CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2013-29

AN ORDINANCE

RELATING TO CHAPTER 21 SFCC 1987 ENVIRONMENTAL SERVICES; ESTABLISHING A NEW SECTION 21-8 SFCC 1987 TO BAN THE DISTRIBUTION OF SINGLE-USE PLASTIC CARRY-OUT BAGS AND ESTABLISH A FEE FOR PAPER CARRY OUT GROCERY BAGS TO BE IMPOSED BY RETAIL ESTABLISHMENTS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Section 21-8 SFCC 1987 (being Ord. #1996-46, as amended) is amended to read:

21-8 SINGLE-USE CARRYOUT BAGS.

Section 2. A new Subsection 21-8.1 SFCC 1987 is ordained to read:

21-8.1 [NEW MATERIAL] Legislative Findings.

The governing body of the city of Santa Fe finds that:

A. Most plastic carry-out bags do not biodegrade and instead persist in the environment for hundreds of years, slowly breaking down through abrasion, tearing and photo degradation into toxic plastic bits that contaminate soil and water while entering the food web when animals inadvertently ingest these materials.

B. It is the city's desire to conserve resources, reduce waste, litter, pollution and protect the public health and welfare.

C. The litter problem resulting from single use plastic bags is becoming increasingly difficult to manage and has costly negative implications for tourism, wildlife and aesthetics.

D. Even though single use paper grocery bags are made from renewable resources and are less of a litter problem than single use plastic carry out bags, they require more resources to manufacture, transport and recycle or dispose of than single use plastic carry out bags.

E. The Single-Use Bag Ordinance will eliminate the use of single-use plastic carryout bags by all retail establishments within the jurisdiction of the city of Santa Fe, place a fee on single-use paper grocery bags, and encourage the use of reusable bags.

Section 3. A new Section 21-8.2 SFCC 1987 is ordained to read:

21-8.2 [NEW MATERIAL] Short Title; Purpose.

A. Section 21-8 SFCC 1987 shall be cited as the "Single-Use Bag Ordinance."

B. The production and disposal of single-use bags causes significant environmental impacts including contamination of the environment, the death of animals through ingestion and entanglement and widespread litter. The purpose of this Ordinance is to protect, conserve and enhance the City's unique natural beauty and irreplaceable natural resources through the reduction of single-use carryout bags by encouraging the use of reusable bags.

Section 4. A new Subsection 21-8.3 SFCC 1987 is ordained to read:

21-8.3 [NEW MATERIAL] Definitions. As used in Section 21-8 SFCC 1987:

Single-use plastic carryout bag means any carryout bag made from plastic, or any material except paper marketed or labeled as "biodegradable" or "compostable", that is neither intended nor suitable for continuous reuse as a carryout bag or that is less than 2.25 mils thick.

Paper grocery bag means a paper carryout bag that has a manufacturer's stated capacity of one-eighth barrel (typical grocery store bag - 882 cubic inches) or larger.

Retail establishment means any retail business including, without limitation, clothing, household goods, or personal items of any kind that sells directly to a customer. Examples include but are not limited to department stores, clothing stores, jewelry stores, grocery stores, pharmacies, home improvement stores, liquor stores, convenience stores, gas stations, and farmers markets.

Reusable bag means a bag with handles that is specifically designed and manufactured for multiple reuse and is either:

A. Made of cloth or other machine washable fabric;

B. Made of durable plastic that is at least 2.25 mils thick; or

C. Other durable material suitable for reuse.

Section 5. A new Subsection 21-8.4 SFCC 1987 is ordained to read:

21-8.4 [NEW MATERIAL] Applicability.

A. A retail establishment shall not provide a single-use plastic carry-out bag to any customer.

B. Retail establishments shall collect a paper grocery bag charge of not less than ten-cents for each paper grocery bag provided to customers, except that retail establishments shall not collect a paper grocery bag charge from any person with a voucher or electronic benefits card issued under Women, Infants and Children Program(WIC), the Emergency Food Assistance Program (TEFAP), Temporary Assistance to Needy Families Program (TANF) , or the federal Supplemental Nutrition Assistance Program (SNAP, also known as Basic Food Stamps). It shall be a violation of this Ordinance for any retail establishment to pay or otherwise reimburse a customer for any portion of the paper grocery bag charge;

C. All retail establishments shall indicate on the customer transaction receipt the number of recyclable paper carryout grocery bags provided and the total amount of the paper grocery bag charge.

D. A retail establishment may provide a paper bag to customers which are smaller than a paper grocery bag as defined by subsection 21-8.3.

E. To further promote the use of reusable shopping bags and reduce the quantity of single-use carryout bags entering the city's waste stream, retail establishments are encouraged to make reusable carryout bags free or for sale at the checkout and/or provide boxes for use at the checkout free of

charge. The environmental services division is authorized to provide reusable carryout bags for the public at low cost or free-of-charge, targeting such programs to reach low-income households to the greatest degree possible.

