

ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 03/25/15
ITEM FROM FINANCE COMMITTEE MEETING OF 03/16/15

ISSUE:

20. Request for Approval of an Ordinance Relating to the Single-Use Carryout Bag Ordinance, Section 21-8 SFCC 1987; Amending Subsection 21-8.1 to Modify the Legislative Findings Related to Paper Grocery Bags; Amending Subsection 21-8.4 to Establish the Requirement That Retail Establishments Collect a Paper Grocery Bag Charge for Each Paper Grocery Bag Provided to Customers; Amending Subsection 21-8.6 to Establish a 60 Day Implementation Period; and Making Such Other Changes as are Necessary to Carry Out the Purpose of This Ordinance. (Councilors Ives and Lindell) (John Alejandro)

Committee Review:

City Council (request to publish)	03/25/15
Public Utilities Committee (scheduled)	04/01/15
City Business Quality of Life Committee (scheduled)	04/08/15
City Council (public hearing)	04/29/15

Fiscal Impact – Yes

FINANCE COMMITTEE ACTION: APPROVED AS DISCUSSION ITEM

Approved Ordinance and FIR in the amount of \$51,000 for FY 14/15 and \$7,000 for FY 15/16.

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

Approved with amendments. Add Councilor Rivera as co-sponsor.

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO		X	
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS		X	
CHAIRPERSON DOMINGUEZ	X		

**ACTION SHEET
PUBLIC UTILITES COMMITTEE MEETING OF 4/1/15**

ISSUE NO. 22

Request for approval of Bill No. 2015-_____. An Ordinance relating to the Single-Use Bag ordinance, Section 21-8 SFCC 1987; amending subsection 21-8.1 to modify the legislative findings related to paper grocery bags; amending Subsection 21-8.4 to establish the requirement that retail establishments collect a paper grocery bag charge for each paper grocery bag provided to customers; amending Subsection 21-8.6 to establish a 60 day implementation period; and making such other changes as are necessary to carry out the purpose of this ordinance. (John Alejandro) (Councilors Ives and Lindell)

Finance Committee – 3/16/15 (approved with amendment)
 City Council (Request to Publish) – 3/25/15
 Public Utilities Committee – 4/1/15
 City Business Quality of Life Committee – 4/8/15
 City Council (Public Hearing) – 4/29/15

PUBLIC UTILITES COMMITTEE ACTION : Approved to forward with amendment as recommended by PUC.

SPECIAL CONDITIONS OR AMENDMENTS: 1) PUC would like to see the Gross Receipts Tax removed from the 10 cent fee 2)

STAFF FOLLOW UP: 1) Gross Receipts Tax removed from 10 cent fee 2) Mechanism to track the actual number of bags sold

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR RIVERA, CHAIR	X		
COUNCILOR MAESTAS	X		
COUNCILOR BUSHEE	Excused		
COUNCILOR DIMAS	Excused		
COUNCILOR IVES	X		

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

Bill No. 2015-12

Paper Bag Charge

SPONSOR(S): Councilors Ives, Lindell and Rivera

SUMMARY: The proposed bill relates to the single-use carryout bag ordinance, Section 21-8 SFCC 1987; amending Subsection 21-8.1 to modify the legislative findings related to paper grocery bags; amending Subsection 21-8.4 to establish the requirement that retail establishments collect an environmental service fee for each paper grocery bag provided to customers; amending Subsection 21-8.6 to establish a 60 day implementation period; and making such other changes as are necessary to carry out the purpose of this ordinance.

At the March 16, 2015 Finance Committee meeting, the Committee had a lengthy discussion about the proposed ordinance amendments and provided direction staff to address some of their concerns. Ultimately, the bill was approved with an amendment to call the fee an “environmental service fee” in lieu of a “paper grocery bag fee” or “service fee”.

PREPARED BY: Melissa Byers, Legislative Liaison

FISCAL IMPACT: Yes

DATE: March 19, 2015

ATTACHMENTS: Amendment Sheet & Substitute Bill
Amendment Sheet & Original Bill
Amended FIR

CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO SUBSTITUTE BILL NO. 2015-12
Paper Bag Charge

Mayor and Members of the City Council:

I propose the following amendment(s) to Substitute Bill No. 2015-12:

1. On page 4, *delete* lines 15-18 and *insert* in lieu thereof:
 “A. The Single-Use Carryout Bag Ordinance shall become effective on February 27, 2014. To facilitate the transition to reusable bags, there shall be a thirty (30) day implementation period from the effective date of this Ordinance. February 26, 2014 to March 28, 2014.”

2. On page 6, line 3, *delete* “June 29” and *insert* “June 28” in lieu thereof.

Respectfully submitted,

Peter N. Ives, Councilor

ADOPTED: _____
NOT ADOPTED: _____
DATE: _____

Yolanda Y. Vigil, City Clerk

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2015-12

INTRODUCED BY:

Councilor Peter Ives

Councilor Signe Lindell

Councilor Chris Rivera

AN ORDINANCE

RELATING TO THE SINGLE-USE CARRYOUT BAG ORDINANCE, SECTION 21-8 SFCC 1987; AMENDING SUBSECTION 21-8.1 TO MODIFY THE LEGISLATIVE FINDINGS RELATED TO PAPER GROCERY BAGS; AMENDING SUBSECTION 21-8.4 TO ESTABLISH THE REQUIREMENT THAT RETAIL ESTABLISHMENTS COLLECT AN ENVIRONMENTAL SERVICE FEE FOR EACH PAPER GROCERY BAG PROVIDED TO CUSTOMERS; AMENDING SUBSECTION 21-8.6 TO ESTABLISH A 60 DAY IMPLEMENTATION PERIOD; AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY TO CARRY OUT THE PURPOSE OF THIS ORDINANCE.

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

Section 1. Section 21-8.1 SFCC 1987 (being Ord. #2013-29, §2) is amended to read:

21-8.1 Legislative Findings.

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

A. ~~Most~~ The majority of single-use plastic carry[-]out bags used for shopping do not

1 easily biodegrade [~~and instead~~] but rather persist in the environment for hundreds of years, slowly
2 breaking down through abrasion, tearing and photo degradation into toxic plastic bits that then
3 contaminate the soil and water [~~while entering the food web when animals inadvertently ingest these~~
4 ~~materials~~].

5 B. It is the city's desire to [~~conserve resources~~] protect the environment, while [~~reduce~~]
6 reducing waste, litter, and pollution [~~and~~] in order to help improve [~~protect~~] the public's health and
7 welfare.

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

11 D. [~~Even though~~] [~~s~~]Single-use paper grocery bags require more resources to
12 manufacture, transport, [~~and~~] recycle, or dispose of than single-use plastic carry[-]out bags, [~~they~~] and
13 although many of them are made from renewable resources and are less of a litter problem than
14 single-use plastic carry[-]out bags, and are also recyclable, studies have shown that they have a
15 limited number of times they can be recycled, require more energy to recycle, and take up more space
16 in landfills than plastic bags.

17 E. To encourage the public to use reusable bags, [~~The~~] the Single-Use Carryout Bag
18 Ordinance will eliminate the use of single-use plastic carryout bags and require all retail
19 establishments within the jurisdiction of the city of Santa Fe to assess an environmental service fee
20 for each paper grocery bag they provide to customers. [~~by all retail establishments within the~~
21 ~~jurisdiction of the city of Santa Fe and encourage the use of reusable bags.~~]

22 **Section 2. Section 21-8.2 SFCC 1987 (being Ord. #2013-29, §3) is amended to**
23 **read:**

24 **21-8.2 Short Title; Purpose.**

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

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

6 **Section 3. Section 21-8.4 SFCC 1987 (being Ord. No. 2013-29, §5, as amended) is**
7 **amended to read:**

8 **21-8.4 Applicability.**

9 A. A retail establishment shall not provide a single-use plastic carryout bag to any
10 customer.

11 B. For every paper grocery bag provided by a retail establishment, an environmental
12 service fee of ten cents (\$.10) shall be charged to the customer for each paper grocery bag provided,
13 except that retail establishments shall not collect the environmental service fee from any person with
14 a voucher or electronic benefits card issued under Women, Infants and Children Program(WIC), the
15 Emergency Food Assistance Program (TEFAP), Temporary Assistance to Needy Families Program
16 (TANF), or the federal Supplemental Nutrition Assistance Program (SNAP, also known as Basic
17 Food Stamps).

18 (1) Retail establishments shall indicate on the customer transaction receipt the
19 number of paper grocery bags provided and the total amount of the environmental service
20 fees charged.

21 (2) Ten percent (10%) of the environmental service fee collected by a retail
22 establishment shall be retained for administrative costs incurred by the collection and
23 reporting of the environmental service fee to the city. The remainder of the environmental
24 service fee collected shall be transmitted to the city of Santa Fe. The city shall dedicate the
25 environmental service fees towards environmental educational programs and services

1 provided to the public, and also towards the purchase of reusable bags to be provided to the
2 public, free of charge.

3 (3) It shall be a violation of this Ordinance for any retail establishment to pay or
4 otherwise reimburse a customer for any portion of the environmental service fee.

5 [B]C. To further promote the use of reusable [shopping] bags and reduce the quantity of
6 single-use carryout bags entering the city's waste stream, retail establishments are encouraged to
7 make reusable [carryout] bags free or for sale at [the] checkout counters and/or provide boxes for use
8 at [the] checkout counters free of charge. The environmental services division is authorized to provide
9 reusable [carryout] bags for the public at low-cost or free[-]of[-]charge, [~~targeting such programs to~~
10 ~~reach~~] with specific emphasis on reaching out to low-income households to the greatest degree
11 possible.

