



Kate Harrison  
Vice Mayor, District 4

CONSENT CALENDAR  
November 15, 2022

To: Honorable Mayor and Members of the City Council

From: Vice Mayor Harrison and Councilmember Hahn

Subject: Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate the Use of Carryout and Produce Bags and Promote the Use of Reusable Bags

RECOMMENDATION

1. Adopt an ordinance adding a Chapter 11.62 to the Berkeley Municipal Code to regulate the use of carryout and produce bags and promote the use of reusable bags with a phased enforcement and implementation approach, effective with respect to new charges for bags pursuant to Sections 11.63.040 and 11.63.050 and provisions applicable to the City of Berkeley and City-sponsored events pursuant to Section 11.63.090 on January 1, 2023, and administrative regulations for and all provisions in this ordinance effective June 30, 2023.
2. Refer to the City Manager and Public Works to consider a Zero Waste rate modification with an anticipated net-zero impact on General Fund to provide additional staffing capacity consistent with business and community outreach, support services, implementation, and phased enforcement of this ordinance and other plastic reduction ordinances. Out of an abundance of caution, and in the event that additional or alternative staffing resources are needed beyond a potential rate increase, refer to the Fiscal Year 2023 AAO #1 Budget Process up to \$350,000 per year for staffing for this ordinance and other plastic reduction ordinances.

POLICY COMMITTEE RECOMMENDATION

On October 6, 2022, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Taplin) to approve the item with a positive recommendation. Vote: Ayes – Taplin, Harrison; Noes – None; Abstain – None; Absent – Robinson.

BACKGROUND

Californians throw away 123,000 tons of plastic bags each year, and much of it finds its way into regional and international waterways.<sup>1</sup> The situation is only getting worse with

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<sup>1</sup> Environment California, “Keep Plastic Out of the Pacific,”  
<https://environmentcalifornia.org/programs/cae/keep-plastic-out-pacific>.

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18 billion more pounds of plastic added to the already colossal amount in our seas.<sup>2</sup> Today, there are 100 million tons of trash in the North Pacific Subtropical Gyre;<sup>3</sup> in some parts, plastic outweighs plankton 6 to 1.<sup>4</sup>

Legislative action at the state level has been successful in achieving reductions in plastic bag pollution. According to the 2018 Change the Tide report, restrictions on plastic bags such as that in effect in California have resulted in a “steady drop” in plastic grocery bags found on California beaches. Berkeley is also in the process of making substantial progress on its restriction of plastic litter in the city through the Single Use Foodware and Litter Reduction ordinance (BMC Chapter 11.64).<sup>5</sup> The ordinance restricts food providers from offering take-out and dine-in food in single-use disposable ware. These items include “containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food.”<sup>6</sup> Notably, plastic bags do not fall within the purview of the Single Use Foodware and Litter Reduction ordinance.

In order to take a further step in protecting the environment and reaching our zero-waste goal, Berkeley must consider more aggressive action to close critical loopholes in state and county law with regard to plastic carryout and produce bags.

California currently prohibits the sale of certain plastic bags that fall into several categories, based on composition, intended use and business size and type. The statewide Single-Use Carryout Bag Ban prevents the sale of “single-use” plastic carryout bags in most large grocery stores, retail stores with a pharmacy, convenience stores, food marts, and liquor stores. Affected stores may offer reusable or recycled paper bags to a customer at the point of sale. Despite these restrictions, the law provides for the sale of plastic bags that are more than 2.25 mils thick in these stores, and exempts a number of key commercial establishments such as restaurants, general retailers, farmers markets, and other smaller businesses. Until 2025, State law also fully exempts

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<sup>2</sup> Division of Boating and Waterways, “The Changing Tide,” [http://dbw.parks.ca.gov/pages/28702/files/Changing%20Tide%20Summer%202018%20HQ%20\(1\).pdf](http://dbw.parks.ca.gov/pages/28702/files/Changing%20Tide%20Summer%202018%20HQ%20(1).pdf).

<sup>3</sup> The North Pacific Gyre, also known as the North Pacific Subtropical Gyre, is a system of ocean currents that covers much of the northern Pacific Ocean. It stretches from California to Japan and contains the Great Pacific Trash Patch, or Pacific trash vortex. National Geographic, “Great Pacific Garbage Patch,” <https://www.nationalgeographic.org/encyclopedia/great-pacific-garbage-patch/>.

<sup>4</sup> Environment California, “Keep Plastic Out of the Pacific,” <https://environmentcalifornia.org/programs/cae/keep-plastic-out-pacific>.

<sup>5</sup> Berkeley Municipal Code, Chapter 11.64 Single Use Foodware and Litter Reduction.

<sup>6</sup> Berkeley Municipal Code Section 11.64.020D.

plastic film bags in grocery stores used for carrying produce from the shelf to the check stand.<sup>7</sup>

This proposed ordinance intends to expand the scope of existing regulation to further reduce plastic waste across exempt and non-preempted categories, namely carryout bags provided by any retail store not regulated by the state, City and City-sponsored events, and pre-checkout bags at large grocery stores, avoiding further destruction of the local, regional and global environment.