Section 6. A new Subsection 21-8.5 SFCC 1987 is ordained to read:

21-8.5 [NEW MATERIAL] Exemptions. Section 21-8 SFCC 1987 does not apply to:

A. Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste;

B. Bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities;

C. Bags used by restaurants to take away prepared food; and

D. Bags used by a consumer inside a retail establishment to:

(1) Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;

(2) Contain or wrap frozen foods, meat, or fish, whether or not prepackaged,

(3) Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases, or

(4) Contain unwrapped prepared foods or bakery goods; and

E. Bags used by a non-profit corporation or other hunger relief charity to distribute food, grocery products, clothing, or other household items."

Section 7. A new Subsection 21-8.5 SFCC 1987 is ordained to read:

21-8.5 [NEW MATERIAL] Effective Dates.

A. The Single-Use Bag Ordinance shall become effective six (6) months after the city council approves the ordinance for all retail establishments.

B. The environmental services division shall conduct an educational campaign in both English and Spanish on this ordinance

C. The environmental services divisions shall conduct a sample survey of some retail establishments impacted by this Ordinance to provide feedback about the financial impact to each establishment.

D. In a public meeting no later than 12 months after the effective date of this Ordinance, the sustainable Santa Fe commission shall review and evaluate the survey results reported by the environmental services division to assess the impacts to businesses of the Single-Use Bag Ordinance. Additionally, the environmental services division shall provide to the sustainable Santa Fe commission a report that contains the following:

(1) An estimation of the financial impact to retail establishments of implementing this Ordinance; and

(2) An estimation of the effectiveness of this Ordinance compared to other jurisdictions' efforts to reduce use of single-use carryout bags.

E. The evaluation by the sustainable Santa Fe commission shall be presented in a report to the city council with recommendations for any changes in the ban, pass-through charges, or other provisions that are needed to improve effectiveness. The report to the city council shall be submitted no later than one year after the approved date of this Ordinance.

Section 8. A new Subsection 21-8.6 SFCC 1987 is ordained to read:

21-8.6 [NEW MATERIAL] Enforcement; Violations and Penalty.

A. The city manager shall assign primary responsibility for enforcement of Section 21-8 SFCC 1987 and that department/division assigned shall be authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Ordinance, including, but not limited to, investigating violations, issuing fines and entering the premises of any store during business hours.

B. If the assigned department/division director determines that a violation of Section 21-8 has occurred, a written warning notice shall be issued to the operator of a store that a violation has

occurred and the potential penalties that will apply for future violations.

C. Any store that violates or fails to comply with any of the requirements of Section 21-8, after a written warning notice is issued for that violation shall be guilty of an infraction.

D. If a store has subsequent violations of Section 21-8 that are similar in kind to the violation addressed in a written warning notice, the following fine shall be imposed and shall be payable by the operator of the store: a fine not to exceed one hundred dollars ($100.00) for the first violation, after the written warning notice is given.

E. A fine shall be imposed for each day a violation occurs or is allowed to continue.

F. All fines collected pursuant to Section 21-8 shall be deposited in the enforcement department/divisions' services fund to assist the department/division with its costs of implementing and enforcing the requirements of this Section.

Section 9. A new Subsection 21-8.7 SFCC 1987 is ordained to read:

21-8.7 Appeals.

A. Within thirty (30) days of the date of a notice of violation of this Ordinance or a notice of a fine due under this Ordinance, a store may file an appeal with the enforcing department director setting forth the reasons for the appeal.

B. A hearing officer appointed by the city manager shall conduct a formal hearing within thirty (30) days of the receipt of the appeal by the public utilities director. The public utilities department director shall give written notice by certified mail to the appellant at least ten (10) days prior to the hearing.

C. The hearing officer shall make a decision on the basis of the preponderance of evidence presented at the hearing. The hearing officer shall affirm or reverse the decision of the enforcement department director. The hearing officer shall render a decision within thirty (30) days after the date of the hearing and shall forward the decision to the public utilities department director and the appellant.

D. A filing fee in the amount of fifty dollars ($50.00) shall be paid if the hearing officer does not find in favor of the appellant.

E. An appellant may appeal the decision of the hearing officer to the first judicial district court pursuant to 1-074 NMRA.

Section 10. A new Subsection 21-8.9 SFCC 1987 is ordained to read:

21-8.8 [NEW MATERIAL] Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the ordinance. The city council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this ordinance would be subsequently declared invalid.

Section 11. A new Subsection 21-8.10 SFCC 1987 is ordained to read:

21-8.9 [NEW MATERIAL] No Conflict with Federal or State Law.

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

PASSED, APPROVED, and ADOPTED this 27th day of August, 2013.

DAVID COSS, MAYOR

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

GENO ZAMORA, CITY ATTORNEY

M/Melissa/Ordinances 2013/2013-29 Single Use Bag Ordinance