



MEMORANDUM

TO: The Honorable Mayor and Members of City Council
FROM: Dori E. Martin, Assistant City Attorney
Mark Whitley, Assistant City Manager
Bill Freehling, Director of Economic Development
DATE: September 09, 2021 (for the September 14, 2021 Council meeting)
SUBJECT: Disposable Plastic Bag Tax

ISSUE

Should the City impose a \$0.05 tax on disposable plastic bags provided to customers at certain retailers?

RECOMMENDATION

Council should hold a public hearing and consider the ordinance on first read.

The implementation of a new disposable plastic bag tax is within the sound discretion of City Council. In 2020 Virginia General Assembly enacted enabling legislation to authorize this new tax, now codified at Virginia Code §§58.1-1745-58.1-1748.

DISCUSSION

Background and Timing

In 2020, the Virginia General Assembly passed legislation to authorize Virginia localities to impose a tax of five cents per disposable plastic bag provided to retail customers by grocery stores, drug stores, and convenience stores. The legislation (SB 11) charges the Virginia Tax Commissioner with developing guidelines to implement the new law.

On September 02, 2021, the state Department of Taxation (VA Tax) published final guidelines for review, kicking off a 30-day public comment period. These guidelines include important information about how VA Tax plans to interpret and implement the legislation, such as an explanation of the types of bags that will be subject to taxation and definitions for key terms in the bill ("grocery store," "drugstore," and "convenience store"). While VA Tax has stated that they do not anticipate making further changes, these final guidelines will not be effective until after the public comment period has concluded. VA Tax anticipates an effective date on or around October 28, 2021.

While the final guidelines will not be effective until late October, they do provide sufficient guidance for City Council regarding how to implement a local ordinance. This guidance makes it possible to move forward with an ordinance at this time. In fact, due to the particular timing requirements mandated by state law for enacting this tax, it will be necessary to proceed in

advance of the effective date of the official guidance, if it is Council's desire to have this tax in place by January 1, 2022.

The local ordinance imposing the tax must have an effective date of the first day of a calendar quarter (January 1, April 1, July 1, or October 1), and the City must provide a certified copy of the approved ordinance to the state Tax Commissioner three months prior to that effective date. Thus, in order to meet an effective date of January 1, 2022, City Council would need to pass an ordinance no later than September 28, 2021. If Council does not act in September, the next possible effective date for the ordinance would be April 1, 2022.

Therefore, for retailers to begin collecting the tax on January 1, 2022, the schedule will be as follows:

- **September 14**: Public Hearing and First Reading of an ordinance to impose a plastic bag tax
- **September 28**: Second Reading (with minor amendments, if final guidance has been issued); continue to accept public comments
- **September 28-30**: Certified Copy of ordinance delivered to VA Tax Commissioner, if approved
- **October 28**: Final VA Tax guidelines made effective; staff to evaluate to ensure no changes have been made
- **January 1**: Tentative effective date of ordinance.

Ordinance Summary

The draft ordinance adds a new Article XVI, "Disposable Plastic Bag Tax," to the Taxation chapter of the City Code, imposing a tax of \$0.05 per each disposable plastic bag provided to customers by grocery stores, convenience stores, and drug stores, as those retailers are defined in the ordinance. The tax will be collected at the point of purchase, in a similar manner as sales taxes, and will be administered and enforced by the Virginia Tax Commissioner.

Pursuant to the final guidelines issued by VA Tax, larger "big box" retailers, such as Wal-Mart or Target, will be subject to the tax if they contain a grocery store, convenience store, or drugstore. However, no retailer will be subject to the tax solely because it offers a limited number of snacks and beverages for sale at the cash register. Furthermore, the tax will only apply to retailers who maintain regular business hours at a fixed place of business in the City. Farmers Markets, Food Banks, and mobile food units will not be subject to the tax.