### State Restrictions on Plastic Bags

California's legislature decided in 2014 to take a step to limit single-use plastic bag waste. Senate Bill 270 regulates stores of a certain size and type offering plastic film carryout bags at checkout. As a result, thin film bags, known as flimsily bags or t-shirt bags, are no longer available at larger retail, grocery and liquor stores. The law also sets a minimum price of at least \$0.10 for thicker plastic film bags.<sup>8</sup>

The scope of state regulation with regard to thicker plastic bags includes minimum percentage of post-consumer recycled plastics, and banning plastic bags deemed adequate for only one use. The state defines single-use plastic bags as thin film bags—bags made out of flexible sheets of plastic usually of polyethylene resin. State legislation distinguishes between single-use film bags and reusable ones based on their thickness, measured in mils—1 thousandth of an inch.

The ban however does not apply to other types of plastic bags deemed reusable or to smaller retailers and restaurants. Many plastic film bags, in particular, are still permitted under SB 270. They are permitted for sale as long as: the bags contain more than 20% post-consumer recycled material<sup>9</sup>; are recyclable in the state of California; are properly labeled as containing post-consumer recycled material; can carry over 22lb for a minimum of 175ft for at least 125 uses; and are at least 2.25 mils thick.

Despite the assumption of reusability, there is limited evidence to suggest that thicker plastic bags are being repurposed to the degree accounted for by SB 270. Some studies suggest that fewer than 1% of people actually reuse the thicker and thus technically-reusable film bags.<sup>10</sup> This erroneous legislative assumption can be addressed at the local level at least in stores not regulated by the state.

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<sup>7</sup> Ban on Single-Use Carryout Bags (SB 270 / Proposition 67) Frequently Asked Questions, Office of the Attorney General and CalRecycle, April 2017, <https://www.calrecycle.ca.gov/Plastics/CarryOutBags/FAQ/>.

<sup>8</sup> California Legislature, Senate Bill 270,

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201320140SB270](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201320140SB270)

<sup>9</sup> In 2020, the percentage required will increase to 40% post-consumer recycled material.

<sup>10</sup> Save Our Shores, "Help Ban Plastic Bags," <https://saveourshores.org/help-ban-plastic-bags/>

Aside from SB 270, the only other legislation governing plastic bag usage in Berkeley is an Alameda County ordinance implementing SB 270 and local ordinances regulating the type of plastic allowed in food packaging.<sup>11</sup> Data from Alameda County revealed that through regulation “plastic bags found in storm drains decreased by 44 percent, indicating that the ordinance has been successful in reducing single use plastic bag litter.” However, by not addressing plastic produce bags and defining reusable bags as any film bag exceeding 2.25 mils, current regional law shares many of the shortcomings of state legislation.<sup>1213</sup>

### Local Restrictions on Plastic Bags

Contested but upheld in a 2016 ballot measure,<sup>14</sup> SB 270 set a statewide code that has been built upon by numerous local governments, including many in the Bay Area. However, it is important to note that jurisdictions that already had local ordinances in place before 2016 enjoy greater regulatory latitude than Berkeley due to state preemption.

Palo Alto is one of the most recent cities to amend its municipal code and take the extra step in limiting the distribution of film bags. By splitting plastic bags into three categories by use—produce bags, checkout bags, and product bags—the city is able to differentiate regulation for each purpose. Its ordinance<sup>15</sup> bans grocery stores and farmers markets from packaging food in film bags, requiring instead the use of compostable plastics. For checkout, Palo Alto mandates that all stores only offer their customers recycled paper bags or reusable bags, a term it defines in accordance with California law as a bag thicker than 2.25 mils.

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<sup>11</sup> Alameda County Waste Management Authority, “Ordinance Regulating the use of carryout bags and promoting the use of reusable bags,” <http://reusablebagsac.org/acwma-ordinance-2012-2-amended-ordinance-2016-2>.

<sup>12</sup> Berkeley Municipal Code Chapter 11.58 Prohibition of Chlorofluorocarbon-Processed Food Packaging, <https://www.codepublishing.com/CA/Berkeley/cgi/NewSmartCompile.pl?path=Berkeley11/Berkeley1158/Berkeley1158.html>.

<sup>13</sup> Berkeley Municipal Code Chapter 11.60 Polystyrene Foam, Degradable and Recyclable Food Packaging, <https://www.codepublishing.com/CA/Berkeley/cgi/NewSmartCompile.pl?path=Berkeley11/Berkeley1160/Berkeley1160.html>.

<sup>14</sup> Ballotpedia, “California Proposition 67, Plastic Bag Ban Veto Referendum (2016),” [https://ballotpedia.org/California\\_Proposition\\_67,\\_Plastic\\_Bag\\_Ban\\_Veto\\_Referendum\\_\(2016\)](https://ballotpedia.org/California_Proposition_67,_Plastic_Bag_Ban_Veto_Referendum_(2016))

<sup>15</sup> Palo Alto Municipal Code, “Chapter 5.35 Retail and Food Service Establishment Checkout Bag Requirements,” <https://www.cityofpaloalto.org/civicax/filebank/documents/63550>.