12 **Section 4. Section 21-8.6 SFCC 1987 (being Ord. No. 2013-29 §7, as amended) is**
13 **amended to read:**

14 **21-8.6 Effective Dates.**

15 A. The Single-Use Carryout Bag Ordinance shall become effective on [~~February 27,~~
16 ~~2014~~] April 30, 2015. To facilitate the transition to reusable bags, there shall be a [~~thirty (30)~~] sixty
17 day (60) day implementation period from the effective date of this Ordinance. [~~February 26, 2014 to~~
18 ~~March 28, 2014.~~] (April 30, 2015 to June 29, 2015.)

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

21 [~~C. The environmental services divisions shall conduct a sample survey of some retail~~
22 ~~establishments impacted by this section to provide feedback about the financial impact to each~~
23 ~~establishment.~~

24 D. [~~In a public meeting no later than twelve (12) months after the effective date of this~~
25 ~~Ordinance, the sustainable Santa Fe commission shall review and evaluate the survey results reported~~

1 by the environmental services division to assess the impacts to businesses of the Single Use Bag
2 Ordinance. Additionally, the environmental services division shall provide to the sustainable Santa
3 Fe commission a report that contains the following:

4 ~~_____ (1) An estimation of the financial impact to retail establishments of~~
5 ~~implementing this section; and~~

6 ~~_____ (2) An estimation of the effectiveness of this section compared to other~~
7 ~~jurisdictions' efforts to reduce use of single use carryout bags.~~

8 ~~_____ (3) A comparison of those retail establishments that charge for paper bags and~~
9 ~~reusable bags and those retail establishments that do not charge for paper bags and reusable~~
10 ~~bags.~~

11 E. ~~The evaluation by the sustainable Santa Fe commission shall be presented in a report~~
12 ~~to the city council with recommendations for any changes in the ban, pass-through charges, or other~~
13 ~~provisions that are needed to improve effectiveness. The report to the city council shall be submitted~~
14 ~~no later than one year after the approved date of this Ordinance (February 26, 2015).]~~

15 C. The environmental services division shall conduct a sample survey of retail
16 establishments impacted by this section and shall review, evaluate and assess the survey results, to
17 then be compiled into a report that shall also contain the following:

18 _____ (1) An estimation of the financial impact to retail establishments of
19 implementing this section and,

20 _____ (2) An estimation of the financial impact on the public.

21 D. The environmental services shall present the report to the city council with
22 recommendations for any changes in this section, or other provisions that are needed to improve its
23 effectiveness. The report to the city council shall be submitted no later than one year after the
24 approved date of this Ordinance.

25 F. There shall be a sixty (60) day implementation period to facilitate the implementation

1 of a ten cent (\$.10) environmental service fee by retail establishments, pursuant to Subsection 21-
2 8.4(B). Therefore, retail establishments shall begin charging the environmental service fee no later
3 than June 29, 2015.

4 **Section 5. Effective Date.** This Ordinance shall become effective immediately upon
5 adoption.

6 APPROVED AS TO FORM:

7 
8 _____

9 KELLEY A. BRENNAN, CITY ATTORNEY

**CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2015-12
Paper Bag – Environmental Service Fee**

Mayor and Members of the City Council:

We propose the following amendment(s) to Bill No. 2015-12:

1. On page 1, lines 14 and 15, *delete* “A PAPER GROCERY BAG CHARGE” and *insert* “AN ENVIRONMENTAL SERVICE FEE” in lieu thereof
2. On page 2, line 19, *delete* “a” and *insert* “an environmental” in lieu thereof
3. On page 3, line 11, *delete* “a” and *insert* “an environmental” in lieu thereof
4. On page 3, line 13, *delete* “ a paper grocery bag” and *insert* “the environmental service”
5. On page 3, line 18, after “amount of the” *insert* “environmental”
6. On page 3, line 19, after “of the” *insert* “environmental”
7. On page 3, line 20, after “of the” *insert* “environmental”
8. On page 3, line 21, after “of the” *insert* “environmental service”
9. On page 3, line 22, after “dedicate the” *insert* “environmental service”
10. On page 4, line 1, after “of the” *insert* “environmental”
11. On page 5, line 23, *delete* “paper grocery bag” and *insert* “environmental service” in lieu thereof
12. On page 5, line 24, *delete* “paper grocery bag” and *insert* “environmental service” in lieu thereof

Respectfully submitted,

Finance Committee

ADOPTED: _____
NOT ADOPTED: _____
DATE: _____

Yolanda Y. Vigil, City Clerk

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2015-12

3 INTRODUCED BY:

4
5 Councilor Peter Ives

6 Councilor Signe Lindell

7 Councilor Chris Rivera

8
9
10 AN ORDINANCE

11 RELATING TO THE SINGLE-USE CARRYOUT BAG ORDINANCE, SECTION 21-8 SFCC
12 1987; AMENDING SUBSECTION 21-8.1 TO MODIFY THE LEGISLATIVE FINDINGS
13 RELATED TO PAPER GROCERY BAGS; AMENDING SUBSECTION 21-8.4 TO
14 ESTABLISH THE REQUIREMENT THAT RETAIL ESTABLISHMENTS COLLECT A
15 PAPER GROCERY BAG CHARGE FOR EACH PAPER GROCERY BAG PROVIDED TO
16 CUSTOMERS; AMENDING SUBSECTION 21-8.6 TO ESTABLISH A 60 DAY
17 IMPLEMENTATION PERIOD; AND MAKING SUCH OTHER CHANGES AS ARE
18 NECESSARY TO CARRY OUT THE PURPOSE OF THIS ORDINANCE.

19
20 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE;

21 Section 1. Section 21-8.1 SFCC 1987 (being Ord. #2013-29, §2) is amended to
22 read:

23 21-8.1 Legislative Findings.

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

25 A. ~~Most~~ The majority of single-use plastic carry[-]out bags used for shopping do not

1 easily biodegrade ~~[and instead]~~ but rather persist in the environment for hundreds of years, slowly
2 breaking down through abrasion, tearing and photo degradation into toxic plastic bits that then
3 contaminate the soil and water ~~[while entering the food web when animals inadvertently ingest these~~
4 ~~materials]~~.

5 B. It is the city's desire to ~~[conserve resources]~~ protect the environment, while ~~[reduce]~~
6 reducing waste, litter, and pollution ~~[and]~~ in order to help improve ~~[protect]~~ the public's health and
7 welfare.

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

11 D. ~~[Even though]~~ ~~[s]~~Single-use paper grocery bags require more resources to
12 manufacture, transport, ~~[and]~~ recycle, or dispose of than single-use plastic carry[-]out bags, ~~[they]~~ and
13 although many of them are made from renewable resources and are less of a litter problem than
14 single-use plastic carry[-]out bags, and are also recyclable, studies have shown that they have a
15 limited number of times they can be recycled, require more energy to recycle, and take up more space
16 in landfills than plastic bags.

17 E. To encourage the public to use reusable bags, [The] the Single-Use Carryout Bag
18 Ordinance will eliminate the use of single-use plastic carryout bags and require all retail
19 establishments within the jurisdiction of the city of Santa Fe to assess a service fee for each paper
20 grocery bag they provide to customers. [by all retail establishments within the jurisdiction of the city
21 of Santa Fe and encourage the use of reusable bags.]

22 **Section 2. Section 21-8.2 SFCC 1987 (being Ord. #2013-29, §3) is amended to**
23 **read:**

24 **21-8.2 Short Title; Purpose.**

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

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

6 **Section 3. Section 21-8.4 SFCC 1987 (being Ord. No. 2013-29, §5, as amended) is**
7 **amended to read:**

8 **21-8.4 Applicability.**

9 A. A retail establishment shall not provide a single-use plastic carryout bag to any
10 customer.

11 B. For every paper grocery bag provided by a retail establishment, a service fee of ten
12 cents (\$.10) shall be charged to the customer for each paper grocery bag provided, except that retail
13 establishments shall not collect a paper grocery bag fee from any person with a voucher or electronic
14 benefits card issued under Women, Infants and Children Program(WIC), the Emergency Food
15 Assistance Program (TEFAP), Temporary Assistance to Needy Families Program (TANF), or the
16 federal Supplemental Nutrition Assistance Program (SNAP, also known as Basic Food Stamps).

17 (1) Retail establishments shall indicate on the customer transaction receipt the
18 number of paper grocery bags provided and the total amount of the service fees charged.

19 (2) Ten percent (10%) of the service fee collected by a retail establishment shall
20 be retained for administrative costs incurred by the collection and reporting of the service fee
21 to the city. The remainder of the fee collected shall be transmitted to the city of Santa Fe.
22 The city shall dedicate the fees towards environmental educational programs and services
23 provided to the public, and also towards the purchase of reusable bags to be provided to the
24 public, free of charge.

25 (3) It shall be a violation of this Ordinance for any retail establishment to pay or

1 otherwise reimburse a customer for any portion of the service fee.

2 [B]C. To further promote the use of reusable [shopping] bags and reduce the quantity of
3 single-use carryout bags entering the city's waste stream, retail establishments are encouraged to
4 make reusable [carryout] bags free or for sale at [the] checkout counters and/or provide boxes for use
5 at [the] checkout counters free of charge. The environmental services division is authorized to provide
6 reusable [carryout] bags for the public at low-cost or free[-]of[-]charge, [~~targeting such programs to~~
7 ~~reach~~] with specific emphasis on reaching out to low-income households to the greatest degree
8 possible.

9 **Section 4. Section 21-8.6 SFCC 1987 (being Ord. No. 2013-29 §7, as amended) is**
10 **amended to read:**

11 **21-8.6 Effective Dates.**

12 A. The Single-Use Carryout Bag Ordinance shall become effective on [~~February 27,~~
13 ~~2014~~] April 30, 2015. To facilitate the transition to reusable bags, there shall be a [~~thirty (30)~~] sixty
14 day (60) day implementation period from the effective date of this Ordinance. [~~(February 26, 2014 to~~
15 ~~March 28, 2014.)~~] (April 30, 2015 to June 29, 2015.)

