax finds that there is no possibility that the
120 adoption and implementation of this Ordinance will have a significant effect on the environment.
121 Thus, it is exempt from review under the California Environmental Quality Act (‘CEQA,’ as
122 codified at Public Resources Code § 21000, et seq., and as further governed by the CEQA
123 Guidelines found at 14 C.C.R. § 15000, et seq.). In addition, pursuant to 14 C.C.R. §§ 15307
124 and 15308, this Ordinance is categorically also exempt from CEQA because the Town of Fairfax
125 is acting as regulatory agency to protect natural resources (15307) and the environment (15308).

126 **SECTION 3.** Severability. If any section, subsection, sentence, clause, or phrase of this
127 ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of
128 competent jurisdiction, such decision shall not affect the validity of the remaining portions of the
129 ordinance. The Town Council hereby declares that it would have passed this ordinance and each

130 section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that anyone or
131 more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

132 **SECTION 4.** This Ordinance shall be effective 30 days following its adoption by the
133 Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption,
134 be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall
135 Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club
136 building.

137 The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 6th
138 day of August, 2014, and duly adopted at the next regular meeting of the Town Council on the
139 3rd day of September, 2014, by the following vote, to wit:

140 AYES:
141 NOES:
142 ABSENT:

143
144

DAVID WEINSOFF, Mayor

146
147 Attest:

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149

150 _____
Michele Gardner, Town Clerk

Date