Retailers will be compensated for the costs of collecting and remitting the tax by retaining a portion of the tax collected. From the date the tax goes into effect in the city until January 1, 2023, retailers subject to the tax will be able to retain \$0.02 for every \$0.05 collected. After January 1, 2023, this discount will be reduced to \$0.01 per bag.

The five-cent tax will not apply to the following:

- Durable plastic bags meant for multiple reuse;

- Bags that are solely used to wrap ice cream, meat, fish, poultry, produce, unwrapped bulk food items, or other perishable food items in order to avoid damage or contamination;
- Plastic bags used for dry cleaning or prescription drugs; and
- Bags that are packaged and sold for use as garbage, pet waste, or leaf removal bags.

State law requires that all revenue collected from this tax shall be appropriated for the purposes of environmental cleanup, providing education programs designed to reduce environmental waste, mitigating pollution and litter, and providing reusable bags to recipients of Supplemental Nutrition Assistance Program (SNAP) or Women, Infants, and Children Program (WIC) benefits.

Outreach to Local Businesses

In an effort to reach out to affected stakeholders, Economic Development Specialist Amy Peregoy conducted an in-person survey of the following seven potentially affected City of Fredericksburg businesses about the proposed plastic bag tax:

1. Wegmans
2. Sheetz
3. Walmart
4. Wawa
5. Target
6. CVS
7. Giant

These seven businesses were all given a copy of the proposed ordinance, and they provided the following comments:

- They want as much notice as possible so they can start communicating the potential change to their customers.
- Technologically wise, the tax would be easy to implement. It would be just a matter of adjusting the point-of-sale software, and since other states have implemented similar taxes it would be easy to do the same in Virginia.
- They had concerns about customer complaints about the new tax.
- They recommended that the City call it a “fee” instead of a “tax” and clearly communicate what the money from the program would be used for.
- They did note that they sell reusable bags that could become a more-popular option with this new tax in place. Many of them already do recycle plastic bags as well.
- They understand the rationale behind the City doing this.

FISCAL IMPACT

The fiscal impact of the proposed \$0.05 per single-use plastic bag tax is difficult to estimate because of a lack of information concerning the current consumption of single-use plastic bags that would be subject to the tax in the City. This tax would constitute new local revenue for the

City, and the use is constrained to the following: environmental cleanup; providing education programs designed to reduce environmental waste, mitigate pollution, and litter; and provide reusable bags to recipients of SNAP or WIC benefits.

The Earth Policy Institute estimates that Americans currently consume 1 bag per day per person or, put another way, 7 bags per week. This estimate provides a basis for a range of between 5 and 10 bags per week per member of the community for a revenue estimate.

The City’s business community also caters to a broader population than just the City’s residents—and City residents also shop outside the City. Generally speaking, the City has more customers coming into the City on a daily basis than the base population of the City. Two estimates are presented below for a City customer base: 35,000 and 45,000.

In addition, any estimate of revenue generated should also consider the goal of the tax – which is to reduce significantly single-use plastic bags in the community. In addition, there may be an effect of customer loss for customers who may travel to nearby jurisdictions to avoid the bag tax. For the purpose of this estimate, a 20% discount is presented to account for these factors.

The ordinance also provides that up until January 2023, retailers may retain \$0.02 per bag for the administration of the tax, and after January 2023, they may retain \$0.01 per bag for the administration of the tax.

Based upon these factors, a range of revenue estimates could be considered.

Annualized # Bags / Week	Customer Base	Tax Estimate Before Discount	Discount for Future Use of Re-usable Bags	Estimated Annual Revenue	Estimated Annual Revenue Net of Dealer Discount of 2 cents
260	35,000	\$455,000	80%	\$364,000	\$218,400
520	35,000	\$910,000	80%	\$728,000	\$436,800
260	45,000	\$585,000	80%	\$468,000	\$280,800
520	45,000	\$1,170,000	80%	\$936,000	\$561,600

It is important to reiterate that these factors are estimates, and the actual revenue could be higher or, more likely, lower, depending upon the actual amount of bags used and taxed and the potential behavioral changes brought about by the tax.