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

18 [~~C. The environmental services divisions shall conduct a sample survey of some retail~~
19 ~~establishments impacted by this section to provide feedback about the financial impact to each~~
20 ~~establishment.~~

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

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

3 ~~(2) An estimation of the effectiveness of this section compared to other~~
4 ~~jurisdictions' efforts to reduce use of single use carryout bags.~~

5 ~~(3) A comparison of those retail establishments that charge for paper bags and~~
6 ~~reusable bags and those retail establishments that do not charge for paper bags and reusable~~
7 ~~bags.~~

8 E. ~~The evaluation by the sustainable Santa Fe commission shall be presented in a report~~
9 ~~to the city council with recommendations for any changes in the ban, pass-through charges, or other~~
10 ~~provisions that are needed to improve effectiveness. The report to the city council shall be submitted~~
11 ~~no later than one year after the approved date of this Ordinance (February 26, 2015).]~~

12 C. The environmental services division shall conduct a sample survey of retail
13 establishments impacted by this section and shall review, evaluate and assess the survey results, to
14 then be compiled into a report that shall also contain the following:

15 (1) An estimation of the financial impact to retail establishments of
16 implementing this section and,

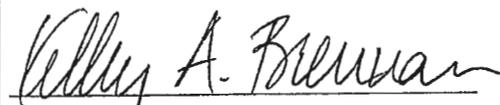
17 (2) An estimation of the financial impact on the public.

18 D. The environmental services shall present the report to the city council with
19 recommendations for any changes in this section, or other provisions that are needed to improve its
20 effectiveness. The report to the city council shall be submitted no later than one year after the
21 approved date of this Ordinance.

22 F. There shall be a sixty (60) day implementation period to facilitate the implementation
23 of a ten cent (\$.10) paper grocery bag fee by retail establishments, pursuant to Subsection 21-8.4(B).
24 Therefore, retail establishments shall begin charging the paper grocery bag fee no later than June 29,
25 2015.

1 **Section 5. Effective Date.** This Ordinance shall become effective immediately upon
2 adoption.

3 APPROVED AS TO FORM:

4 
5 _____
6 KELLEY A. BRENNAN, CITY ATTORNEY

City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

Section A. General Information

(Check) Bill: Resolution: _____
(A single FIR may be used for related bills and/or resolutions)

Short Title(s): AN ORDINANCE RELATING TO THE SINGLE-USE CARRYOUT BAG ORDINANCE, SECTION 21-8 SFCC 1978; AMENDING SUBSECTION 21-8.1 TO MODIFY THE LEGISLATIVE FINDINGS RELATED TO PAPER GROCERY BAGS; AMENDING SUBSECTION 21-8.4 TO ESTABLISH THE REQUIREMENT THAT RETAIL ESTABLISHMENTS COLLECT AN ENVIRONMENTAL SERVICE FEE FOR EACH PAPER GROCERY BAG PROVIDED TO CUSTOMERS; AMENDING SUBSECTION 21-8.6 TO ESTABLISH A 60 DAY IMPLEMENTATION PERIOD; AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY TO CARRY OUT THE PURPOSE OF THIS ORDINANCE.

Sponsor(s): Councilors Ives, Lindell and Rivera
Reviewing Department(s): Public Utilities
Persons Completing FIR: John Alejandro Date: 3/18/15 Phone: 955-6236

Reviewed by City Attorney:  Date: 3/19/15
(Signature)

Reviewed by Finance Director:  Date: 3-19-2015
(Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the bill/resolution:

The proposed ordinance amends the existing single-use bag ordinance to establish the requirement that retail establishments collect an environmental service fee of ten cents (\$0.10) for each paper bag provided to customers. Ten percent (10%) of the service fee collected by a retail establishment shall be retained by the retail establishment for administrative costs incurred by the establishment. The remainder of the fee collected shall be transmitted to the city of Santa Fe. The city shall dedicate the fees towards environmental educational programs and services provided to the public, and also towards the purchase of reusable shopping bags to be provided to the public, free of charge.

However, retail establishments shall not collect an environmental service fee 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).

Section C. Fiscal Impact

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)

Finance Director: _____

c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*

1. Projected Expenditures:

a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)

b. Indicate: “A” if current budget and level of staffing will absorb the costs
“N” if new, additional, or increased budget or staffing will be required

c. Indicate: “R” – if recurring annual costs
“NR” if one-time, non-recurring costs, such as start-up, contract or equipment costs

d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns

e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

_____ Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY 14/15_	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY 15/16_	"A" Costs Absorbed or "N" New Budget Required	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected
	Personnel*	\$13,000	A		\$7,000	A		
	Fringe**	\$			\$			
	Capital Outlay	\$			\$			
	Land/ Building	\$			\$			
	Professional Services	\$			\$			
	All Other Operating Costs	\$38,000	N		\$			
	Total:	\$51,000			\$7,000			

* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. **For fringe benefits contact the Finance Dept.

2. Revenue Sources:

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY 15/16_	"R" Costs Recurring or "NR" Non-recurring	FY 16/17_	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected
	General	\$~336,150	NR	\$ TBD		
		\$		\$		
		\$		\$		
	Total:	\$~336,150		\$ TBD		

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

EXPENDITURES:

Staff time (FY 14/15):

- **Outreach to stores (phone calls, meetings, Q&A): \$2,000**
- **Materials development to stores (content): \$1,000**
- **Tabling at community events & stores: \$10,000**

Materials (FY 14/15):

- **Reusable Bags to give away: \$20,000**
- **Advertising (print and radio): \$15,000**
- **Utility bill mailer: \$2,000**
- **Letters to retail businesses (mailer): \$1,000**

Staff time (FY 15/16):

- **Enforcement: \$1,000**
- **Data/survey collection: \$2,500**
- **Report/survey analysis and draft: \$3,500**

REVENUE:

Notes:

- **Retail stores in Santa Fe do not provide data related to bags used annually in Santa Fe, or bags used per person.**
- **Comparative data from Boulder, Colorado used to calculate approximate service fee to be collected in Santa Fe, specifically population size and bags purchased per person, per year (~60).**
- **As per the draft ordinance, of the \$0.10 cent service fee to be collected, \$0.01 cent will be retained by retailers and \$0.09 cents will remit to the city.**

Calculations:

- **83,000 (people in Santa Fe, U.S. Census) – 20,750 (kids under 18 yrs., U.S. Census) = 62,250 people**
- **62,250 ppl x 60 bags per person = 3,735,000 bags annually**
- **3,735,000 bags x .09 cents service fee per bag = \$336,150 total annual service fee**

Section D. General Narrative

1. Conflicts: Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

None that staff is aware of.

2. Consequences of Not Enacting This Bill/Resolution:

Are there consequences of not enacting this bill/resolution? If so, describe.

Customers of retail establishments may choose to continue using paper bags and not use reusable bags.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

No

4. Community Impact:

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

The proposed ordinance is designed to discourage the use of paper bags, and in doing so, encourage the public to use reusable bags when shopping. The reduction of paper bags in the waste stream may have a positive impact on the environment.

Currently, businesses are providing the public with paper bags due to the ban on plastic bags. Some businesses have reported that the cost associated with paper bags is greater than plastic bags. The proposed ordinance requires retailers to collect a ten cent (\$0.10) environmental service fee for providing a paper bag, of which they may retain one cent (\$0.01) to cover the costs related to the collection and disbursement of the service fee to the city. The ordinance does not enable any portion of the service fee to be retained by retailers to help them offset the costs incurred from providing paper bags.

The impact of the service fee on low-income populations is attempted to be reduced by requiring retailers to not charge the services fee to those using a voucher or benefits card issued by WIC, TEFAP, TANF, SNAP.

The service fee collected may be used to provide free reusable bags to the public and to administer environmental education programs and services to the public, which may help to reduce waste, improve recycling rates, and improve Santa Fe's environment.

Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08

Chair Dominguez said, "That's essentially what it means."

Councilor Lindell asked, "Is that your understanding Councilor Maestas." Councilor Maestas said, "Yes."

Councilor Rivera said assuming this isn't funded during the budget session, we in essence have created a position. So this creates a position and leaves it as a vacant, unfunded position, which is something that has been a huge topic of discussion with the Finance Committee for the past 3 months, talking about vacant positions, getting rid of them. So now we're creating another vacant position that stays on the books until it is funded or done away with.

Chair Dominguez sees it as the position wouldn't get created unless there was an appropriation for the position. He doesn't want to create a position, as an unfunded shell. His preference is to determine through the budget process whether we can fund this position, and if so it is created, but not simply to create a position. We would actually have to fund it in order to be "quote unquote created."

Ms. Byers suggested a possible amendment on page 17, where it talks about Review and Reporting, and it says, "This Ordinance shall be reviewed by the Governing Body within one year of a forensic auditor being employed by the City." Ms. Byers suggest, "I would recommend or suggest putting in a appropriations paragraph saying unless sufficient appropriation is made the position will not be implemented," or something to that effect. This is for the forensic auditor portion of this, commenting the Ordinance also contains other changes to clarify other provisions. This isn't just about a forensic auditor, so her suggestion is specifically about the forensic auditor position.

RESTATEMENT OF THE MOTION, AS AMENDED: Councilor Maestas said, "We moved for approval, but with the proviso that the Fraud Investigator Position be created and funded, subject to appropriations during the budget hearing process."

VOTE: The motion was approved on a voice vote with Councilors Lindell, Maestas and Trujillo voting in favor of the motion and Councilor Rivera voting against..

