

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2013-30

3 INTRODUCED BY:

4 Councilor Wurzburger

5 Mayor Coss

6 Councilor Rivera

7 Councilor Bushee

8 Councilor Ives

9 Councilor Calvert

10 Councilor Dimas

11 Councilor Dominguez

12 AN ORDINANCE

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

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

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

20 21-8 ~~[COLLECTION OF RATES AND CHARGES]~~ SINGLE-USE CARRYOUT BAGS.

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

22 21-8.1 [NEW MATERIAL] Legislative Findings.

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

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

1 inadvertently ingest these materials.

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

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

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

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

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

13 **21-8.2 [NEW MATERIAL] Short Title; Purpose.**

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

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

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

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

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

25 *Paper grocery bag* means a paper carryout bag that has a manufacturer's stated capacity of

1 one-eighth barrel (typical grocery store bag - 882 cubic inches) or larger and meets the following
2 requirements:

- 3 A. Contains a minimum average of 40 percent post-consumer recycled materials; and
- 4 B. Displays the minimum percent of post-consumer content on the outside of the bag.

5 *Retail establishment* means any retail business including, without limitation, clothing,
6 household goods, or personal items of any kind that sells directly to a customer. Examples include but
7 are not limited to department stores, clothing stores, jewelry stores, grocery stores, pharmacies, home
8 improvement stores, liquor stores, convenience stores, gas stations, and farmers markets. For
9 purposes of this Ordinance, food banks, public eating establishments defined as restaurants, take-out
10 food establishments, or any other business that receives 90% or more of its revenue from the sale of
11 food which is prepared on the premises, to be eaten on or off its premises are not defined as retail
12 establishments.

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

- 15 A. Made of cloth or other machine washable fabric;
- 16 B. Made of durable plastic that is at least 2.25 mils thick; or
- 17 C. Other durable material suitable for reuse.

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

19 **21-8.4 [NEW MATERIAL] Applicability.**

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

22 B. Retail establishments shall collect a paper grocery bag charge of not less than ten-
23 cents for each paper grocery bag provided to customers, except that retail establishments shall not
24 collect a paper grocery bag charge from any person with a voucher or electronic benefits card issued
25 under Women, Infants and Children Program(WIC), the Emergency Food Assistance Program

1 (TEFAP), Temporary Assistance to Needy Families Program (TANF) , or the federal Supplemental
2 Nutrition Assistance Program (SNAP, also known as Basic Food Stamps). It shall be a violation of
3 this Ordinance for any retail establishment to pay or otherwise reimburse a customer for any portion
4 of the paper grocery bag charge;

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

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

9 E. To further promote the use of reusable shopping bags and reduce the quantity of
10 single-use carryout bags entering the city's waste stream, retail establishments are encouraged to
11 make reusable carryout bags available for sale at the checkout and/or provide boxes for use at the
12 checkout free of charge. The environmental services division is authorized to provide reusable
13 carryout bags for the public at low cost or free-of-charge, targeting such programs to reach low-
14 income households to the greatest degree possible.

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

16 **21-8.5 [NEW MATERIAL] Effective Dates.**

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

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

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

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

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

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

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

12 **Section 7. A new Section 21-8.6 SFCC 1987 is ordained to read:**

13 **21-8.6 [NEW MATERIAL] Enforcement; Violations and Penalty.**

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

19 B. If the assigned department/division director determines that a violation of Article 21-
20 8 has occurred, a written warning notice shall be issued to the operator of a store that a violation has
21 occurred and the potential penalties that will apply for future violations.

22 C. Any store that violates or fails to comply with any of the requirements of Article 21-
23 8, after a written warning notice is issued for that violation shall be guilty of an infraction.

24 D. If a store has subsequent violations of Article 21-8 that are similar in kind to the
25 violation addressed in a written warning notice, the following fine shall be imposed and shall be

1 payable by the operator of the store: a fine not to exceed one hundred dollars (\$100.00) for the first
2 violation, after the written warning notice is given.

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

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

7 **Section 8. A new Section 21-8.7 SFCC 1987 is ordained to read:**

8 **21-8.7 Appeals.**

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

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

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

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

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

25 **Section 9. A new Section 21-8.9 SFCC 1987 is ordained to read:**

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21-8.8 [NEW MATERIAL] Severability.

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

Section 10. A new Section 21-8.10 SFCC 1987 is ordained to read:

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

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

APPROVED AS TO FORM:



GENO ZAMORA, CITY ATTORNEY