



# TOWN OF FAIRFAX

## STAFF REPORT

May 7, 2014

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager *GT*

**SUBJECT:** Discuss/consider a requirement for all stores, shops, eating places, food, and retail food vendors to charge a mandatory charge for paper bags provided at check out

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### **RECOMMENDATION**

Provide direction to staff regarding: 1) whether a charge should be mandatory, 2) the amount of a mandatory charge and if there should be an automatic increase in the future, 3) effective date of the charge, and 4) whether there should be an exemption for some customers.

### **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 fee for paper bags, but does allow businesses to sell reusable bags.

At the April 2, 2014 meeting, Council discussed the matter and requested staff to return with a copy of the San Jose ordinance which included exemptions to the bag charge. San Jose's ordinance exempts those customers participating in a State supplemental food program. Previously, at its February 13, 2014 meeting, Council had requested staff to research if the Town can direct how the charge is used by merchants. Staff found that LA county requires businesses to use the monies collected as follows: "(1) costs associated with complying with the requirements of this Chapter, (2) actual costs of providing recyclable paper carryout bags, or (3) costs associated with a store's educational materials or education campaign encouraging the use of reusable bags, if any." They also have a reporting requirement.

Many municipalities in California have avoided directing merchants how to use the funds because it can be considered a fee and subject to legal challenge (e.g., LA County's ordinance was challenged but prevailed). To avoid any possible challenges, staff would recommend an alternate approach of just suggesting to merchants how to best use the monies received for the bags. This approach would have a minimal impact on staff resources in terms of reporting requirements.

Staff is seeking direction on the key provisions of the ordinance before it is drafted. It should be noted that the State is considering a bill (SB270) that will require a 10-cent charge for paper bags unless the Council adopts its own ordinance by September 1, 2014.

### **FISCAL IMPACT**

None

### **Attachments:**

San Jose Ordinance

AGENDA ITEM # 19

**ORDINANCE NO. 29314**

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
SECTIONS 9.10.2010 AND 9.10.2020 OF CHAPTER 9.10  
OF TITLE 9 OF THE SAN JOSE MUNICIPAL CODE  
RELATING TO SINGLE-USE CARRY-OUT BAGS**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 9.10.2010 of Chapter 9.10 of Title 9 of the San José Municipal Code is hereby amended to read as follows:

**9.10.2010 Definitions**

The definitions set forth in this Section shall govern the application and interpretation of this Part 13.

- A. "Customer" means any person obtaining goods from a retail establishment.
- B. "Nonprofit Charitable Reuser" means a charitable organization, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.
- C. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.
- D. "Prepared Food" means food or beverage which is prepared on the premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no

further preparation to be consumed. "Prepared Food" does not include any produce, bulk food or meat from a produce, bulk food or meat department within a Retail Establishment.

E. "Public Eating Establishment" means a:

1. Restaurant, take-out food establishment, or any other business, that receives ninety percent (90%) or more of its revenue from the sale of Prepared Food to be eaten on or off its premises; or
2. Department, unit or section located within and operated by a Retail Establishment that generates ninety percent (90%) or more of its revenue from the sale of Prepared Food to be eaten on or off its premises, and the department, unit or section does not engage in the sale of perishable or nonperishable goods from another department, unit or section within the same Retail Establishment.

F. "Recycled Paper Bag" means a paper bag provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment that contains no old growth fiber and a minimum of forty percent (40%) post-consumer recycled content; is one hundred percent (100%) recyclable; and has printed in a highly visible manner on the outside of the bag the words "Reusable" and "Recyclable," the name and location of the manufacturer, and the percentage of post-consumer recycled content.

G. "Retail Establishment" means any commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to the Customer; and is located within or doing

business within the geographical limits of the City of San José. "Retail Establishment" does not include Public Eating Establishments or Nonprofit Charitable Reusers.

- H. "Reusable Bag" means either a bag made of cloth or other machine washable fabric that has handles, or a durable plastic bag with handles that is at least 2.25 mil thick and is specifically designed and manufactured for multiple reuse.
- I. "Single-Use Carry-Out Bag" means a bag other than a Reusable Bag provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. "Single-Use Carry-Out Bags" do not include bags without handles provided to the Customer: (1) to transport produce, prepared food, bulk food or meat from a produce, deli, bulk food or meat department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; or (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Paper Bag.

SECTION 2. Section 9.10.2020 of Chapter 9.10 of Title 9 of the San José Municipal Code is hereby amended to read as follows:

**9.10.2020 Single-Use Carry-Out Bag**

- A. No Retail Establishment shall provide a Single-Use Carry-Out Bag to a Customer, at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this Section.
- B. On or before December 31, 2013, a Retail Establishment may make available for sale to a Customer a Recycled Paper Bag for a minimum charge of ten cents.

- C. Notwithstanding this Section, no Retail Establishment may make available for sale a Recycled Paper Bag unless the amount of the sale of the Recycled Paper Bag is separately itemized on the sale receipt.
  
- D. A Retail Establishment may provide a Customer participating in the California Special Supplement 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; and a Customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code, with one or more Recycled Paper Bags at no cost through December 31, 2013.

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PASSED FOR PUBLICATION of title this 24th day of September, 2013, by the following vote:

AYES: CAMPOS, CHU, HERRERA, KALRA, KHAMIS, LICCARDO,  
OLIVERIO, ROCHA; REED.

NOES: NONE.

ABSENT: CONSTANT, NGUYEN.

DISQUALIFIED: NONE.



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CHUCK REED  
Mayor

ATTEST:



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TONI J. TABER, CMC  
Acting City Clerk