



**BERKELEY CITY COUNCIL FACILITIES, INFRASTRUCTURE,
TRANSPORTATION, ENVIRONMENT & SUSTAINABILITY COMMITTEE
REGULAR MEETING**

**Wednesday, October 6, 2021
2:30 PM**

Committee Members:

Councilmembers Terry Taplin, Rigel Robinson, and Kate Harrison
Alternate: Councilmember Sophie Hahn

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH
VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be available

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/81648836229>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **816 4883 6229**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - July 7, 2021

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. **Climate Equity Action Fund - Committee Discussion Pursuant to Resolution No. 69,984 Regarding Eligible Categories of Fund Expenditures to Maximize Equitable Emissions Reductions and Impacts for Eligible Households**
3. **Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate Plastic Bags at Retail and Food Service Establishments**
From: Councilmembers Harrison and Hahn
Referred: November 25, 2019
Due: July 30, 2021
Recommendation: Adopt an ordinance adding a Chapter 11.62 to the Berkeley Municipal Code to regulate plastic bags at retail and food service establishments.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Committee Action Items

4. **Native and Drought Resistant Plants and Landscaping Ordinance Referral**
From: Councilmember Taplin (Author)
Referred: September 13, 2021
Due: February 19, 2022
Recommendation: Refer to the City Manager the development of an ordinance amending the Berkeley Municipal Code to require that plant materials (1) native to Berkeley and Northern California and (2) resistant to drought conditions shall be used exclusively in designing, planting, maintaining, and managing the landscape features of all City roadsides, parks, public areas, and other City properties and facilities.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

5. **Refer to the City Manager to Prioritize Establishment of Impact/Mitigation Fees to Address Disproportionate Private and Public Utility Impact to the Public Right of Way**
From: Councilmember Harrison (Author)
Referred: February 22, 2021
Due: July 12, 2021
Recommendation: In order to ensure equitable support of the public right of way by private and public entities that use City facilities, refer to the City Manager and City Attorney to prioritize the following in consultation with the Facilities, Infrastructure, Transportation, Environment, & Sustainability Committee:
1. establish impact and/or mitigation fees to address disproportionate private impacts to the public right of way, such as our roads and utility poles; and
2. establish transfers between sewer, waste, or other utilities as appropriate to address impacts to the public right of way.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Items for Future Agendas

- **Discussion of items to be added to future agendas**

Adjournment

Written communications addressed to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.



COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 30, 2021.

A handwritten signature in black ink that reads "Mark Numainville".

Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@cityofberkeley.info.

**BERKELEY CITY COUNCIL FACILITIES, INFRASTRUCTURE,
TRANSPORTATION, ENVIRONMENT & SUSTAINABILITY COMMITTEE
REGULAR MEETING MINUTES**

**Wednesday, July 7, 2021
2:30 PM**

Committee Members:

Councilmembers Terry Taplin, Rigel Robinson, and Kate Harrison
Alternate: Councilmember Sophie Hahn

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH
VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

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MINUTES

Roll Call: 2:32 p.m.

Present: Robinson, Harrison

Absent: Taplin

Public Comment on Non-Agenda Matters: 2 Speakers

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. **Minutes - June 2, 2021**

Action: M/S/C (Robinson/Harrison) to approve the June 2, 2021 minutes as presented.

Vote: Ayes – Robinson, Harrison; Noes – None; Abstain – None; Absent – Taplin.

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. **Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate Plastic Bags at Retail and Food Service Establishments**

From: Councilmembers Harrison and Hahn

Referred: November 25, 2019

Due: July 30, 2021

Recommendation: Adopt an ordinance adding a Chapter 11.62 to the Berkeley Municipal Code to regulate plastic bags at retail and food service establishments.

Financial Implications: See report

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

Action: 2 speakers. Presentation made by the Ecology Center. Supplemental material received from the author. Discussion held. The item was continued to the next meeting.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting. Pursuant to Appendix D of the City Council Rules of Procedure and Order related to Temporary Rules for Policy Committees the deadline to take action on some items on the Unscheduled list may be postponed.

3. Refer to the City Manager to Prioritize Establishment of Impact/Mitigation Fees to Address Disproportionate Private and Public Utility Impact to the Public Right of Way

From: Councilmember Harrison (Author)

Referred: February 22, 2021

Due: July 12, 2021

Recommendation: In order to ensure equitable support of the public right of way by private and public entities that use City facilities, refer to the City Manager and City Attorney to prioritize the following in consultation with the Facilities, Infrastructure, Transportation, Environment, & Sustainability Committee:

1. establish impact and/or mitigation fees to address disproportionate private impacts to the public right of way, such as our roads and utility poles; and
2. establish transfers between sewer, waste, or other utilities as appropriate to address impacts to the public right of way.