- 20. REQUEST FOR APPROVAL OF AN ORDINANCE RELATING TO THE SINGLE-USE CARRYOUT BAG ORDINANCE, SECTION 21-8 SFCC 1987; AMENDING SUBSECTION 21-8.1 TO MODIFY THE LEGISLATIVE FINDINGS RELATED TO PAPER GROCERY BAGS; AMENDING SUBSECTION 21-8.4 TO ESTABLISH THE REQUIREMENT THAT RETAIL ESTABLISHMENTS COLLECT A PAPER GROCERY BAG CHARGE FOR EACH PAPER GROCERY BAG PROVIDED TO CUSTOMERS; AMENDING SUBSECTION 21-8.6 TO ESTABLISH A 60-DAY IMPLEMENTATION PERIOD; AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY TO CARRY OUT THE PURPOSE OF THIS ORDINANCE (COUNCILORS IVES AND, LINDELL AND RIVERA). (JOHN ALEJANDRO) Committee Review: City Council (Request to publish) 03/25/15; Public Utilities Committee (scheduled) 04/01/15; City Business & Quality of Life Committee (scheduled) 04/08/15; and City Council (public hearing) 04/29/15. Fiscal Impact – Yes.**

Councilor Trujillo said he thought we weren't going to hear this anymore, but guesses something has happened. He said he understands what happened, saying when Geno Zamora was City Attorney he said this was legal and we could do this. And then Kelley revisited it and said it was an illegal tax. He said, "That's how I've always felt, this is an illegal tax. What has changed. Why are we able to bring this before the Council when technically, the provision when it passed 1½ years ago it was said we couldn't."

John Alejandro said, "Through my discussions with the City Attorney's Office, the original wording of the Ordinance that referred to the fee was found to be written such that it could be construed as a tax, and so that's why it was removed. On further review by the City Attorney's Office, new language was discovered that could be inserted into the Ordinance so it was written into the Ordinance as a service fee. A service fee meaning that the amount of money associated with charging the consumer a very small portion of that amount could be retained by the retailer, but only the amount of money it would take for them to report funds to the City. And so, under that language which is in the new Ordinance, the service fee address the question of tax versus service fee due to the retention of a small amount of money on that fee."

Councilor Trujillo said, "What I'm seeing here is that the retailer would get 1¢ and the City would retain 9¢. Correct."

Mr. Alejandro said, "Correct."

Councilor Trujillo asked, "What is this 9¢ going to go for."

Mr. Alejandro said, "The recommendation that is written into the Ordinance is based on the Sustainable Santa Fe Commission's survey report, and it would go basically to 3 things: Purchase and distribution of additional reusable bags to the community. Last time around, I believe 20,000 reusable bags were given into the community. I believe that amount, if not more, would be used again to distribute reusable bags into the community. The second thing would be to provide educational programming in the community to make members of the community aware of recycling responsibility, benefits of recycling and that type of thing. The third would be to identify and administer an environmental services program that would benefit the community as a whole."

Councilor Trujillo asked Mr. Alejandro asked if any businesses currently are charging for paper bags.

Mr. Alejandro said yes, from personal experience, he knows of one if not a handful throughout the City.

Councilor Trujillo asked if they are charging 10¢ per bag.

Mr. Alejandro said, "Yes. And if I may editorialize, it was just based on my observations based on where I shop, they are, in certain specific areas of the City."

Councilor Trujillo said, "Well my ten cents on this. I still consider this an illegal tax. When this was first brought before the Council, the goal was to get rid of plastic bags, and it didn't get all the plastic bags. That's what I've kept on saying, has this really truly been a plastic bag ban in the entire City. The dry cleaners, those on the Plaza think they don't fall under that law. This was a plastic bag ban and this is why I see this as an illegal tax. I've talked to a lot of constituents, those on fixed incomes with 5 bags of groceries, that's initially 50¢. That accumulates over the year. The goal was to get rid of the plastic bags, you got some of them, but the initial goal of this Ordinance was to get the paper bags, not 10¢. And I still believe this is an illegal tax."

Councilor Trujillo continued, "I don't understand why the City Attorney really is circumventing this and saying, hey, it's okay now, because we're going to buy more bags. Well, guess what we bought \$20,000 worth of bags last time. Are people using them, I don't know. I really don't. I carry my bags, I do that, but there have been times I've forgotten my bags, and luckily I've been able to pay. One of my concerns is, are we creating more of a problem. We talk about plastic bags, but the thing I'm hear from a lot of constituents here in Santa Fe, well guess what, we just created another problem, paper. Instead of synthetic plastic, now we're killing more trees."

Councilor Trujillo continued, "I guess it's a balancing act. Has this really done good in this community. We're having a discussion in a few weeks dealing with miniatures, plastic and all that stuff. This is the same thing. It's a trash issue. I still see plastic bags when I shop, I buy cereal. Guess what, it's packaged in a box, but guess what's in the box, a plastic bag. So we haven't really gotten rid of the plastic bags, the plastic are here. I think they are reusable. In my house they are. To line the trash, pick up dog poop, pick up weeds. They're reusable in my household and I feel a lot of constituents in Santa Fe feel the same way too."

Councilor Trujillo continued, "So, I just want to be on record as to the reason I do not support this. I do believe its an illegal tax, and that wasn't the goal of this Ordinance to tax people in this community. So I give it to you John."

Chair Dominguez said his question to Mr. Alejandro, as the environmental person, is what is the benefit of not allowing plastic bags in our community, and has it made an impact. I think that's the question Councilor Trujillo was trying to get to."

Councilor Trujillo said, "No. What is the benefit of charging 10¢."

Chair Dominguez said, "What's the benefit of charging 10¢, and the difference between paper and plastic."

Mr. Alejandro said, "The benefits to not allowing plastic bags to enter the environment are multiple. To many of the points you made Councilman Trujillo, once a plastic bag enters into the environment and not into the proper waste stream channel, it takes years for the plastic bag to degrade. I think it goes with saying many of us have often seen plastic bags in trees or in the arroyos, or even floating around in some instances just around town. The life span of a plastic bag is years, upon years, upon years. The overall intent of the original Ordinance was to get rid of plastic bags and to remove them from the environment,

which was accomplished vis a vis the bag ban survey report from the Sustainable Santa Fe Commission, that was accomplished in the sense that plastic bags were no longer being given at point of purchase and are now being replaced by paper bags. In that sense, it stands to reason that a reduction of plastic bags in the environment will be seen over time, given that they're not being available at the point of purchase any longer."

Mr. Alejandro continued, "When it comes to paper bags, however, much like plastic bags, I should note, the content of the paper is made up of anywhere from 10 to 35 to 40% of recyclable materials, and plastic bags are as well. The benefit to having paper bags versus plastic bags, is I believe they are more readily available to be recycled at recycling centers, much like newspapers and cardboard are. The benefit to having a service fee imposed, is I think a question of consistency now."

Mr. Alejandro continued, "There are stores that currently are charging anywhere between 5¢ to 10¢ for a paper bag. That has been applied evenly throughout the community. I think consistency is one thing when it comes to assessing a service fee across the board. Everyone understands that this is what the law says and it's going to be applied evenly amongst everyone. Even the retailers that are providing single use bags for clothing. Under the definition in the Ordinance if you look at, I forget the exact section, the definition of paper bag as written, includes the grocery store size shopping bag. Anything smaller than that, the service fee does not apply. So take out restaurants and those types of entities, small grocers that use the smaller paper bags would be exempt under this one. It's the large paper bags that are typically used for grocery shopping."

Chair Dominguez asked if the environmental impact of those exceptions is less. He said, "In other words, did you just say some restaurants would be exempt from the Ordinance."

Mr. Alejandro said, "That's correct, given the Ordinance and the definition of paper and plastic bags, nothing would be changed with this specific ordinance. So what that means is that plastic bags of a certain size would still be available to the public for restaurant take-outs, subway sandwiches and what-not, and then smaller size paper bags would be exempt from the service fee. Under the definition of paper bag, we're talking about a standard grocery store size grocery bag or larger."

Mr. Alejandro said, "I had one additional point in terms of the service fee. The second benefit to the service fee would be, right now, under the existing Ordinance, there is no public benefit to anyone for the fees that are being charged for paper bags. The Ordinance here would rectify that. It would consistently apply the 10¢ service fee across the board to everyone in the City and then a public benefit would be derived from that fee itself, which would be applied to everyone throughout the community, depending on the environmental service program that would be established in addition to the reasonable cloth bags that would be given out again."

Councilor Dominguez asked the Assistant City Attorney if she would like to comment.

Teresa Gheen, Assistant City Attorney, said, "Kelley Brennan extends her apologies for not being here today, she had an appointment she could not miss."

Chair Dominguez asked, "So is this an illegal tax."

Ms. Gheen said, "Kelley Brennan's opinion is that this not an illegal tax, that this is a fee which is legal and she is comfortable with the Ordinance as it is written."

Chair Dominguez asked, "What makes it not a legal tax or any sort of tax."

Ms. Gheen said, "I will have to punt that question, because I was not fully briefed on that, but Kelley's message was that it is an appropriate fee as opposed to an illegal tax."

Chair Dominguez asked Ms. Byers to comment.

Melissa Byers said, "It is my recollection, before the Ordinance mandated the paper bag fee of 10¢, and in that Ordinance, we did not require the business to turn money back to the City, so it was Kelley's opinion that was an illegal tax because the City is not getting anything. The way this is written that we are mandating the businesses to collect 10¢. However, they get to keep a penny of the 10¢ for administrative purpose to turn over the money to the City. So I think that's the distinction. Before, they kept all of the 10¢, so we were mandating that they tax people and they got to keep the money. In this case the penny that they collect is used for their administrative handling of funds to the City."

Chair Dominguez said, "Essentially, before, money was being collected that was not being used for a public purpose."

