

ORDINANCE NO. 722

AN ORDINANCE AMENDING THE TOWN OF FAIRFAX CODE BY ADDING NEW CHAPTER 8.18, SECTIONS 8.18.010 THROUGH 8.18.100, TO: (1) REQUIRE THE USE OF COMPOSTABLE PLASTIC, RECYCLABLE PAPER AND/OR REUSABLE CHECKOUT BAGS BY ALL SHOPS, STORES, EATING PLACES AND RETAIL FOOD VENDORS LOCATED IN THE TOWN OF FAIRFAX, AND (2) PROVIDE PENALTIES FOR VIOLATIONS.

Be it ordained by the Town of Fairfax:

Section 1. Chapter 8.18 is added to the Fairfax Town Code as follows:

“CHAPTER 8.18 REQUIRING THE USE OF COMPOSTABLE PLASTIC, RECYCLABLE PAPER AND/OR REUSABLE CHECKOUT BAGS BY ALL SHOPS, STORES, EATING PLACES AND RETAIL FOOD VENDORS LOCATED IN THE TOWN OF FAIRFAX, AND PROVIDING PENALTIES FOR VIOLATIONS

8.18.010 FINDINGS

- (a) Globally the production and use of plastic bags has significant environmental impacts each year, including the use of over 12 million barrels of oil, and the deaths of thousands of marine animals through ingestion and entanglement.
- (b) Each year, an estimated 500 billion to 1 trillion plastic bags are used worldwide, which is over one million bags per minute, many of which end up as litter each year.
- (c) Most plastic carry-out bags do not biodegrade, but instead photo-degrade, which means that the bags break down into smaller and smaller toxic bits that enter the food web when animals mistake those materials for food.
- (d) Because plastic does not biodegrade, every piece of plastic that has found its way from California shores to the Pacific Ocean for the past fifty years still remains in the ocean or has been accumulating in the central Pacific gyre and a “Pacific Garbage Patch” now exists made up of floating plastic and Styrofoam debris. The remaining plastic is deposited on local or distant shores.
- (e) Plastic fragments act as “sponges” for dangerous compounds such as Dichlorodiphenyldichloroethylene (DDE), Polychlorinated Biphenyl (PCB), and other toxic materials in ocean water. Plastics have been found to concentrate these toxic chemicals at levels of up to one million times the levels found in sea water.
- (f) These highly contaminated fragments have been shown to cause hormone

disruption in the fish that ingest them, and in the humans that ingest the fish.

(g) Data collected from the State of California's annual Coastal Cleanup and the 1999 Pilot Litter Study by the Department of Conservation "indicates that disposable retail bags represent some of the most commonly littered items. Plastic bags are easily carried by wind from uncovered trash and dumpsters, vehicles and solid waste facilities including landfills."

(h) The US Marine Mammal Commission estimates that "257 marine species have been reported entangled in or having ingested marine debris...the plastic constricts the animals' movements and kills marine animals through starvation, exhaustion or infection from deep wounds caused by tightening material. The animals may starve to death as the plastic clogs their intestines preventing them from obtaining vital nutrients. Toxic substances present in plastics are known to cause death or reproductive failure in fish, shellfish and wildlife."

(i) The Environmental Protection Agency (EPA) reports that over 52,000 tons of disposable bags were used in California in 2000 and less than 50 tons were recovered for recycling.

(j) According to Californians Against Waste, over 19 billion disposable plastic bags are generated in California every year, resulting in over 147,000 tons of waste. An estimated 60% of these bags are generated by grocery stores. These bags represent a disproportionately large share of litter and marine debris according to a 1999 Department of Conservation study.

(k) The economics of recycling plastic bags are difficult to sustain, due to the logistics of sorting, contamination of inks, and the overall low quality of the plastic used in plastic bags, resulting in an estimated rate of 1-3% of all plastic bags being recycled in any way.

(l) Many plastic bags collected for recycling never get recycled but instead get shipped to third world countries where less stringent environmental laws permit cheap incineration which emits toxic chemicals which are known to cause harm and injury to human health.

(m) While there are many serious negative environmental impacts from the use of paper grocery bags as well, nonetheless, 45% of all paper products are recycled while less than 5% of plastics are recycled.

(n) Almost all curbside pickup and recycling centers allow customers to mix paper bags with newspapers for recycling but very few accept plastic bags for recycling.

(o) The proliferation of plastic carry-out bags at retail stores of all kinds is unmitigated, and recent State legislation mandating that grocery stores provide bins for plastic bag recycling (AB 2449) is not expected to have significant impact on reducing the use of plastic bags (and may not improve recycling rates, given the difficult logistics and poor economics of recycling plastic bags).