Attachments: Ordinance
Virginia Department of Taxation Final Guidelines



September 14, 2021
Regular Meeting
Ordinance No. 21-__

MOTION:

SECOND:

RE: Amending Fredericksburg City Code Chapter 70, Taxation, to Add a New Article XVI Imposing a Five-Cent Tax on Disposable Plastic Bags Provided to Consumers at Certain Retailers

ACTION: APPROVED: Ayes: 0; Nays: 0

FIRST READ: _____

SECOND READ: _____

Sec. I. Introduction.

In 2020, the Virginia General Assembly passed legislation to authorize Virginia localities to impose a tax of five cents per disposable plastic bag provided to retail customers by grocery stores, drug stores, and convenience stores. The legislation (SB 11) provides that the tax will be collected by the retailers at checkout and requires the localities to allocate the revenues they collect from this tax to environmental cleanup programs, educational programs aimed at waste reduction and pollution and litter mitigation, and provision of reusable bags to low-income populations.

This ordinance amends Fredericksburg City Code Chapter 70, "Taxation," by adopting a new Article XVI, Disposable Plastic Bag Tax, to enact a tax on each disposable plastic bag provided to consumers by certain retailers, in accordance with the provisions of Section 58.1-1745 through Section 58.1-1748 of the Code of Virginia (1950), as amended. The new tax will become effective on January 1, 2022.

City Council held a public hearing on the imposition of this tax on Tuesday, September 14, 2021, in accordance with Code of Virginia § 58.1-3007.

Sec. II. City Code amendment.

It is hereby ordained by the Fredericksburg City Council that City Code Chapter 70, "Taxation," is hereby amended to add a new Article XVI, "Disposable Plastic Bag Tax," as follows:

ARTICLE XVI DISPOSABLE PLASTIC BAG TAX

§ 70-621 Definitions.

For the purpose of this Article, the following words and phrases shall have the meanings ascribed to them by this section:

CONVENIENCE STORE

An establishment that (i) has an enclosed room in a permanent structure where stock is displayed and offered for sale and (ii) maintains an inventory of edible items intended for human consumption consisting of a variety of such items of the types normally sold in grocery stores. No store will be considered a convenience store solely because it offers a limited selection of snacks and beverages for sale at the point of sale.

DRUGSTORE

An establishment that sells medicines prepared by a licensed pharmacist pursuant to a prescription and other medicines and items for home and general use.

GROCERY STORE

An establishment that has an enclosed room in a permanent structure and that sells food and other items intended for human consumption, including a variety of ingredients commonly used in the preparation of meals. This definition does not include food banks, farmers markets, or mobile food units.

§ 70-622 Levy and Rate.

The City hereby imposes a tax in the amount of \$0.05 for each disposable plastic bag provided to a consumer of tangible personal property by retailers in grocery stores, convenience stores, or drugstores. This tax shall be collected whether or not such disposable plastic bag is provided free of charge to the consumer.

§ 70-623 Method of Collection.

The tax imposed by this section shall be collected by the retailer, along with the purchase price and all other fees and taxes, at the time the consumer pays for the tangible personal property being purchased. The Virginia Tax Commissioner shall be responsible for collecting, administering, and enforcing the tax imposed by this article and shall distribute the tax revenue to the City in accordance with Virginia law.

§ 70-624 Retailer Discount.

- A. Until January 1, 2023, every retailer that collects the tax imposed under this Article shall be allowed to retain two cents (\$0.02) from the tax collected on each disposable plastic bag.

- B. Beginning on January 1, 2023, every retailer that collects the tax imposed under this Article shall be allowed to retain one cent (\$0.01) from the tax collected on each disposable plastic bag.

- C. Any retailer that retains a discount pursuant to this Section shall account for it in the form of a deduction when submitting its tax return and paying the amount due in a timely manner.