Ms. Byers said that is correct. It wasn't being turned over to the City at all.

Responding to the Chair, Ms. Byers said, "Yes. It will be administered by the business and they will turn over 9¢ to the City and we'll use that to educate the public and purchase reusable bags."

Chair Dominguez said he has heard nothing that will keep him from supporting the Ordinance, noting he wants to "make sure we keep the substance and not just chime-in on what's politically appealing, but that we have an Ordinance with substance." He said, as he's said before, "The road to hell is paved with good intentions, and that's what you have to go through sometimes to make sure you do the right thing."

Councilor Maestas said in general, he is reluctantly in support of this, noting he inherited the plastic bag ban, but understands without the disincentive it won't work, and this is a disincentive. He reluctantly supports it because it is an optional fee. All people have to do is bring reusable bags to the grocery store and they don't pay the fee. It is based on the person's option. It's all about behavior modification. He said the initial funds are substantial, but trails-off after people establish the habit of bringing reusable bags. He sees the fee being imposed for a very short period time, and the revenues will than trail-off and people will bring their reusable bags. He asked how we will collect the fee, what is the new mechanism to collect the revenues, noting we normally do not collect any fees directly from retailers. He noted the FIR shows \$50,000 total to create a new mechanism. He believes it will cost more than \$50,000.

Mr. Alejandro said he would like to clarify the FIR. The personnel charges and operating costs in FY 14/15, the \$13,000 for personnel and other operating costs at \$38,000, totals \$51,000, and \$7,000 for FY 15/16 – these are costs associated with public education and awareness programs about the paper bag fee in addition to the funds used to purchase reusable bags.

Mr. Alejandro continued, "To your question, specifically, Councilor Maestas, given that I would have to give you a specific answer to that question in terms of how the City would then collect the fee that has been imposed, I do know retailers would be required, much like they do on the GRT, to collect, account and report that amount to the City. But the process to you and myself, I can't definitively give you an answer to that process."

Councilor Maestas said essentially, we're becoming a new fiscal agent for the revenues for this fee, and "I know it's not \$50,000, and there's no way that the costs associated with collecting this revenue is going to go down. The revenues may go down, but the administrative effort required to collect this fee on an ongoing basis is going to be much more substantial than \$50,000. And you show the fiscal impact going down to \$7,000 next year. I think we're not including all those overhead costs associated with collecting revenue, and creating a new collection process. A direct collection process from retailers. That's my first issue with this. My second is how we enforce this. There's no requirement to have retailers register. A retailer needs to register with the City and say we do dispense paper bags. I think there needs to be a registration process as a part of this."

Councilor Maestas reiterated the enforcement piece is missing, the collection piece is missing, and there needs to be a formal identification and registration process for retailers. These are his major issues. His smaller issues have to do with charging 10¢. He said he thought the Sustainability Commission gave us a range. He said we need to be very careful to not create a lot of programs, because in 3-5 years, the revenues will trail-off. He would hate for us to create more, bigger government and then have to reduce the size when the revenues no longer are coming in. He asked, "Why not 5¢."

Mr. Alejandro said the Sustainable Santa Fe Commission looked at other cities and it came up with 10¢ as being the most appropriate and modest amount, noting the range of cities they surveyed charged 5¢ to 25¢.

Councilor Maestas said when he saw the estimate of revenue generated annually of \$336,000, he can't see us giving away bags and launching a broader public education campaign and spending that much money. He doesn't think we need that much money, and we can get by with less and still achieve the desired results. He thinks the 10¢ is excessive and we could charge 5¢, do the same things with the same desired effect.

Councilor Maestas thinks we should do what Dallas did in calling its fee an environmental fee, and thinks we should consider renaming ours, because it implies the intent of this whole plastic bag ban and disincentive fee for paper bags. He would urge the sponsors to consider this.

Councilor Maestas said Dallas exempted the fee on the bag from gross receipts tax, and this Ordinance is silent. He would like to see the exemption of sales tax on that fee. He summarized his proposed amendments: add language on enforcement, rename the service fee the environmental fee, exempt the fee from sales tax and require that businesses dispensing paper bags be registered.

Chair Dominguez said, if approved, there is someone from the City Attorney's Office that can answer some of the questions by the time it goes to the City Council. He said Councilor Maestas's proposed amendments probably will be acceptable, but there needs to be clarification on Councilor Maestas's questions by the time it gets to Council.

Councilor Maestas said the biggest issue is the fiscal impact and a description of the collection process, noting this is precedent setting and we don't have a mechanism like this. He pointed out that there is a considerable overhead involved in being a fiscal agent which he believes goes far 50,000. We can do a cost/allocation study once we identify how to collect revenues, which he believes will be far beyond \$50,000.

Chair Dominguez reiterated the overall overarching theme and purpose is to change community norms.

Councilor Maestas said we had a lengthy discussion on fiscal impact, and we shouldn't lose that and get caught up in the concept.

Councilor Ives said with regard to the fee, "I would note for the record here today that when this came forward, it came forward with a fee attached so there's nothing new there. And that was always intended by Business & Quality of Life, the primary Committee which this grew out of. And it was specifically because they wanted to make sure that we did have impact on behavior that would eliminate the use of plastic bags and put people in the context of using reusable bags so we could cut down on our waste streams, because as a City we do such a bag job at recycling. So it's very much an effort to do exactly the kinds of things we are interested in doing on the environmental side of the City."

Councilor Ives continued, saying the City Attorney's Office now agrees that, based on the redrafted provisions, it now constitutes a fee instead of a tax. He doesn't doubt that we can have the additional information from the City Attorney's office, if needed, on that particular point.

Councilor Ives said, regarding the registration issue, all businesses register with the City every year and get business licenses. He said Councilor Maestas had an efficient means of testing business compliance with the Living Wage which was a checkbox on the business registration form where people checked indicating and certifying that they are in compliance with the Living Wage Ordinance. He said this kind of registration is easy and can be used for something like this as well. He said they would be happy to bring forward an additional amendment for a similar checkbox for business registration, so people are required to self-identify and self-regulate in terms of whether or not they sell paper bags and are subject to this reporting.

Councilor Ives continued saying, with regard to compliance, one of the reasons we were talking about having a new forensic auditor position is to ensure compliance with City Ordinances. He said with regard to terminology he has no problem in calling it an environmental fee, noting the purpose is toward the environmental side.

Councilor Ives said, with regard to the sales tax issue, he is unsure the City has any say in exempting people from sales tax, and that might have to come from the State level.

Councilor Ives said regarding the fiscal impact, "Again, because we can build very easily on these enforcement mechanisms, I don't think the expenditure is going to be significant. The work that is to be done with the fee is being funded by the fee, and goal is, and the hopeful impact is that once imposed, people's behavior will change, they'll stop getting paper bags and start bringing reusable bags to the stores for their goods. And we'll reduce those waste streams, we'll reduce collection of the fee and the best thing that could happen is that we eliminate any fees needing to be collected at all, so that would be a wonderful thing. So I'm not sure the fiscal impact is necessarily as egregious as you think it might be."

Councilor Ives continued saying most other cities are charging fees, of 10¢ or 25¢ and knows of no municipalities with a fee of less than 10¢. This fee has been deemed as reasonable and sufficient to accomplish their purpose. He agrees that the 10¢ measure is reasonable and has been proved to have a positive impact on behavior in other municipalities.

Councilor Maestas asked about potential financial management problems at audit time. He asked if we are creating another problem because we still can't mandate collections for the unpaid Lodgers' Taxes. He asked Mr. Rodriguez to comment on the collections process.

Mr. Rodriguez said, "It's important to note that every fee we collect is different in terms of the dynamics, so we would adapt a query to this fee if you pass it. We do what is necessary to enforce the spirit of the law. If it turned out there was great cooperation, obviously we wouldn't expend much effort and we would be working with the Council to see how hard we would go after people to make sure we collected so we are all in agreement as to just how far it goes. And understanding that the objective here is to get the practice of paper bags to go down. We'll be watching that as well. If we got to that point earlier than later, we will be coming back to you and recommending to do away with the fee because bags are things of the past."

Mr. Rodriguez continued, "Now exactly how much it costs, I think it depends on how hard you would want to get. There is no staff person identified now that is dedicated to that. The first thing would be to get the public educated on this, work through our license permitting process to make sure people are aware, and then occasionally sample to see if there was good compliance. If we saw it was working, we wouldn't be coming back to recommend to you we need any more staff."

Councilor Maestas asked the source of the 60 bags per person, noting it was the basis of the estimate for revenue projections.

Mr. Alejandro noted stores in Santa Fe don't provide data related to annual bag use per person, so he used the data from the City of Boulder who had a disincentive fee in place and then applied our census data, eliminating children, and multiplied that times 9¢. He noted Boulder does track annually the number of bags used per person and by the stores.

Councilor Rivera said, "I have been in support of this the entire time. In doing my own research and looking at it more from the environmental impact for future generations, and in how a bag decomposes and the manufacturing of a plastic bags, the process for that and the amount of water it takes. He said in doing his research he also learned that paper bags isn't much better and it also has a huge environmental impact to construct a paper bag. Again, changing those behaviors is really the key here."

MOTION: Councilor Rivera moved, seconded by Councilor Lindell, to approve this request, with direction to staff to change the language from a "service fee" to an "environmental fee."

DISCUSSION: Chair Dominguez said there needs to be direction to staff to answer some of Councilor Maestas's specific issues.

Councilor Maestas said, "I am going to withhold my support until I see a revision. And I'm willing to work with staff to find out more about how this collection process is going to be done, and the enforcement process, if any. If there's none, that's fine. But we definitely have to collect the revenues. I definitely need to find out more about that and make sure the FIR is accurate, in terms of identifying the costs associated with collecting the revenues."