Financial Implications: See report

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

Items for Future Agendas

- None

Adjournment

Action: M/S/C (Robinson/Harrison) to adjourn the meeting.

Vote: Ayes – Robinson, Harrison; Noes – None; Abstain – None; Absent – Taplin.

Adjourned at 3:45 p.m.

I hereby certify that this is a true and correct record of the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee meeting held on July 7, 2021.

Michael MacDonald, Assistant City Clerk

Communications

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RESOLUTION NO. 69,984-N.S.

RESOLUTION ESTABLISHING A CLIMATE EQUITY ACTION FUND

WHEREAS, the City of Berkeley and broader world is facing a grave climate emergency, requiring municipalities to rapidly transition towards a zero-carbon economy by 2030; and

WHEREAS, transitioning Berkeley's economy will require significant investment on the part of both government and residents; and

WHEREAS, lower-income communities are most impacted by global climate change and have the least financial ability to address it; and

WHEREAS, low-carbon technology and infrastructure can often be out of reach for many low-income households and, without direct assistance, many will be left behind; and

WHEREAS, City's Electric Mobility Roadmap and Existing Building Electrification strategy both cite the importance of ensuring equity in access to carbon-free technology and infrastructure; and

WHEREAS, on June 29, 2021 the Council passed the Mayor's Supplemental Budget Recommendations, which included \$600,000 in seed funding for the Climate Equity Action Fund; and

WHEREAS, it is in the public interest to establish a Climate Equity Action Fund to assist low-income residents with the cost of transitioning from a carbon-based city.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager establish a Climate Equity Action Fund as a repository of city, regional, state, and federal funds related to climate equity for income-qualified households with a preference for households at or below 50% of Area Median Income

BE IT FURTHER RESOLVED that the Berkeley Energy Commission, or successor, and the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee, in consultation with community groups, provide input to staff and Council on at least an annual basis about eligible categories of fund expenditures to maximize equitable emissions reductions and impacts for eligible households.

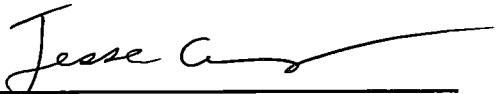
BE IT FURTHER AND FINALLY RESOLVED that any unexpended funds shall carry over from year to year.

The foregoing Resolution was adopted by the Berkeley City Council on July 27, 2021 by the following vote:

Ayes: Bartlett, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: Droste.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

Consent Calendar

17. Creation of Climate Equity Action Fund

From: Energy Commission

Recommendation: The Energy Commission recommends that City Council create a Climate Equity Action Fund, designate a process for making funding decisions, and appropriate \$600,000 to create a pilot test.

Financial Implications: See report

Contact: Billi Romain, Commission Secretary, (510) 981-7400

Action: Approved recommendation as revised in Supplemental Communications Packet #1 by Councilmember Harrison to adopt Resolution No. 69,984-N.S. with further amendments to the be it resolved clause made at the meeting as follows:

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager establish a Climate Equity Action Fund as a repository of city, regional, state, and federal funds related to climate equity for income-qualified households with a preference for households at or below 50% of Area Median Income.

18. Request for Two Additional Meetings for the Commission

From: Homeless Services Panel of Experts

Recommendation: That Council grant the Homeless Services Panel of Experts two additional meetings for the calendar year, 2021.

Financial Implications: See report

Contact: Josh Jacobs, Commission Secretary, (510) 981-5400

Action: Approved the City Manager recommendation. Additional meetings not approved.

Council Consent Items

19. Contract No. 32000196 Amendment: Szabo & Associates for Communications Consulting Services

From: Mayor Arreguin (Author)

Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32000196 with Szabo & Associates for communications consulting services for the Mayor's Office, in the amount of \$78,000, extending the contract to June 30, 2022.

Financial Implications: Mayor's Office Budget - \$78,000

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Action: Adopted Resolution No. 69,985-N.S. as revised in Supplemental Communications Packet #2 by Mayor Arreguin.



Climate Equity Pilot Fund Proposal

Berkeley Energy Commission

September 22, 2021



Background



- Climate Equity Action Fund established July 27, 2021 with \$600,000 for FY21-22
- Provide climate and resilience benefits to low-income residents for building and transportation electrification
- Energy Commission and Council Policy Committee (FITES) to provide annual input on

“eligible categories of fund expenditures to maximize emission reductions and impacts for eligible households”.