San Francisco has similar provisions.<sup>16</sup> It decided in July 2019<sup>17</sup> to both increase the amount of money charged for checkout bags from \$0.10 to \$0.25 and ban what it calls plastic film “pre-checkout bags”—defined as a non-recyclable or compostable “bag provided to a customer before the customer reaches the point of sale,” nearly identical in definition to Palo Alto’s produce bag language. San Francisco drew inspiration from Monterey, Pacifica, Santa Cruz and Los Altos, all of which charge more than SB270 requires for plastic bags.<sup>18</sup> The ordinance also specifically referenced an Irish law, which increased the price of plastic checkout bags from 15 cents to 22 cents, reducing plastic checkout usage by more than 95 percent, as precedent.<sup>19</sup>

Yet there are some cities that have gone even farther in their restriction of single-use plastics. Although Capitola does not ban plastic produce/pre-checkout bags, it notably redefined the thickness of a reusable bag as equal or exceeding 4 mils, instead of 2.25 mils.<sup>20</sup> This means that any carryout bag provided by a retailer in the city is more durable than those considered multi-use by the state of California.

New York State recently introduced a plastic bag reduction ordinance that provides a number of precedents for a potential Berkeley ordinance. It bans all plastic carryout bags less than 10 mils thick (four times California’s limit).<sup>21</sup>

Given the progress many cities and states have made in regulating plastic bags, to the extent permitted by state law, Berkeley has many examples to emulate.

### Past Efforts in Berkeley

Berkeley attempted to pass its own plastic bag ban in 2010.<sup>22</sup> In the years following councilmembers have pushed for reform, calling for an ordinance to improve upon

<sup>16</sup> San Francisco Municipal Code Chapter 17: Plastic Bag Reduction Ordinance, [http://library.amlegal.com/nxt/gateway.dll/California/environment/chapter17plasticbagreductionordinance?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca](http://library.amlegal.com/nxt/gateway.dll/California/environment/chapter17plasticbagreductionordinance?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca).

<sup>17</sup> San Francisco Municipal Code, “Ordinance amending the Environment Code,” <https://sfbos.org/sites/default/files/o0172-19.pdf>.

<sup>18</sup> Isabela Agnus, “San Francisco bumps bag fee up to 25 cents,” <https://www.sfgate.com/news/article/SF-bumps-bag-fee-25-cents-plastic-produce-ban-14102908.php>.

<sup>19</sup> Republic of Ireland Department of Communications, Climate Action & Environment, “Plastic Bags,” <https://www.dccae.gov.ie/en-ie/environment/topics/waste/litter/plastic-bags/Pages/default.aspx>.

<sup>20</sup> Capitola Municipal Code Chapter 8.07: Single-use Plastic and Paper Carryout Bag Reduction, <https://www.codepublishing.com/CA/Capitola/#!/Capitola08/Capitola0807.html#8.07>.

<sup>21</sup> New York State, Bag Waste Reduction Law, <https://law.justia.com/codes/new-york/2021/env/article-27/title-28/27-2803/>

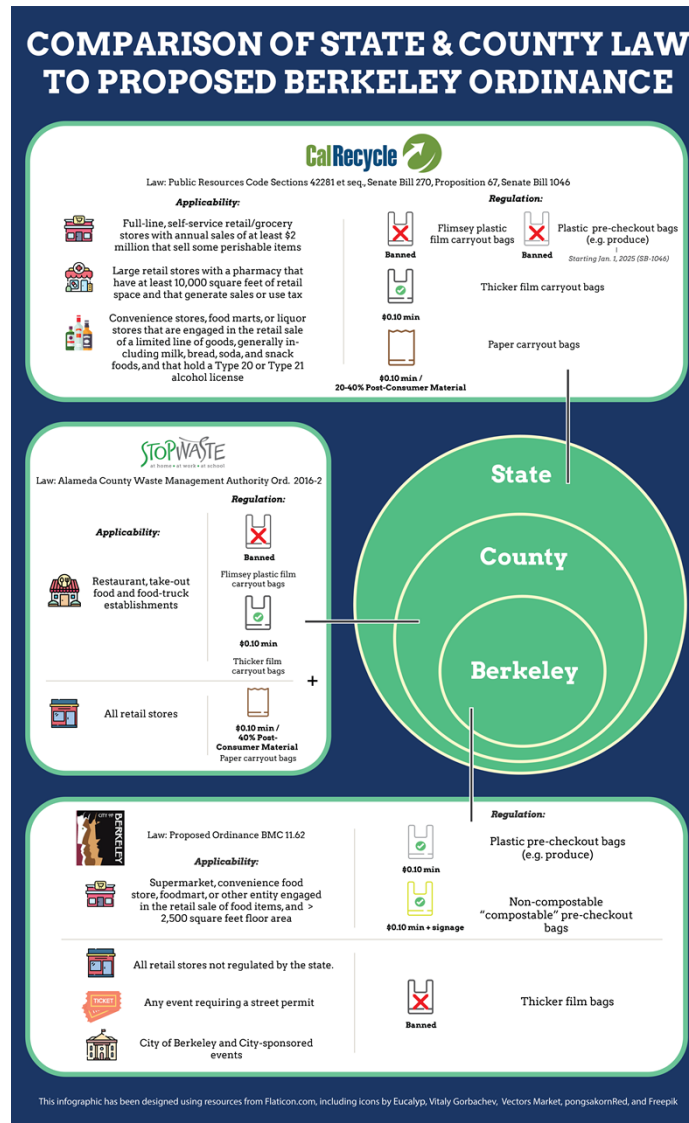
<sup>22</sup> Berkeley City Council, “Berkeley Bag Reduction Ordinance,” [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Solid\\_Waste/BagReductionDraftOrdinance.100316.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Solid_Waste/BagReductionDraftOrdinance.100316.pdf).