Councilor Ives said, "Of course Section 21-8.4(B)(2) does provide that the remainder of the fee collected, minus the portion retained by the store for its administration of the program, shall be transmitted to the City of Santa Fe. So the collection mechanism is imposed and required of the stores, but we certainly can work to clarify that process, but it does exist. And it is as simply stated..."

Councilor Maestas said, "Then on that point, what I'd like for staff to do, because we're asking for staff direction, is to calculate the curve for Santa Fe showing when the revenues would trail off. Because I want to make sure that when the revenues trail off there is enough funding to cover at least the administrative costs associated with collecting the revenues."

Mr. Alejandro said he will do so.

VOTE: The motion as amended, was approved on the following Roll Call vote:

For: Councilor Lindell and Councilor Rivera, and Chair Dominguez.

Against: Councilor Trujillo and Councilor Maestas

The resulting vote was a tie, with the Chair voting in favor to break the tie.

Explaining his vote: Councilor Rivera said, "Yes, and can you add me as a sponsor."

~~**MOTION:** Councilor Maestas moved, seconded by Chair Rivera, to approve this request, and that the identified budget impact is subject to appropriation and approval by the Finance Committee and the City Council during the FY2016 budget process.~~

~~**VOTE:** The motion was approved on a voice vote, with Councilor Maestas, Councilor Ives, and Chair Rivera voting in favor of the motion, no one voting against, and Councilor Bushee absent for the vote.~~

DISCUSSION AND ACTION ITEMS

22. **REQUEST FOR APPROVAL OF BILL NO. 2015- ____ . AN ORDINANCE RELATING TO THE SINGLE-USE BAG ORDINANCE, SECTION 21-8 SFCC 1987; AMENDING SUBSECTION 21-8.1 TO MODIFY THE LEGISLATIVE FINDINGS RELATED TO PAPER GROCERY BAGS; AMENDING SUBSECTION 21-8.4 TO ESTABLISH THE REQUIREMENT THAT RETAIL ESTABLISHMENTS COLLECT A PAPER GROCERY BAG CHARGE FOR EACH PAPER GROCERY BAG PROVIDED TO CUSTOMERS; AMENDING SUBSECTION 21-8.6 TO ESTABLISH A 60-DAY IMPLEMENTATION PERIOD; AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY TO CARRY OUT THE PURPOSE OF THIS ORDINANCE (COUNCILOR IVES AND LINDELL). (JOHN ALEJANDRO) Committee Review: Finance Committee 03/16/15 (approved with amendment); City Council (Request to Publish) 03/26/15; Public Utilities Committee 04/01/15; City Business & Quality of Life Committee 04/08/15; and City Council (Public Hearing) 04/29/15**

Councilor Ives gave an overview and history of this issue, and presented the proposed change to the bill from the Legislative Summary which is in the Committee packet.

Mr. Alejandro said he has no additional remarks and will stand for questions.

The Committee commented and asked questions as follows:

- Councilor Maestas said he supports this bill. He had prior questions on the Ordinance, and he wants to make sure we don't treat this like the living wage in terms of enforcement. He said this is being implemented on the honor system, and asked how we are going to collect the fees. He asked Mr. Martinez we are we going to collect this.

Mr. Martinez said, "Basically, the retailer businesses that are subject to this fee, will be acting almost as the agent of the City in collecting and remitting the fee to the City, less a 1 cent administrative fee. So that's basically how it's going to be collected. The businesses are going to be turning it over to the City."

- Councilor Maestas asked how do we know they are sending us what they should be sending us, and if we will get these monies from the retailers on a monthly basis.

Mr. Martinez said, "Yes. My understanding is we're going to be collecting it on a monthly basis."

Mr. Alejandro said this is correct.

- Councilor Maestas asked if there is some sort of documentation that proves the numbers. He said every time we pass legislation and there is an administrative impact, we follow with an administrative process, but we haven't done that. He wants to be clear on the steps of them sending the funds and the City having some sort of verification. He asked if we need administrative procedures.

Mr. Martinez said, "I think we do care. I think the Council may well want to consider administrative procedures in the future, based on, I believe there is a review period built into the Ordinance. I think at that point in time we may want to talk about enforcement problems."

- Councilor Maestas said we have to account for funds received, and once submitted it becomes public money. His concern is the collection process and understanding the roles and responsibilities in managing those funds. The estimated revenues are \$336,000. He said this is a lot of money. He would like to work in a provision to start working on administrative procedures for managing collection of the funds. He wouldn't insist we have it right now. He thinks we need to register the retailers, and know who should be sending us funds, even though it is on the honor system. We need to know which retailers will be dispensing paper bags with the merchandise.
- Councilor Maestas said the sponsor recommended we do what we did for a living wage is they self certify through the Business License registration process. He is willing to work with the sponsor and staff on this.
- Councilor Maestas said he would like the fee to be exempt from the GRTs. He said he asked Ms. Brennan if it would be subject to the GRTs, and she said the 9 cents wouldn't, but perhaps the 1 cent might be. He would like to have the GRTs tax to be waived on the fee, noting Dallas waived taxes on the fee. He said it doesn't give a lot of relief, but it would make the calculation and accounting for revenues much easier for the retailers. He asked if we can add a waiver of the GRTs in the bill.

Mr. Martinez said, "I've actually been looking a little bit into that question, and I think there might be a way to do that."

MOTION: Councilor Maestas moved, seconded by Councilor Ives, to approve this request with the proposed amendments as proposed above.

DISCUSSION: Councilor Ives said the registration process could be very simple and we should add that in the bill. In terms of enforcement, any funds sent to the City by any establishment will be divisible by 9 and we easily should be able to calculate the number of bags they indicated they have distributed and collected the fee for. They are required to keep sales tapes showing the bag fees, so there is a potential audit trail.

And as he mentioned the last time this was considered, one of the reasons he is highly in favor of adding a forensic auditor to our staff is to do programmatic analysis on things such as this one, which is important in terms of enforcement capacity if we learn people are not complying as required.

Councilor Maestas said, "I didn't add it in my motion, but on the point of enforcement, when I asked the City Attorney about enforcement, she cited the existing enforcement on the plastic bag ban, but I'm talking about enforcing payment of the paper bag fee, so I see them as two separate requirements. My direction to staff is to use the same enforcement for payment of bag fees as used by the plastic bag ban."

VOTE: The motion was approved on a voice vote, with Councilor Maestas, Councilor Ives, and Chair Rivera voting in favor of the motion, no one voting against, and Councilor Bushee absent for the vote.

MATTERS FROM THE PUBLIC

Tony Ortiz said they answered most of his questions. He said he is glad that this is moving forward, and thanked the Committee.. *[Mr. Ortiz's remarks were for the most part inaudible because the microphone was turned off].*

MATTERS FROM THE CITY ATTORNEY

There were no matters from the City Attorney.

ITEMS FROM STAFF

There were no items from staff.

MATTERS FROM THE COMMITTEE

A copy of "Bills and Resolutions scheduled for introduction by members of the Governing Body for the Public Utilities Committee meeting of April 1, 2015, is incorporated herewith to these minutes as Exhibit "8."

Responding to the Chair, "Mr. Martinez said a Councilor can informally announce they're going to be sponsoring a Resolution under Matters from the Committee, but I think it will still have to go through the formal process."

Councilor Ives introduced a Resolution on behalf of Mayor Gonzales as follows, indicating he would join as a cosponsor: A Resolution affirming the City of Santa Fe's policy of non-discrimination and joining other elected officials throughout the country who have implemented policies of non-discrimination

- ordinance and encouraging people to use reusable bags.
- Barriers for the use of reusable bags was primarily 1) the lack of a reminder, especially in the parking lot. People left their bags in the car, or forgot to put them in the car. When asked if they cared if there was a fee for paper bags, 62% either said it was a good idea or that it did not matter one way or the other.
 - Looking at other cities success; the way to realize the kind of reduction experienced by other communities (in the range of 80 percentile who use reusable bags), there needs to be some kind of disincentive for the use of single-use paper bags.

Mr. Roybal said originally the City wanted to implement a fee and did not have the authority. He asked what changed that the City now has the authority.

Ms. Mortimer said Mr. Alejandro could answer that better, but the quick answer is that the fee would be kept by the store and no service was being provided to the customer. In this case, the City is allowed to keep the fee when the fee provides service to the customer.

Mr. Alejandro explained that he had been working with the City Attorney's office to craft acceptable language that would make the fee legal. The original ordinance fee that was to be kept by the retailer was construed under New Mexico State Law as a tax and impermissible.

He said the City Attorney worked on the language and now one penny of the ten cents will be retained by the retailer to cover the administrative cost incurred by the retailer for collecting the fee. The remaining nine cents will be remitted to the City and provide environmental services that benefit the public. The fee is then construed as legal because of the benefit to the public.

Mr. Roybal said as a business owner he has a problem with that. He said now the business will have to do bookkeeping and track and report the fee and the fee will probably have to be reported separately. He doesn't think his computer system is set up for the extra charge. He said, "I can imagine what the grocery stores will have to go through".

Mr. Furry asked if it was determined whether the 10 cents will be taxed.

Mr. Alejandro said the City Attorney is currently looking at whether the Gross Receipts Tax (Gross Receipts Tax) is applicable to the service fee, but thought they do not have a definitive answer.

Mr. Ortiz said he was at a meeting where the Public Utilities Commission recommended the gross receipts not be applied, so there is momentum behind that.

Chair Lindell confirmed Ms. Mortimer's statement that 60% of those surveyed were fine with the ten cents fee, or did not care about the fee. Ms. Mortimer replied it was 62 percent.

Mr. Roybal said the problem is that it is not the customer, but the retailer who will be impacted.