§ 70-624 Appropriation of Revenue.

All revenue accruing to the City from the tax imposed by this Article shall be appropriated for the following purposes only:

- A. Environmental cleanup;
- B. Providing education programs designed to reduce environmental waste,
- C. Mitigating pollution and litter; and
- D. Providing reusable bags to recipients of Supplemental Nutrition Assistance Program (SNAP) or Women, Infants, and Children Program (WIC) benefits.

§ 70-625 Exemptions.

The tax imposed by this Article shall not apply to the following:

- A. Durable plastic bags with handles that are specifically designed and manufactured for multiple reuse and that are at least four mils thick;
- B. Plastic bags that are solely used to wrap, contain, or package ice cream, meat, fish, poultry, produce, unwrapped bulk food items, or perishable food items in order to avoid damage or contamination;
- C. Plastic bags used to carry dry cleaning or prescription drugs; and
- D. Multiple plastic bags sold in packages and intended for use as garbage, pet waste, or leaf removal bags.

- E.

Sec. III Certified Copy to Tax Commissioner.

Council directs the Clerk of Council to provide, at least three months prior to the effective date of this ordinance, a certified copy of the ordinance to the Commonwealth of Virginia Tax Commissioner, as required by Section 58.1- 1745 of the Code of Virginia (1950), as amended.

Sec. IV. Effective date.

This ordinance shall take effect on January 1, 2022.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Approved as to form:

Kathleen Dooley, City Attorney

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 21- duly adopted at a meeting of the City Council meeting held Date, 2021 at which a quorum was present and voted.

***Tonya B. Lacey, MMC
Clerk of Council***

GUIDELINES FOR THE VIRGINIA DISPOSABLE PLASTIC BAG TAX

September 1, 2021

Legislation enacted during the Regular Session of the 2020 General Assembly (House Bill 534 (2020 *Acts of Assembly*, Chapter 1022) and Senate Bill 11 (2020 *Acts of Assembly*, Chapter 1023)) authorizes any county or city to adopt by ordinance the Virginia Disposable Plastic Bag Tax on disposable plastic bags provided to customers in grocery stores, convenience stores, and drugstores in the locality. The tax will be administered by the Virginia Department of Taxation (“the Department”). A locality must provide a certified copy of the ordinance to the Tax Commissioner at least three months prior to the date the tax is to become effective.

These guidelines are not rules or regulations subject to the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000, *et seq.*) and are being published in accordance with the requirement that the Tax Commissioner publish these guidelines pursuant to *Va. Code* § 58.1-1748, as well as the Tax Commissioner’s general authority to supervise the administration of the tax laws of the Commonwealth pursuant to *Va. Code* § 58.1-202. As necessary, additional information will be published and posted on the Department’s website, www.tax.virginia.gov.

These guidelines represent the Department’s interpretation of the relevant laws. They do not constitute formal rulemaking and hence do not have the force and effect of law or regulation. In the event that the final determination of any court holds that any provision of these guidelines is contrary to law, taxpayers who follow these guidelines will be treated as relying on erroneous written advice for purposes of waiving penalty and interest under *Va. Code* §§ 58.1-105, 58.1-1835, and 58.1-1845. To the extent there is a question regarding the application of these guidelines, taxpayers are encouraged to write to the Department and seek a written response to their question.

Virginia Disposable Plastic Bag Tax

Any county or city may impose the Virginia Disposable Plastic Bag Tax in the amount of five cents (\$0.05) on each disposable plastic bag provided to purchasers by any grocery store, convenience store, or drugstore in the locality. The tax is due regardless of whether the retailer sells the bag to the customer or it is provided free of charge.