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county and state legislation.<sup>23</sup> Yet the threat of lawsuits<sup>24</sup> and movement and preemption on the state and county levels appear to have delayed local reform.

The Proposed Ordinance



<sup>23</sup> Kriss Worthington, "Adopt Expanded Single Use Plastic Bag Ban/Paper Bag Fee Ordinance," [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2012/01Jan/2012-01-31\\_Item\\_25\\_Adopt\\_Expanded\\_Single\\_Use\\_Plastic\\_Bag.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2012/01Jan/2012-01-31_Item_25_Adopt_Expanded_Single_Use_Plastic_Bag.pdf).

<sup>24</sup> Doug Oakley, "Berkeley's plan for plastic bag ban part of larger movement," <https://www.mercurynews.com/2009/12/23/berkeleys-plan-for-plastic-bag-ban-part-of-larger-movement/>.

This proposed ordinance picks up where prior attempts failed, bringing Berkeley more or less on par with many of its neighbors in tightening restrictions on plastic bag sales. On some points, this ordinance ensures that the City again becomes a leader in environmental regulation. The following details the key changes that close loopholes in state and local law:

- **Grocery Stores > 2,500 sq. ft.**

Before September 2022, State and County laws were completely silent with respect to regulating plastic film pre-checkout bags (e.g., produce bags). This loophole was the original impetus for this ordinance, which was first introduced in 2019.

Thanks to ongoing advocacy and possibly to the media attention surrounding this ordinance, state leaders have moved to close this loophole (SB-1046 – 2022), but only effective beginning in 2025.

In response and in anticipation of the new State law, the latest version of the proposed Berkeley ordinance was updated at committee to regulate grocery stores with more than 2,500 square feet of retail space (consistent with the Berkeley Healthy Checkout Ordinance) by requiring store owners to apply a minimum charge of \$0.10 for each plastic film pre-checkout bag provided, regardless of thickness.

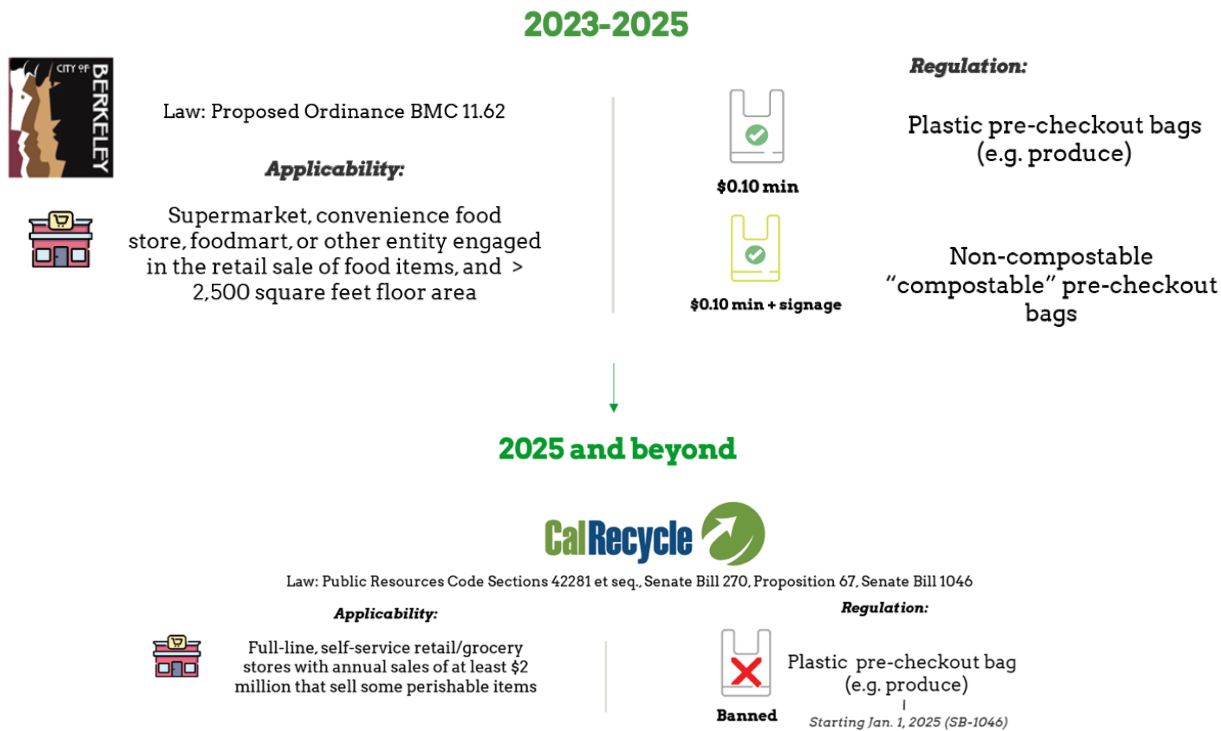
As part of the hearing process at FITES, it came to the attention of the City that many if not all pre-checkout compostable produce bags provided by grocery stores are not actually composted by the City's compost facility, Blossom Valley. Compostable bags decompose at a different rate than organic compost, and therefore are separated from compost piles and thrown in the trash. This reality creates a potential for misleading customers and the public.