B. ACTION ITEMS (Revised Agenda Order)

- B. Request for approval of an ordinance relating to the Single-Use Carryout Bag Ordinance, Section

21-8 SFCC 1987; Amending Subsection 21-8.1 to modify the legislative findings related to paper grocery bags; Amending Subsection 21-8.4 to establish the requirement that retail establishments collect an environmental service fee for each paper grocery bag provided to customers; Amending Subsection 21-8.6 to establish a 60 day implementation period; and making such other changes as are necessary to carry out the purpose of this ordinance. (Councilors Ives and Lindell) (John Alejandro)

Mr. Alejandro said he is the Renewable Energy Planner for the City of Santa Fe and also works on various sustainability issues related to energy and energy efficiency.

Mr. Conway said the report mentions ongoing education is valuable for people to remember to bring their bags. He asked if that is on the front burner as they implement the ordinance. He added the survey shows that the signage was abysmal.

Mr. Alejandro said the fee collected is maintained by the City and will go into a specific account to use to give additional reusable bags to the public at no cost and for recycling educational programs to remind people to take their bags to the store and additional signage, etc.

Ms. Kapin asked who will deliver the bags and ensure the stores have bags. She asked if that will be part of the fee.

Mr. Alejandro said the Environmental Services Department and Katherine Mortimer procured the reusable bags. He said the bags were given at community events throughout the year. The ordinance was explained to storeowners and what was required and signage was provided to the stores. He said they will continue to provide that educational service.

Ms. Kapin asked if there is a specific budget or staff for that service and how will the stores get the bags.

Mr. Alejandro said they distributed 20,000 bags to individuals throughout the community and he thought that bags were also taken to the stores, but would have to confirm that. He said the process will be similar now, however the fees being collected vis-à-vis the Environmental Services would be used to reimburse the City for the cost of procuring bags and providing bags to the public. He will have to check on whether stores will provide their own reusable bags and sell them.

Chair Lindell said it is not like there would be 20,000 reusable bags given out at stores for people to use in the same way they now use paper bags. She said most stores she goes to sell reusable bags for \$.99 at the checkout.

She said wasn't sure that 10 percent is enough to give to the retailer and thought there would be a conversation about that. She said these monies will go toward environmental education programs *and* services provided to the public *and* provide bags to the public free of charge. She said there are three things there.

Chair Lindell said she will ask that the program be reviewed in one year. She said from the Fiscal Impact Report, she is not interested in adding FTEs (full time employees) into any department at this

point. Chair Lindell said it is a lot of money and she knows there has to be a certain threshold or it will be ineffective and if they tell people it is two cents a bag, that is fine.

She said the program needs to be reviewed in one year to see where they are fiscally. She said the money can be transferred somewhere else to be used for other purposes, in as much as the ordinance does say: '*services provided to the public*'.

Mr. Roybal said he is confused as to how it will be reported, who to report it to and how he can keep track of it. He said it doesn't impact his business a lot, but a grocery store with hundreds of bags going out and keeping track of that... He said if not taxed, that is another nightmare. He asked how do you eliminate the tax on the bag.

Ms. Kelly said she has talked with groceries in California and locally about how they track that and was told it just involves scanning an extra PLU number for the bag. That will feed into their existing program and is totaled at the end of the month.

Mr. Alejandro said that aligns with what they have heard from retailers. Many of the large grocery chains have experienced this in their locations throughout the country and the process is not unfamiliar.

He said he has seen that there are initial revenue spikes in other cities implementing the bag fees, but that drops off over six to twelve months as people begin to take their bags. He said in most cities where a nickel fee was implemented the revenues stayed and the city utilized the money to provide additional city services. A case in point is Washington DC., where the revenue has never fallen. He said 10 cents falls within the middle of the fee found to be most effective and that was decided as the best practice.

Mr. Alejandro said Santa Fe compares nicely given their demographics and usage to Boulder Colorado. He said Boulder tracks their plastic and paper bag usage and has a 10 cents fee. He said he calculated the City could collect upwards of \$300,000 annually (at the spike), but the hope is that the amount will drop by 50-70% over 6 to 12 months.

Mr. Ortiz asked at what point the City Attorney thinks this will become a tax. He thought the program would work if retailers could keep a chunk of this [fee] to make it worthwhile, or maybe even be a moneymaking venture.

Mr. Alejandro said that was the focus in determining the fee amount the retailer could keep. He explained if the retailer keeps too much and the fee begins to cover the cost of the procurement of their paper bags, the City falls into a gray area of becoming a municipal tax.

He said the City Attorney arrived at a penny based on best practices in other cities and in the way the New Mexico GRT is collected and reported vis-à-vis the State. He said the Governing Body could choose to make an amendment and increase the fee that the retailer retains.

Mr. Ortiz said he is in support of this, but is trying to figure a way people won't choke on the fee. He thought the City might be taking the most conservative approach. He said for now, he is just asking to recommend this move forward and that there is an assessment of whether additional retention is available for merchants.

Chair Lindell said they would vote with an additional recommendation to look at whether one cent is the maximum amount.

Mr. Alejandro confirmed that the Committee would like the City Attorney to assess the impact of an additional service fee obtained by the retailer. He asked how he should deliver that information. Councilor Lindell suggested he send it by email to the entire Committee.

Mr. Trujillo pointed out that stores do not need permission now to charge a bag fee. He said they currently can collect a fee as part of their cost, but chose not to because of competition. He said some stores do charge a paper bag fee.

Mr. Furry said Ms. Mortimer said only one store does that and some that started have stopped.

Mr. Alejandro said there is more than one store charging ten cents for a paper bag. Some retail chains are charging 10 cents along the Cerrillos corridor on the south side of town and no one reaps the benefit other than the store covering their cost. He said this is being revisited for consistency.

Mr. Furry said if they are charging 10 cents, it is not for profit. They are covering their costs.

Ms. Kelly moved to support the ordinance and move it forward with the recommendation that the City Attorney assess the possibility of allowing merchants to retain more than one cent of the ten cents fee. Mr. Furry seconded the motion.

Ms. Karp said another action in the market is to give a 10 cents credit for each reusable bag you take in. She said you have the option to take the money or donate that to make reusable bags available to others. She said that is another aspect and is clear stores want to make this work.

Mr. Ortiz asked to clarify that his recommendation is that he supports the ordinance in its current form with a one cent fee, if that is the determination of the City Attorney. He is just asking for options.

Chair Lindell asked if there is a definition of a paper grocery bag.

Mr. Alejandro said the definition is in the ordinance and is provided for a standard paper grocery size bag in mills, thickness, size, etc.

Mr. Roybal asked if a year is too long before a review of the ordinance. He said the intent is to prevent paper bag recycling, but if that does not happen because people pay ten cents, then the City will not accomplish much. He said giving credit for bringing a reusable bag makes more sense as far as the intent of recycling and limiting paper and plastic.

Councilor Lindell said there is a motion on the floor. She said she will consider the comments, but will ask that the ordinance be reviewed in a formal manner in a year.

Ms. Kapin said she personally would like to see the educational programming plan that will be used so the Committee knows it supports the stores on the front line and to make sure this has an environmental impact.

The motion to support the bag ordinance amendment and move it forward with recommendations was passed by a majority voice vote. Mr. Roybal and Mr. Taggart voted against.

- A. Making such other changes that are necessary to carry out the purpose of this ordinance.
(Councilor Lindell, Mayor Gonzales, Councilors Ives, Dominguez and Rivera) (Matthew O'Reilly)
1. Request for approval of a resolution authorizing mobile vehicle vendors within the plaza periphery area at specific locations and at limited times, pursuant to the Vehicle Vendor Ordinance, 18-8.9 SFCC 1987. (Councilor Lindell, Mayor Gonzales, Councilors Ives, Dominguez and Rivera) (Matthew O'Reilly)

Mr. O'Reilly, Asset Development Director for the City said the Staff Report and Fiscal Report are in the Committee packet.

He said the ordinance tackles the Chapter 18 section of the City Municipal Code that has been neglected and deals with business licenses and business regulations, etc. This section of the Code specifically deals with street vendors and currently limits the City to issuing 10 licenses annually to sell food and beverages and five licenses to sell other things. In addition, the ordinance cleans up confusing language in the Code; creates and opens the definition of a street vendor, currently called a *vehicle* vendor; allows vendors to vend in other places than a public street, such as parking lots and on private streets; and greatly expands where the vendors can operate and the number of vendors.

The Code clearly defines 2 different types of vehicle vendors: the first is a *stationary* vehicle vendor where a food truck parks in one spot and stays there. The City ensures compliance with the zoning and parking for the employees and visitors and employee access to bathrooms. These food trucks tend to generate more trash and people complain about their business being blocked by them, etc., but this ordinance does not get into that at this time.

The second vendor created is a category of *mobile vehicle vendors*, which move around; an ice cream truck or food, beverages, merchandise, etc. or there could be mobile services like a manicure truck.

One of the new regulations added is that the mobile vehicle vendor can only be in one spot for a maximum of 3 hours and then has to move at least 300 feet. This also creates a separation between where a mobile vehicle vendor can park and the street level entrance to any restaurant. Part of the ordinance comes out of a similar ordinance in Albuquerque that has a restriction that a vehicle vendor cannot be closer than 100 feet from the entrance to the property on which a restaurant sits. In Santa Fe it is 150 feet and only applies during the restaurant's operating hours. The ordinance also allows them to be in front of a restaurant if they are part of a City sponsored special event where a special permit is issued or if the restaurant owner gives written permission.

Mr. O'Reilly said a resolution accompanies the ordinance. The existing Code and proposed ordinance maintains the restriction to prohibit vehicle vendors to be in the Plaza periphery area (surrounding the Plaza extending on the west to Grant Avenue and Sandoval and to the south down to Alameda and to the east to Paseo de Peralta and to the north of Paseo de Peralta). The ordinance continues that restriction, but allows the Council to waive the restriction if they adopt a resolution. The resolution would allow mobile vehicle vendors to be inside the Plaza periphery area at three locations from 5 p.m. to 1 a.m. and the spaces will be reserved for them for that time.