Taxable Items

A disposable plastic bag subject to the tax includes any plastic bag provided by a grocery store, convenience store, or drugstore to a customer at the point of purchase to transport items purchased and not intended for reuse. Dealers should not collect the tax on the following items:

- Durable plastic bags, with handles, that are specifically designed and manufactured for multiple reuse and that are at least four mils thick;

- Plastic bags that are solely used to wrap, contain, or package ice cream, meat, fish, poultry, produce, unwrapped bulk food items, or perishable food items in order to avoid damage or contamination;
- Plastic bags used to carry dry cleaning or prescription drugs; or
- Multiple plastic bags sold in packages and intended for use as garbage, pet waste, or leaf removal bags.

As the tax is imposed on each disposable plastic bag provided to a customer rather than the items purchased by the customer, refunds of the Disposable Plastic Bag Tax should not be allowed in situations where the customer returns the items purchased or the bag to the dealer.

Collection of the Tax

Any grocery store, convenience store, or drugstore located in a county or city that has adopted the Disposable Plastic Bag Tax is required to collect the tax from customers who make in-store purchases, to-go purchases, delivery purchases, and curbside pick-up purchases from its establishments in such locality. Grocery stores, convenience stores, and drugstores that are not located in a county or city that imposes the tax are not subject to the tax. The store collecting the tax may provide signage advising customers of the Disposable Plastic Bag Tax.

For purposes of the tax:

- “Grocery store” means an establishment that has an enclosed room in a permanent structure and that sells food and other items intended for human consumption, including a variety of ingredients commonly used in the preparation of meals. This definition does not include food banks, farmers markets, or mobile food units.
- “Drugstore” means an establishment that sells medicines prepared by a licensed pharmacist pursuant to a prescription and other medicines and items for home and general use.
- “Convenience store” means an establishment that (i) has an enclosed room in a permanent structure where stock is displayed and offered for sale and (ii) maintains an inventory of edible items intended for human consumption consisting of a variety of such items of the types normally sold in grocery stores.

(See *Va. Code* § 4.1-100)

Larger retailers that contain a grocery store, a convenience store, or a drug store are subject to the tax. Such retailers shall collect the tax on all taxable plastic bags provided, regardless of the items sold. However, no store will be considered a convenience store solely because it offers a limited selection of snacks and beverages for sale at the point of sale.

In order to be subject to the tax in a locality, a grocery store, convenience store, or drug store must maintain regular business hours at a fixed place of business in the locality.

Dealer Discount

To compensate dealers for the cost of collecting, accounting for, and remitting the tax, dealers are permitted to keep a portion of the tax collected. Dealers must account for the discount in the form of a deduction when submitting their tax return and paying the amount due in a timely manner. The amount of the discount will decrease over time as follows:

- Beginning January 1, 2021, and ending January 1, 2023, dealers are allowed to retain two cents (\$0.02) from the tax collected on each disposable plastic bag
- Beginning January 1, 2023, dealers are allowed to retain one cent (\$0.01) from the tax collected on each disposable plastic bag

Administration of the Tax

The Department will administer the tax similarly to the Retail Sales and Use Tax. As with the local option Retail Sales and Use Tax, the Department of Taxation will be solely responsible for administering the tax, including auditing and collecting of the tax.

Returns

Any dealer with a grocery store, convenience store, or drugstore located in a county or city that imposes the Disposable Plastic Bag Tax shall report the number of disposable plastic bags and amount of tax for each locality to the Virginia Department of Taxation.

The return must be filed and the tax paid by the dealer to the Virginia Department of Taxation on or before the 20th day of each month for the period ending the previous month.

Examples

Example 1

A customer purchases food and other grocery items in a grocery store located in a county that imposes the Disposable Plastic Bag Tax. At checkout, the customer is provided five plastic bags to carry the items. None of the plastic bags provided are in the non-taxable categories. The dealer is required to charge the customer \$0.25 (5 x \$0.05) in tax. The

dealer is required to report this amount and remit \$0.25 to the Department of Taxation, less the applicable dealer discount.