Therefore, in addition, any pre-checkout bag deemed non-compostable by the City's composting facility would incur a \$0.10 minimum charge as well. Truly compostable bags can be provided free of charge.

Beginning in 2025, when SB-1046 comes into effect, plastic film pre-checkout bags would be completely prohibited. The state plans to only allow paper or compostable bags to be provided as defined (however reusable bags may still be sold). At that time, any Berkeley pre-checkout provisions pertaining to grocery stores that are preempted by the onset of SB-1046 would be phased out. This arrangement provides a glidepath for grocery stores to incentivize the phasing out or disincentivizing of plastic film and non-compostable pre-checkout bags:

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- **Retail Stores Not Regulated by State**

Current State and County laws include a glaring loophole with respect to thicker carryout bags. Despite successfully phasing out flimsier carryout plastic bags (< 2.25 mills) across nearly all sectors, they effectively promoted and normalized thicker plastic bags. The result has been a boon for the plastic industry and has caused considerable environmental destruction.

The State currently regulates full-line, self-service retail stores with gross annual sales of at least \$2 million that sell a line of dry groceries, canned goods, or nonfood items, and some perishable items, large retail stores with a pharmacy that have at least 10,000 square feet of retail space, and most convenience stores, food marts, or liquor stores. All other retail stores are currently unregulated by the State and only partially regulated by the County.





State Definitions of Retail Store



Full-line, self-service retail stores with annual sales of at least \$2 million that sell some perishable items



Large retail stores with a pharmacy that have at least 10,000 square feet of retail space and that generate sales or use tax



Convenience stores, food marts, or liquor stores that are engaged in the retail sale of a limited line of goods, generally including milk, bread, soda, and snack foods, and that hold a Type 20 or Type 21 alcohol license

Despite state preemption from further carryout regulation in Grocery Stores, Berkeley’s proposed ordinance would ban thicker plastic bags in all retail stores not already regulated by the State and County. Therefore, retail stores covered under the Berkeley ordinance would only be able to provide paper carryout bags for a \$0.10 charge, or truly reusable bags:



All retail stores not regulated by the state.



Banned

Thicker film bags

• **Restaurants**

The author considered closing State and County carryout bag loopholes applicable to restaurants, but determined that pandemic-related hardships and complications related to pick up and delivery orders, and the onset of significant new state regulation of organic waste (SB-1383) all contributed to making further regulation infeasible at this time. However, the author and Council may revisit this issue at a later date.

The only new provision of this Berkeley ordinance applying specifically to restaurants is that a restaurant providing a customer with a plastic film carryout bag, at the customer’s request, in order to carry leftovers after sit-down meal service, will incur a minimum of \$0.10 charge. No such fee will apply to paper bags provided for such purpose.



Plastic bags provided to customers after meal to carry home leftovers include \$ 0.10 charge.

- **Permitted Events, City events, and City-sponsored events**

Many of the same loopholes applicable to grocery stores and retail stores also exist at permitted events. Therefore, the Berkeley ordinance extends the same regulations applied to private businesses to any event, or person therein, requiring a street event permit pursuant to Berkeley Municipal Code 13.44.040 and not subject to State law.

In addition, the ordinance specifies that the City of Berkeley and any City-sponsored event shall provide or sell to a customer or participant only recycled content paper bags or reusable carry-out bags for the purpose of carrying away goods or other materials from the point of sale or event.



Any event requiring a street permit



City of Berkeley and City-sponsored events



**Banned**

Thicker film bags

- **All stores**

In response to reports of certain stores refusing customers' reusable bags, the ordinance provides that any establishment regulated by Public Resources Code Section 42281, Alameda County Waste Management Authority Ordinance 2016-02, or this proposed Berkeley ordinance, except Restaurants with respect to takeout orders, shall not unreasonably deny a customer from using bags or containers of any type that they bring themselves.

However, establishments may refuse, at their sole discretion, any customer-provided bag or container that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended food item, or that appears to be excessively soiled or unsanitary. If the customer accepts a store-provided bags or containers in lieu, any required charge will apply.