(p) The EPA estimates that disposal costs for single-use retail bags in the state exceeds \$51 million annually.

- (q) The nation of Ireland imposed a 17 cent surcharge on carry-out plastic bags which resulted in a 90% decrease in consumption of plastic bags.
- (r) State law does not prohibit local ordinances from seeking to remedy this problem by banning plastic bags outright in favor of re-usable cloth bags or paper bags or adding a surcharge for paper-carry out bags.
- (s) Alternatives to plastic bags are readily available and include re-usable cloth bags, paper bags, and grocery stores could do more to provide for sale and encourage their customers to use such bags, making plastic unnecessary.
- (t) State of California law does not prohibit the adoption, implementation, or enforcement of any local ordinance, resolution, regulation or rule governing curbside or drop off recycling programs operated by, or pursuant to a contract with a city, county or other public agency, including any action relating to fees for these programs.
- (u) The Town of Fairfax has a duty to protect the natural environment, the economy, and the health of its citizens.
- (v) The Town of Fairfax has adopted citywide goals of 80% landfill diversion by 2012 and zero waste by 2020.
- (w) The expansive usage of plastic shopping bags and their typical disposal creates an impediment to Fairfax's landfill diversion goals.
- (x) Plastic shopping bags are difficult to recycle and currently contaminate, or will contaminate, material that is processed through Fairfax's recycling and anticipated composting programs.
- (y) Plastic shopping bags create significant litter problems in Fairfax's neighborhoods and also its streets, parks, creeks and open space lands; and
- (z) It is the intent of the State Legislature, in enacting Chapter 5.1 (commencing with Section 42250) Part 3 of Division 30 of the Public Resources Code, to encourage the use of reusable bags by consumers and retailers and to reduce the consumption of single-use bags.
- (aa) Although not legally required to articulate the basis for concluding that a project is exempt from the California Environmental Quality Act ("CEQA", the Town hereby finds and determines that the Ordinance is exempt from CEQA. Specifically, the basis for the exemption includes, without limitation, the following (each providing a separate and independent basis and when viewed collectively providing an overall basis for an exemption): (1) Common-Sense exemption (CEQA Guidelines section 15061 (b)(3)); (2) Actions by Regulatory Agencies for Protection of Natural Resources (CEQA Guidelines section 15307); (3) Actions by Regulatory Agencies for Protection of the Environment (CEQA Guidelines section 15308); and (4) Projects Consistent with a General Plan (CEQA Guidelines section 15183).

Therefore a need exists to adopt regulations to reduce the use of plastic bags in Fairfax.

8.18.020. SHORT TITLE.

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

8.18.030. DEFINITIONS.

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

- (a) "ASTM Standard" means the American Society for Testing and Materials (ASTM)'s International standard D6400 for compostable plastic, as that standard may be amended from time to time.
- (b) "Compostable Plastic Bag" means a plastic bag that (1) meets the ASTM Standards for compostability; (2) contains no petroleum derived content; and (3) displays the word "Compostable" in a highly visible manner on the outside of the bag.
- (c) "Checkout bag" means a carryout bag that is provided by a store, eating place, shop, or retail food vendor to a customer at the point of sale.
- (d) "Store" means a public establishment devoted exclusively to the retail sale of a commodity or commodities as defined under Fairfax Municipal Code section 17.008.020 located within the geographical limits of the Town of Fairfax.
- (e) "Eating place" means a retail establishment primarily engaged in the sale of prepared food and drinks for consumption on the premises as defined under Fairfax Municipal Code section 17.008.020 located within the geographical limits of the Town of Fairfax
- (f) "Shop" means a use devoted primarily to the sale of a service or a product or products, but the service is performed or the product to be sold is prepared in its finished form on the premises as defined under Fairfax Municipal Code section 17.008.020 located within the geographical limits of the Town of Fairfax. Notwithstanding the foregoing, dry cleaning establishments are excluded from the definition of "shop."
- (g) "Retail Food Vendor" means any store, shop, sales outlet or other establishment, including a grocery store or a delicatessen, other than a restaurant, located within the Town of Fairfax, which sells take-out food as defined under Fairfax Municipal Code section 8.16.020 located within the geographical limits of the Town of Fairfax.
- (h) "Highly visible manner" means for compostable plastic bags, displaying the word "Compostable" and "Reusable" either on the front and back of the bag or repeatedly in a band circling the circumference of the bag in a lettering or other visible means.
- (i) "Person" means an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.
- (j) "Recyclable" means material that can be sorted, cleansed, and reconstituted using the Town's available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.
- (k) "Recyclable Paper Bag" means a paper bag that is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content.

