TOWN OF FAIRFAX
STAFF REPORT
September 3, 2014

TO: Mayor and Town Council

FROM: Michele Gardner, Town Clerk GK

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 and waive first reading and read by title only:

> 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.

DISCUSSION

At its August 6th meeting, the Town Council considered a draft of proposed Ordinance No. 784, and directed staff to bring back the ordinance with revisions as follows (from page 3) of proposed Ordinance No. 784, under section 8.19.030 (A) and (E):

> **8.19.030. Checkout Bag Charge.**
>
> **(A) No store shall provide a Paper Bag ~~or a Reusable Bag~~ to a customer at the point of sale, unless the customer is charged at least ten cents ($0.10) per checkout bag. The Town Council may increase the Checkout Bag Charge by adoption of a resolution to that effect if it determines that a charge in a greater amount is necessary to accomplish the goals of this Chapter.**
>
> **(E) Exceptions.**
> **(1) A store may provide Reusable Bags to customers at no cost ~~only when combined with a time limited promotional program, not to exceed 12 days pr year~~.**

ATTACHMENT

Ordinance No. 784

AGENDA ITEM # 19

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

WHEREAS, on April 4, 2012, the Town Council of the Town of Fairfax duly adopted the Fairfax 2010-2030 General Plan (the "General Plan"); and

WHEREAS, in order to protect the public health, safety, and welfare, the General Plan seeks to among other things, "move toward greater sustainability" in order to protect and maintain existing resources for future generations, as well as to aggressively pursue policies that potentially protect resources beyond the Town's borders (Conservation Element, pp. CON-6); and

WHEREAS, the Conservation Element of the General Plan establishes goals for the promotion of energy conservation and climate balance (Conservation Element Goal CON-1), air quality (Conservation Element Goal CON-2), water conservation and quality (Conservation Element Goal CON-4), and waste management (Conservation Element Goal CON-7); and

WHEREAS, the General Plan Conservation Element supports "zero-waste" concepts, a philosophy that encourages reuse of products and limits waste sent to landfills (Conservation Element Goal CON-7); and

WHEREAS, the Town has committed to employ "zero waste" principals to reduce the amount of waste generated in Fairfax by 80 percent before 2015 and 100 percent by 2025 (Conservation Element Objective CON-7.1) by, among other actions, reducing the total amount of waste generated by Fairfax residents, businesses and government (Conservation Element Policy CON-7.1.2); and

WHEREAS, the Town has sought to focus on sustainable and socially equitable energy usage by addressing direct energy requirements and those associated with energy consumption (Conservation Element Goal CON-1) by, among other actions, participating in efforts toward energy conservation, renewable energy generation and greenhouse gas (GHG) reduction (Conservation Element Policy CON-1.1.4); and

WHEREAS, the manufacture, use, and disposal of single-use paper bags is energy intensive and has severe environmental impacts, including GHG emissions, atmospheric acidification, air pollution, water consumption, litter, and solid waste generation; and

WHEREAS, various studies have found that reusable bags use less energy, emit less pollution, release less greenhouse gases, and create less solid waste than single-use plastic bags and single-use paper bags; and

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

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

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

"CHAPTER 8.19 PAPER BAG REDUCTION

8.19.010. Short Title.

This Ordinance shall be entitled the "Paper Bag Reduction Ordinance."

8.19.020. Definitions.

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

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

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

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

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

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

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

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

8.19.030. Checkout Bag Charge.

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

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

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

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

(E) Exceptions.

(1) A store may provide Reusable Bags to customers at no cost.

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

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

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

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

18.19.040 Implementation.

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

(B) The Town Manager or his or her designee will have primary responsibility for enforcement of this chapter. The Town Manager or his or her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, creating forms, investigating violations, issuing fines, and entering the premises of any store during business hours.

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

18.19.050 Penalties.

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

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

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

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

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

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

8.19.060 Operative Date.

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

8.19.070 No Conflict with State or Federal Law.

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

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

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the

ordinance. The Town Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

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

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 3rd day of September, 2014, and duly adopted at the next regular meeting of the Town Council on the 1st day of October, 2014, by the following vote, to wit:

AYES:
NOES:
ABSENT:

_____
DAVID WEINSOFF, Mayor

Attest:

_____ _____
Michele Gardner, Town Clerk Date