



A handwritten signature in black ink, appearing to read 'Mark Whitley', written in a cursive style.

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 22, 2021 (for the September 28, 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

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 on 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 is as follows:

- **September 14:** Council held a public hearing and approved the ordinance on first read
- **September 28:** Second Reading; 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.

If approved, staff will notify businesses right away and we will begin communicating this change to the public through our social media outreach, website and media notifications.

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



September 28, 2021
Regular Meeting
Ordinance No. 21-24

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: September 14, 2021

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.

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. 21-24 duly adopted at a meeting of the City Council meeting held September 28, 2021 at which a quorum was present and voted.

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