(l) "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse is either made of cloth or other machine washable fabric.

8.18.040 MANDATORY USE OF RECYCLABLE AND COMPOSTABLE CHECKOUT BAGS.

(a) All stores, shops, eating places and retail food vendors, shall provide only the following as checkout bags to customers: recyclable paper bags, or reusable bags, or until the date set in Section 8.18.080 below, compostable plastic bags.

(b) Violation of the requirements set forth in subsection (a) shall subject stores, shops, eating places and retail food vendors to penalties set forth in Section 6.

(c) Nothing in this section shall be read to preclude stores, shops, eating places and retail food vendors from making reusable bags available for sale to customers.

8.18.050 IMPLEMENTATION.

The Town Council, after a public hearing, may adopt and may amend guidelines, rules, regulations and forms to implement and enforce this Ordinance.

8.18.060 NOTIFICATION, ENFORCEMENT AND PENALTIES.

(a) The Town of Fairfax shall provide a copy of this ordinance to every new store, shop, eating place and retail food vendor that applies for a business license in the Town of Fairfax. Thirty days before this ordinance becomes operative, the Town shall mail or deliver a copy of it to every store, shop, eating place and retail food vendor within the Town of Fairfax.

(b) The Town Manager or his/her designee will have primary responsibility for enforcement of this Chapter. The Town Manager or his/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, entering the premises of any affected retail store to verify compliance.

(c) Any person who violates this Ordinance shall be guilty of an infraction. If charged as an infraction, upon conviction thereof, said person shall be punished by (1) a fine not exceeding \$100.00 for a first violation, (2) a fine not exceeding \$200.00 for a second violation within the same year, and (3) a fine not exceeding \$500.00 for each additional violation within the same year.

(d) In the event that the Town adopts an ordinance creating a procedure for imposing and reviewing Administrative Penalties pursuant to California Government Code Section 53069.4, the Town may impose Administrative Penalties for violation of this Ordinance as follows: (1) in an amount not exceeding \$100.00 for the first violation, (2) in an amount not exceeding \$200.00 for the second violation in the same year, and (3) in an amount not exceeding \$500.00 for each subsequent violation in the same year.

(e) The Town Attorney may seek legal, injunctive, or other equitable relief to enforce this Ordinance.

18.18.070 OPERATIVE DATE.

This Ordinance shall become operative six (6) months after its effective date.

18.18.080 SUNSET PROVISION FOR COMPOSTABLE PLASTIC BAGS

Because of the ongoing threat that compostable plastic bags pose to marine life, the permitted continued use of compostable plastic bags under Section 4 (a) shall be terminated by operation of law, three years from the date of passage of this ordinance. After that date, compostable plastic bags will be prohibited unless by public vote the Town Council passes a resolution which permits their continued usage based upon commercial necessity or makes findings that compostable plastic take out bags no longer pose a risk of harm to the environment, including but not limited to, marine and aquatic life forms. Any such extension may only last for three years before it must again be renewed by the Town Council. If the Town Council does not pass such an extension, the use of compostable bags shall be prohibited under this ordinance.

18.18.090 NO CONFLICT WITH FEDERAL OR STATE LAW.

Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal or state law.

18.18.100 UNDERTAKING FOR THE GENERAL WELFARE.

In undertaking the implementation of this Ordinance, the Town is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officer and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 2. Severability.

If any article, section, subsection, subdivision, paragraph, sentence, clause, phrase, or word of this ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The Town Council of the Town of Fairfax hereby declares that it would have adopted each article, section, and sentence thereof, irrespective of the fact that any one or more of said provision be declared unconstitutional or invalid.

Section 3.

Copies of the foregoing ordinance shall within fifteen (15) days after its final passage and adoption be posted in three public places in the Town of Fairfax, to wit:

- (a) Bulletin Board, Fairfax Town Offices, Town Hall;
- (b) Bulletin Board, Fairfax Post Office; and
- (c) Bulletin Board, Fairfax Women's Club Building, which said places are hereby designated for that purpose, and shall be in full force and effect thirty (30) days from and after its final passage and adoption.

The foregoing ordinance was duly and regularly introduced at a regular meeting of the Town Council of the Town of Fairfax held in said town on the 11th day of July, 2007 and thereafter adopted on the 1st day of August, 2007 by the following vote, to wit:

AYES:

NOES:

ABSENT:

LARRY BRAGMAN, MAYOR

ATTEST:

JUDY ANDERSON, TOWN CLERK