Electrification Strategy Equity Guardrails



ACCESS TO HEALTH & SAFETY BENEFITS

Ensure equitable access to marginalized communities and others most impacted by climate change, to health, safety and comfort benefits from electrification for both home owners and renters. Due to the upfront costs of electrification, many households will need financial support to have access to high quality upgrades and the benefits of electrification, including long-term cost savings.



ACCESS TO ECONOMIC BENEFITS

Ensure all community members, especially marginalized communities have equitable access to affordable funding and financing mechanisms, and to high-road job opportunities.



MAXIMIZE EASE OF INSTALLATION

Ensure that incentives and programs for the community provide meaningful support to renters, owners, and marginalized community members to provide a simple process that minimizes the burdens and impacts associated with the installation of high quality electric equipment installed by a fairly paid and well trained workforce



PROMOTE HOUSING AFFORDABILITY & ANTI-DISPLACEMENT

Ensure upgrades don't displace renters or over-burden homeowners. Programs should support housing production, housing preservation, and tenant protections.



Work Plan & Timeline

	2021					2022				2023
	Aug	Sep	Oct	Nov	Dec	Q-1	Q-2	Q-3	Q-4	
Research & assessment										
Develop funding categories		Energy Comm	FITES							
Issue Request for Proposals										
Select Projects							City Council			
Execute contracts										
Implement programs										
Annual evaluation										

Community Outreach



- Association for Energy Affordability (AEA)
- Bay Area Regional Energy Network (BayREN)
- BlocPower
- CoB Aging Services
- CoB (Disability) Access Program
- CoB Housing Trust Fund
- CoB Public Health School Linked Program
- CoB Public Health Black Infant Health Program
- CoB Senior & Disabled Rehabilitation Loan Program
- CoB Transportation Division
- East Bay Community Energy (EBCE)
- Ecology Center
- Edible Schoolyard
- FreeBike
- GRID Alternatives
- Habitat for Humanity
- Northern California Land Trust (NCLT)
- Rising Sun Center for Opportunity
- Rebuilding Together
- Satellite Affordable Housing Associates (SAHA)
- Solar on Multifamily Affordable Housing (SOMAH)
- Spectrum Services
- Stopwaste
- TransForm
- Waterside Workshops



Community Feedback





Proposed Categories of Fund Expenditure



Electric Mobility Access Program

- Increase access to bicycles, eBikes, eScooters, or other forms of micromobility for low income residents.



Resilient Retrofits for Buildings

- Install electrification, electrification-readiness, and resilience upgrades for buildings that have received income-qualified health and safety and/or weatherization upgrades.



Access to Resilience Measures & Electrification Engagement

- Engage community to determine priorities and provide access to resilience measures such as induction hobs, air purifiers, transit passes, etc.

Feedback



- Proposed funding categories?
- Distribution of funding among projects?
- Ideas to reduce barriers to RFP process?
- Prioritize impact or number of people served?

Thank You!



Office of Energy and Sustainable Development





Planning and Development Department
Office of Energy and Sustainable Development

DATE: September 22, 2021
TO: Berkeley Energy Commission
FROM: Billi Romain, Manager Office of Energy and Sustainable Development
SUBJECT: Climate Equity Fund Proposal and Input on Eligible Funding Categories

Overview

The goal of the Climate Equity Fund is to provide climate and resilience benefits to lower income communities for building and transportation electrification. Advancing electrification in buildings and sustainable forms of mobility for low-income residents can support greenhouse gas emissions reduction and fossil fuel-free goals while improving the health, safety and resilience of marginalized communities - who are hit first and worst by climate change. Strategic investment is needed for low-income communities to ensure that these communities are not left behind or are negatively impacted by the transition to electrification.

Background

Through efforts that include the [Electric Mobility Roadmap](#) (approved by Council on July 21, 2020) and the [Berkeley Existing Building Electrification Strategy](#) (scheduled for Council consideration in late 2021), Berkeley is actively working to equitably transition to a fossil fuel-free future in which all community members benefit from clean and affordable energy, healthy, safe and comfortable homes, and a carbon neutral transportation system that supports walking, biking and public transportation.