Example 2

The facts are the same as Example 1, except the customer purchases a pre-packaged box of plastic garbage bags and several produce items that the customer has placed in bags provided by the retailer in its produce section. The customer is provided 5 bags when checking out to carry the groceries. The tax would remain \$0.25 ($5 \times \0.05), as the prepackaged box of garbage bags and the bags used for the produce items are exempt from the tax. The dealer is required to report and remit the tax in the same way as in Example 1. The dealer is not required to report the exempt plastic bags.

Example 3

A convenience store that also sells gasoline and is located in a city that imposes the Disposable Plastic Bag Tax provides disposable plastic bags at check-out, free of charge, to its customers to carry groceries out of the store. These bags are subject to the tax.

Example 4

A customer who resides in a county that imposes the Disposable Plastic Bag Tax orders groceries to be delivered from a grocery store to the customer's home address. The groceries are delivered in disposable plastic bags. The grocery store from which the groceries are ordered is located in a city that does not impose the Disposable Plastic Bag Tax. No plastic bag tax is due on this transaction.

Example 5

A customer who resides in a city that does not impose the Disposable Plastic Bag Tax orders groceries for curbside pick-up from a grocery store in a locality that does impose a plastic bag tax. This transaction would be subject to the plastic bag tax for the locality where the store is physically located.

Example 6

A convenience store retailer located in a county that imposes the Disposable Plastic Bag Tax files a return with the Department on June 20, 2022. The retailer reports 200 taxable disposable plastic bags provided to customers in the month of May. The total tax collected should be \$10.00 ($200 \times \$0.05 = \10.00) for the month. The retailer should report this amount on the return and remit \$6.00 ($200 \times \$0.03 = \6.00) with the return and keep \$4.00 ($200 \times \$0.02 = \4.00) as a dealer discount.

Example 7

The same retailer reports 200 taxable plastic bags provided to customers on its return due June 20, 2023. The tax on the 200 bags would be \$10.00 (200 x \$.05 = \$10.00), the same as above. The tax remitted would be \$8.00 (200 x \$.04). The discount would be \$2.00 (200 x \$.01 = \$2.00).

Adoption of the Tax

In order for the Disposable Plastic Bag Tax to be imposed in any county or city, the tax must be adopted by an ordinance enacted by its governing body. Each local ordinance imposing the tax must provide for the tax to become effective on the first day of a calendar quarter and the effective date must not be before January 1, 2021.

The county or city must provide a certified copy of the ordinance to the Tax Commissioner at least three months prior to the date the tax is to become effective. The ordinance must be certified by the clerk of the city council or board of supervisors and sent to the Tax Commissioner at the address below:

Virginia Department of Taxation
Attention: Disposable Plastic Bag Tax
P.O. Box 27185
Richmond, VA 23261-7185

Revenues

All revenues accruing to a county or city from the Disposable Plastic Bag Tax must be appropriated by the locality for the purposes of environmental cleanup, providing education programs designed to reduce environmental waste, mitigating pollution and litter, or providing reusable bags to recipients of Supplemental Nutrition Assistance Program (SNAP) or Women, Infants, and Children Program (WIC) benefits.

Business License Tax

For purposes of the local Business, Professional, and Occupational License (“BPOL”) Tax, any Disposable Plastic Bag Tax collected from customers and remitted to the Commonwealth shall be excluded from the dealer’s gross receipts in the same manner as with the Retail Sales and Use Tax.

Additional Information

These guidelines are available online under the Guidance Documents section of the Department’s website at <http://tax.virginia.gov/guidance-documents>. The Department will issue additional guidance regarding this law change if necessary. Information regarding which localities have imposed a plastic bag tax will be available on the Department’s website at <https://www.tax.virginia.gov/disposable-plastic-bag-tax>. This information will

be updated as additional localities enact ordinances imposing the tax. For additional information, please visit the Department's website at www.tax.virginia.gov or contact the Department at (804) 367-8037.

Approved:

A handwritten signature in black ink, reading "Craig M. Burns". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Craig M. Burns
Tax Commissioner