- **Exemptions and Waivers**

The proposed Berkeley ordinance exempts all product bags,<sup>25</sup> or bags sold in packages containing multiple bags such as those intended for use as garbage, prescription medication, pet waste or yard waste bags, or which are integral to the use of other objects, from regulation consistent with County and State law.

In addition, except as regulated by State law, the ordinance allows covered entities and food product stores to provide recycled content paper bags as carryout bags to persons in the California Special Supplemental Food Program for Women, Infants, and Children, CalFresh, and Supplemental Food Program for free.

Additionally, the ordinance provides the City Manager with the authority to prescribe and adopt rules, regulations and forms for covered entities or food product stores to obtain a partial waiver from any requirement of this ordinance upon sufficient evidence by the applicant that the provisions of this Chapter would cause undue hardship. The phrase "undue hardship" may include, but is not limited to situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.

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<sup>25</sup> Bags that are integral to the packaging of a product such as film or other bags used to fully encapsulate liquid or semi-liquid takeout food items (e.g., soup containers) to prevent spillage; bags to hold prescription medication dispensed from a pharmacy; or bags designed to be placed over articles of clothing on a hanger at dry cleaning or laundry facility.

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## Committee Outreach and Implementation

The Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee (FITES) held numerous hearings over the course of nearly three years. The Committee initially recommended that Council refer to the Zero Waste and Energy Commissions to hold a series of outreach hearings, however, the Commissions declined to hold such hearings, and the Commissions were reorganized due to Council action. In response, the FITES Committee held three public hearings to hear from large grocery stores, City staff (with respect to City events and permits) and retail stores. Before each meeting, Committee staff conducted outreach to impacted businesses and business organizations/associations (in the case of retail) with phone calls and/or emails. The Committee listened to businesses and the public and made numerous changes the ordinance.

In addition, the author conducted sustained outreach to the Alameda County Waste Management Authority and City staff to seek advice, input and to ensure coordination. Authority staff have indicated that they will watch Berkeley's ordinance closely and will consider adopting relevant provisions countywide.

The ordinance will be effective with respect to new charges for bags pursuant to carryout bags for restaurants and plastic and non-accepted compostable pre-checkout bags (Sections 11.63.040 and 11.63.050) on January 1, 2023. In addition, provisions applicable to the City of Berkeley and City-sponsored events pursuant to Section 11.63.090 will be effective on January 1, 2023. However, administrative regulations for and all other provisions will be effective beginning on June 30, 2023. Staff indicate that they need time to hire additional staff and to conduct outreach to effected businesses. Enforcement of the ordinance is expected to be reactive and complaint-based, and not proactive.

### FISCAL IMPLICATIONS

Staff costs will be necessary for the launch, for outreach and education, enforcement, administration and analysis. Staff costs, estimated at \$350,000 per year, will likely be recovered through increases to Zero Waste rates.

This item refers to the City Manager and Public Works to consider a Zero Waste rate modification with an anticipated net-zero impact on General Fund to provide additional staffing capacity consistent with business and community outreach, support services, implementation, and phased enforcement of this ordinance and other plastic reduction ordinances. Out of an abundance of caution, and in the event that additional or alternative staffing resources are needed beyond a potential rate increase, this item refers to the Fiscal Year 2023 AAO #1 Budget Process up to \$350,000 per year for staffing for this ordinance and other plastic reduction ordinances.

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ENVIRONMENTAL SUSTAINABILITY

Reducing the amount of discarded plastic bags—previously classified as multi-use or compostable—in the city of Berkeley will result in less overall waste and fewer plastics that make it into local and regional waterways. Reducing plastic waste is also a key strategy towards addressing climate change and phasing out fossil fuels.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

ORDINANCE NO. –N.S.

ADDING CHAPTER 11.63 TO THE BERKELEY MUNICIPAL CODE TO REGULATE  
THE USE OF CARRYOUT AND PRE-CHECKOUT BAGS AND PROMOTING THE USE  
OF REUSABLE BAGS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Chapter 11.63 of the Berkeley Municipal Code is added to read as follows:

**Chapter 11.63**

**REGULATING THE USE OF CARRYOUT AND PRE-CHECKOUT BAGS AND  
PROMOTING THE USE OF REUSABLE BAGS**

**Sections:**

**11.63.010 Findings and purpose.**

**11.63.020 Definitions.**

**11.63.030 Carryout Bag restrictions for Covered Entities.**

**11.63.040 Carryout Bag restrictions for Restaurants**

**11.63.050 Pre-checkout Bag restrictions for Food Product Stores and Covered  
Entities.**

**11.63.060 Unreasonable denial of customer bags or containers.**

**11.63.070 General exemptions.**

**11.63.080 Waivers—applicability and process to obtain.**

**11.63.090 Carry-out bag restrictions for the City of Berkeley and City-sponsored  
events.**

**11.63.100 Duties, responsibilities and authority of the City of Berkeley.**

**11.63.110 Liability and enforcement.**

**11.63.120 Severability.**

**11.63.130 Construction.**

**11.63.140 Effective date.**

**11.63.010 Findings and purpose.**

The Council of the City of Berkeley finds and declares as follows:

- A. Single-use plastic bags and plastic produce bags are a significant contributor to street litter, ocean pollution, marine and other wildlife harm and their production creates greenhouse gas emissions.
- B. The production, consumption and disposal of plastic-based bags contribute significantly to the depletion of natural resources. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and present a great harm to the global environment.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain plastic bags can also contain microplastics that present a great harm to our seawater and freshwater life, which indirectly presents a threat to human life.
- D. It is in the interest of the health, safety and welfare of all who live, work and do business in the City that the amount of litter on public streets, parks and in other public places be reduced.
- E. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of plastic bag waste furthers this goal.
- F. The State of California and Alameda County Waste Management Authority both regulate single-use, paper, and reusable carryout bags respectively under SB 270/Proposition 67 and Ordinance 2012-02 (as amended by Ordinance 2016-02). However, neither currently address all establishments or pre-checkout (e.g., produce) bags to carry fruits, vegetables, and other loose or bulky items while shopping before reaching the checkout area. These bags, which are often plastic, share many of the same physical qualities as single-use plastic carryout bags no longer permitted in California, and are difficult to recycle, reuse or compost.
- G. The State also does not regulate the price of bags provided at the point of sale by restaurants and streets events, including farmers' markets. While the County's Ordinance 2016-02 regulates restaurant carryout bags, it allows thicker film plastic.
- H. The City of Berkeley currently regulates a number of disposable plastic items through the Single-Use Foodware and Litter Reduction Ordinance (Ord. 7639-NS § 1 (part), 2019), but does not impose regulations with respect to bags. It is in the public interest to reduce plastic and paper waste in areas not preempted by the State of California.
- I. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, as amended, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.63.020 Definitions.**

- A. "Accepted Compostable Pre-Checkout Bag" means a bag that is accepted by the City's compost facility as having the requisite and appropriate physical qualities for controlled biological decomposition in conjunction with other organic solid waste.

B. "Carryout Bag" means a bag provided at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of a Covered Entity or Restaurant. Carryout Bags do not include Pre-checkout or Product Bags.

C. "Covered Entity" means any of the following:

(1) any event, or Person therein, requiring a street event permit pursuant to Berkeley Municipal Code 13.44.040 and not subject to the requirements of Public Resources Code Section 42281; and

(2) any other commercial establishment other than a Restaurant that sells perishable or nonperishable goods including, but not limited to, clothing, food and personal items directly to a customer, and that is not subject to the requirements of Public Resources Code Section 42281.

D. "Customer" means any Person obtaining goods from a Covered Entity, Food Product Store or Restaurant.

E. "Food Product Store" means a supermarket, convenience food store, foodmart, or other entity engaged in the retail sale of goods that include perishable and nonperishable food items, and with a total floor area over 2,500 square feet.

F. "Person" means an individual, firm, public or private corporation, limited liability company, partnership, industry or any other entity whatsoever.

G. "Pre-checkout Bag" means a Recycled Content Paper Bag, Accepted Compostable Pre-Checkout Bag, or plastic film bag provided or sold to a customer to carry produce, bulk food, or other food items to the point of sale inside a store.

H. "Product Bags" are bags that are integral to the packaging of a product such as film; bags used to fully encapsulate liquid or semi-liquid takeout food items (e.g., soup containers) to prevent spillage; bags to hold prescription medication dispensed from a pharmacy; or bags designed to be placed over articles of clothing on a hanger at dry cleaning or laundry facility.

I. "Recycled Content Paper Bag" means either a Carryout Bag provided by a Covered Entity or a Pre-checkout Bag provided by a Food Product Store that contains no old growth fiber and a minimum of forty percent (40%) postconsumer recycled material; is one hundred percent (100%) recyclable and compostable, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; and has printed in a highly visible manner on the outside of the bag the words: "Recyclable," the name and location of the manufacturer, and the percentage of postconsumer recycled content.

J. "Reusable Carryout Bag" means a bag that is specifically designed and manufactured for multiple reuse and meets all of the following requirements:

(1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet;

(2) has a minimum volume of 15 liters;

(3) is washable by hand or machine, or is made from a material that can otherwise be cleaned or disinfected;

(4) does not contain lead, cadmium or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags;

(5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a



statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and (6) is not made of plastic film, regardless of thickness.

K. "Restaurant" means a food or take-out food establishment (including, but not limited to, food sales from vehicles or temporary facilities open to the public) that sells prepared food directly to a customer and is not subject to the requirements of Public Resources Code Section 42281.

L. "Reusable Pre-checkout Bag" means a bag that is specifically designed and manufactured for multiple reuse and meets all of the following requirements:

(1) is washable by hand or machine, or is made from a material that can otherwise be cleaned or disinfected;

(2) does not contain lead, cadmium or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags;

(3) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and

(4) is not made of plastic film, regardless of thickness.

#### **11.63.030 Carryout Bag restrictions for Covered Entities.**

A. No Covered Entity shall provide or sell a Carryout Bag other than Recycled Content Paper Bags or Reusable Carryout Bags at the check stand, cash register, point of sale or other location to a Customer for the purpose of transporting food or merchandise out of such Covered Entity.