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APR 22 15 11:21 AM

April 21, 2015

Via Federal Express

Kelley Brennan
Santa Fe City Attorney
200 Lincoln Avenue, Room 209
PO Box 909
Santa Fe, NM 87504-0909

RE: Problematic aspects of Bill No. 2015-12
Our File No.: 31253/00008

Dear Ms. Brennan:

We represent Novolex, a manufacturer of paper and plastic bags that employs more than 5,000 people at 31 facilities across the United States and in four international facilities. We are writing to express concern with the significant legal deficiencies in Bill No. 2015-12 and the amendments it would make to the "Single-Use Bag Ordinance" found in Section 21-8 of the Santa Fe City Code. As explained more fully below, this Bill would impose an impermissible tax in violation of the New Mexico Code and Constitution, and it grants rights, privileges, and exemptions to some citizens but not others in violation of the state Constitution. Accordingly, we submit that if this Bill is enacted, a court would find it unenforceable and void and would require the return of any so-called "fees" collected pursuant to the Bill's provisions. Should you have any questions regarding the analysis below or wish to discuss this matter, please do not hesitate to contact us.

1. *Bill No. 2015-12 imposes an illicit tax masquerading as an "environmental service fee."*

Bill No. 2015-12 requires retailers to collect a \$0.10 "environmental service fee" from its customers for each paper bag it provides to the customer. *See* Bill No. 2015-12 § 3. The ordinance requires retailers to remit 90% of the supposed "fees" to the city, which may use the proceeds to fund, among other things, environmental education programs and "services provided to the public." *Id.* Despite being labeled a "fee," the \$0.10-per-bag charge imposed by the Bill is a tax. New Mexico's appellate courts have previously distinguished between taxes and fees by examining the purpose to which the revenue is put. A fee is identifiable by the fact that the proceeds it generates are used merely to implement or enforce the regulation or service, whereas a tax is identified by the fact that the revenue it generates is put to broader purposes:

Generally, a "fee" is a charge intended to defray, in whole or in part, the expense of regulating or providing a service, benefit or privilege. . . .

* * *

[G]enerally, a regulatory fee must not exceed the amount reasonably necessary to cover the costs of performing or regulating the matter in question

* * *

“[A] trait that distinguishes fees from taxes is that fees, unlike taxes, only cover the agency’s reasonably anticipated costs of providing the services for which the fees are charged.”

N.M. Mining Ass’n v. N.M. Mining Comm’n, 924 P.2d 741, 747–48 (N.M. Ct. App. 1996) (citations omitted);¹ *see also Rio Grande Kennel Club v. City of Albuquerque*, 190 P.3d 1131, 1137–38 (N.M. Ct. App. 2008) (holding the trial court erred by ruling that “fees” were reasonably related to enforcement of the regulation rather than an impermissible excise tax when the ordinance stated the fees were to be used by the city for other purposes such as spaying and neutering pets for low-income persons); *City of Lovington v. Hall*, 359 P.2d 769, 770–71 (N.M. 1961) (striking down a municipal fee as an invalid revenue generating measure and noting that fees imposed by municipal ordinance “must be ‘incidental to regulation and not primarily for the purpose of producing revenue’”) (citation omitted).

In short, when money is collected by legislative fiat, is paid to the government, and becomes revenue used for general public purposes, it is a tax, regardless of what it is called. Here, Bill No. 2015-12 does precisely that, mandating a charge that is remitted to the city where it is put to use for purposes unrelated to the implementation or regulation of the Single-Use Bag Ordinance. Accordingly, despite being labeled a fee, it is, in fact, an excise tax on paper bags. *See Rio Grande*, 190 P.3d at 1137 (“Excise is defined as ‘[a] tax imposed on the manufacture, sale, or use of goods.’”) (quoting Black’s Law Dictionary 605 (8th ed. 2004)).

The tax imposed by Bill No. 2015-12 is an impermissible one. Under New Mexico law, a municipality is permitted to impose an excise tax only “if the ordinance is approved by a majority vote in the municipality.” N.M. Stat. Ann. § 3-18-2(D); *see also* N.M. Const. art. X, § 6(D) (“No tax imposed by the governing body of a charter municipality, except a tax authorized by general law, shall become effective until approved by a majority vote in the charter municipality.”). Here, the bag tax was never voted on by Santa Fe’s citizens, much less approved by a majority of them. Accordingly, the “environmental services fee” is an impermissible and unenforceable tax. In the event this illicit tax is enacted and litigation is necessary to strike it down, the city will be required to repay any revenues collected pursuant to Bill No. 2015-12 to the citizens who were wrongfully taxed. *See Waksman v. City of Albuquerque*, 690 P.2d 1035 (N.M. 1984) (affirming trial court’s ruling striking down impermissible city tax and requiring the

¹ In *N.M. Mining Ass’n*, the New Mexico Court of Appeals concluded that the surcharge on fees imposed by the New Mexico Mining Commission were permissible fees because the amount charged was reasonably related to the Commission’s implementation of the Mining Act.

city to refund the taxpayers' excess payments). In light of the constitutional and statutory prohibition on an excise tax such as the one contained in Bill No. 2015-12, the Bill is fatally flawed. Novolex urges the city not to enact the Bill, thereby avoiding needless and costly litigation that would inevitably strike it down.

2. *Bill No. 2015-12 violates the New Mexico Constitution by granting rights, privileges, and exemptions to some citizens but not others.*

An additional and independent problem with Bill No. 2015-12 is that the proposed bag tax grants rights, privileges, and exemptions to some people and corporations but not to others. This is a clear violation of the New Mexico Constitution, which prohibits the state legislature and municipalities from granting unequal rights and exemptions:

The legislature shall not grant to any corporation or person, any rights, franchises, privileges, immunities or exemptions, which shall not, upon the same terms and under like conditions, inure equally to all persons or corporations; no exclusive right, franchise, privilege or immunity shall be granted by the legislature or any municipality in this state.

N.M. Const., art. IV § 26; *see also id.* art. II, § 18 (“[N]or shall any person be denied equal protection of the laws.”). As explained below, Bill No. 2015-12 and the underlying City Code section (SFCC Section 21-8) violate this constitutional mandate in several ways.

First, Bill 2015-12 exempts some, but not all, people from the \$0.10-per-bag tax. Specifically, it exempts participants in federal food aid programs from paying the bag tax. *See* Bill No. 2015-12 § 3. Novolex agrees that federal regulations prohibit the imposition of any tax or charge on authorized purchases made by these individuals. *See, e.g.,* 7 CFR § 246.12(c) (mandating that “participants receive their authorized supplemental food free of charge”); *id.* § 246.12(h)(3)(vii) (forbidding the collection of any tax on authorized supplemental foods). The New Mexico Constitution, however, forbids a city from selectively extending a right or immunity to only one person or class of people. *See* N.M. Const., art. IV § 26.

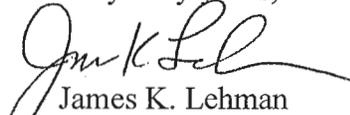
Second, Bill No. 2015-12 creates an inequitable outcome by bestowing a financial benefit on retailers with higher-income customers while simultaneously imposing a financial detriment on retailers who cater primarily to lower-income consumers. The former will be required to impose a per-bag charge that, if successful in changing consumers' habits, will reduce the retailer's packaging costs (which it previously absorbed). Even if the bag tax is unsuccessful in changing consumers' habits, it will at least permit the store to retain 10% of the per-bag tax to help offset the cost of providing paper bags. In contrast, a retailer whose customers are recipients of federal food aid (*e.g.,* WIC, TEFAP, TANF, or SNAP) is also required to provide costly paper bags but is prohibited from charging or retaining any amount to offset that cost and must thus absorb the not insubstantial cost of providing paper bags to its customers. *See* Bill No. 2015-12

§ 3.² In simple terms, the Bill is a net financial gain to a high-end supermarket chain and a net financial loss to a discount grocer. This unequal effect is not remedied by the Bill's statement that City may (but is not required to) provide cheap or free reusable bags to low-income families. *See id.* Even if reusable bags are made available to families on federal food aid, there is no guarantee they will use them because they have no financial incentive to do so when they can obtain paper bags for free at the grocery store. In short, the disparity of outcome on retailers renders Bill 2015-12 a violation of the state Constitution.

Third, the underlying City Code section violates the Constitution by granting exemptions or immunities to some retailers but not others. Specifically, SFCC Section 21-8.5 contains a dozen exemptions to the existing Single-Use Bag Ordinance, permitting the use of plastic bags by dry cleaners, newspaper publishers, pharmacists, veterinarians, restaurants, nonprofit corporations, retailers who sell "meat, or fish, whether or not prepackaged," and others. *See* SFCC § 21-8.5. These rights, immunities, and exemptions are not impartially available to all retailers and thus constitute impermissible rights, privileges, immunities, and exemptions.

In conclusion, Bill 2015-12 constitutes an unauthorized tax and violates several provisions of the New Mexico Constitution. We respectfully suggest that the City, through its Council Members, reject this ill-advised ordinance and refrain from enacting any similar fee or ban in the future, and thus spare the City and its attorneys from the effort and expense of litigation that will inevitably end with the ordinance being struck down.

Very truly yours,



James K. Lehman
Attorney for Novolex

² The unfortunate unintended consequence of the bag ban and tax is that grocers who cater to low-income customers who receive federal aid will likely be forced to raise the cost of groceries to offset the increased overhead costs imposed by the Single-Use Bag Ordinance and the Bill seeking to amend it.