B. A Covered Entity may provide or make available for sale to a Customer a Recycled Content Paper Bag, provided that the Covered Entity charge a minimum of ten cents (\$0.10) per bag.

#### **11.63.040 Carryout Bag restrictions for Restaurants.**

A Restaurant providing a Customer with plastic film Carryout Bag, at the Customer's request, in order to carry leftovers after sit-down meal service, shall charge a minimum of ten cents (\$0.10) per bag.

#### **11.63.050 Pre-checkout Bag restrictions and requirements for Food Product Stores and Covered Entities.**

A. A Food Product Store providing a Customer with plastic film Pre-checkout Bags, or Pre-checkout Bags deemed not to be Accepted Compostable Pre-Checkout Bags, shall charge a minimum of ten cents (\$0.10) per bag. Food Product Stores shall consider providing appropriate signage detailing procedures for acquiring and purchasing such bags. Food Product Stores providing Pre-checkout Bags deemed not to be Accepted Compostable Pre-checkout Bags pursuant to this Chapter shall provide signage notifying customers that such bags are not composted and are sent to landfill, and indicating availability of options such as bringing their own bag, or acquiring Recycled Content Paper or Reusable Pre-Checkout Bags.

B. Notwithstanding subsection A, Covered Entities and Food Product Stores may provide plastic film bags as Pre-checkout Bags to Customers free of charge for the sole purpose of separating meats and seafood only upon the specific request of a Customer.

Covered Entities shall not proactively offer Customers plastic film Pre-checkout Bags for such uses.

C. Food Product Stores may provide Recycled Content Paper or Accepted Compostable Pre-checkout Bags free of charge in produce and other aisles.

D. Food Product Stores shall make reasonable efforts to stock and make Reusable Pre-checkout Bags available or for sale.

E. A state law (SB 1046) scheduled to take effect on January 1, 2025 will preempt this Section 11.63.050 with respect to Food Product Stores. At that point, this Section 11.63.050 shall only apply to Covered Entities unless SB 1046 is repealed or otherwise amended.

**11.63.060 Unreasonable denial of customer bags or containers.**

Any establishment regulated by Public Resources Code Section 42281, Alameda County Waste Management Authority Ordinance 2016-02, or this Chapter, except Restaurants with respect to takeout orders, shall not unreasonably deny a customer from using bags or containers of any type that they bring themselves, including in lieu of using bags or containers provided by the establishment. However, establishments may refuse, at their sole discretion, any customer-provided bag or container that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended food item, or that appears to be excessively soiled or unsanitary. If the customer accepts store-provided bags or containers in lieu, any charge required pursuant to this ordinance, other applicable law, or the establishment's policy will apply.

**11.63.070 General exemptions.**

A. Bags exempt from this Chapter include Product Bags, bags sold in packages containing multiple bags such as those intended for use as garbage, pet waste bags, yard waste bags, and bags which are integral to the use of other objects.

B. Nothing in this Chapter prohibits customers from using bags of any type that they bring to the establishment themselves or from carrying away merchandise or materials that are not placed in a bag at point of sale, in lieu of using bags provided by the establishment.

C. Notwithstanding the requirements of Sections 11.63.30 and 11.63.40, Covered Entities and Food Product Stores, except as subject to the requirements of Public Resources Code Section 42281, providing Recycled Content Paper Bags as Carryout Bags at the point of sale or Pre-Checkout Bags before the point of sale, shall provide such bags at no cost to a Customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code; a Customer participating in Calfresh pursuant to Chapter 1 commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code; and a Customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code.

**11.63.080 Waivers—applicability and process to obtain.**

A. The City Manager shall prescribe and adopt rules, regulations and forms for Covered Entities or Food Product Stores to obtain a partial waiver from any requirement of this ordinance upon sufficient evidence by the applicant that the provisions of this

Chapter would cause undue hardship. The phrase "undue hardship" may include, but is not limited to situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.

B. Waivers may be granted by the City Manager or their designees, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.

C. The City Manager or their designees shall act on a waiver application no later than 90 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.

**11.63.090 Carry-out bag restrictions for the City of Berkeley and City-sponsored events.**

The City of Berkeley and any City-sponsored event shall provide or sell to a Customer or participant only Recycled Content Paper Bags or Reusable Carry-out Bags for the purpose of carrying away goods or other materials from the point of sale or event.

**11.63.100 Duties, responsibilities and authority of the City of Berkeley.**

The City Manager or their designee shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this Chapter including, but not limited to, inspecting any Covered Entity or Food Product Store's premises to verify compliance.

**11.63.110 Liability and enforcement.**

- A. Anyone violating or failing to comply with any requirement of this Chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this Chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.63.060.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.63.120 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that

any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

**11.63.130 Construction.**

This Chapter is intended to be a proper exercise of the City's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

**11.63.140 Effective date.**

- A. Sections 11.63.040 and 11.63.050 shall take effect January 1, 2023.
- B. Section 11.63.090 shall take effect January 1, 2023.
- C. All other provisions in this ordinance are effective June 30, 2023.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.