On July 27, 2021, City Council approved the “Resolution Establishing a Pilot Climate Equity Action Fund” with the following clauses:

- NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager establish a Climate Equity Action Fund as a repository of city, regional, state, and federal funds related to climate equity for income-qualified households with a preference for households at or below 50% of Area Median Income.
- BE IT FURTHER RESOLVED that the Berkeley Energy Commission, or successor, and the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee, in consultation with community groups, provide input to staff and Council on at least an annual basis about eligible categories of fund expenditures to maximize equitable emissions reductions and impacts for eligible households.

- BE IT FURTHER AND FINALLY RESOLVED that any unexpended funds shall carry over from year to year.

On June 29, 2021, City Council approved a budget item for FY21-22 of \$600,000 for climate equity programs to promote both building and transportation electrification for low-income residents.

Proposed Workplan and Timeline

Office of Energy & Sustainable Development (OESD) staff is designing the Climate Equity Fund with input from other City Departments, Divisions, the Berkeley Energy Commission, the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Policy Committee, and external partners including community organizations serving low-income residents. The proposed workplan can be found below:

	2021					2022				2023
	Aug	Sep	Oct	Nov	Dec	Q-1	Q-2	Q-3	Q-4	
Research & assessment										
Develop funding categories		Energy Comm	FITES							
Issue Request for Proposals										
Select projects							City Council			
Execute contracts										
Implement programs										
Annual evaluation										

Community Feedback on Priorities and Process

OESD staff interviewed over two dozen community organizations on funding priorities, existing programs, and community concerns. The following synopsis highlights key findings, with more detailed notes provided in Attachment 1.

- **Need for deep community engagement** with targeted community in program design and implementation.
- **Prioritize climate resilience and adaption** by including measures that protect against extreme heat and poor air quality, reduce energy costs, and safeguard against housing displacement.
- **Partner with community-based organizations** that are already working with and providing services to low-income residents to benefit from existing relationships and outreach efforts.
- **Leverage existing income-qualified programs** to integrate services, access additional funding, and streamline income qualification and administration for participants and organizations.
- **Focus on direct installation of resilience and electrification upgrades**, rather than rebates, to reduce burdens to participation for lower income residents.

- **Prioritize access to micromobility** (such as bicycles and scooters, including electric versions) **and public transit** to provide clean transportation options to lower income residents and renters.
- **Make the procurement process easy** by simplifying the RFP and contract administration requirements.
- **Prioritize replicable projects with lasting impacts** given that funds are currently one time only.
- **Recognize that funding is insufficient** for deep electrification and resilience investments that are needed in lower income households.
- **Evaluate success and identify mechanism for long-term funding** to sustain efforts and extend pilot programs.

Proposed Categories of Fund Expenditures

Funding is proposed to be allocated for a combination of projects (2-4) that would leverage resources and align with existing programs to streamline administration and maximize benefits for participants. The funding for programs will be informed by community feedback on priorities and process, as well as the Equity Guardrails, developed in consultation with community organizations as part of the draft Berkeley Existing Buildings Electrification Strategy, see Attachment 2.

1. Electric Mobility Access Program

Funding to increase access to bicycles, eBikes, eScooters, or other forms of micromobility for low income residents.

2. Resilient Retrofits for Buildings

Funding for installation of electrification, electrification-readiness, and resilience upgrades for buildings that have received income-qualified health and safety and/or weatherization upgrades.

3. Access to Resilience Measures and Electrification Engagement

Funding to engage low-income residents in climate action and resilience by providing technical assistance, support, and access to improve mobility and indoor air quality, such as induction hobs, air purifiers, transit passes, etc.

Attachment 1

Engagement with Partner Organizations

OESD staff has been meeting with local organizations working to deliver benefits to low and moderate income (LMI) residents in Berkeley to understand existing programs and that could be potential opportunities for the Climate Equity Fund to build from.

Meetings to date:

- [Association for Energy Affordability \(AEA\)](#)- Low-income Weatherization Program solar and efficiency installs for MF residents (Eligibility 60% AMI)
- [Bay Area Regional Energy Network](#) (BayREN) – Efficiency and electrification rebates
- [BlocPower](#) – Climate technology startup focused on financing and whole building retrofits for disadvantaged communities.
- City of Berkeley Aging Services
- City of Berkeley (Disability) Access Program
- [City of Berkeley Housing Trust Fund](#) – Rehab funding for income qualified affordable housing (Eligibility 50% and 80% AMI)
- City of Berkeley Health, Housing & Community Services – Housing rehab programs (80% AMI)
- [City of Berkeley Public Health School Linked Program](#) - Linking City of Berkeley Public Health to BUSD to improve health outcomes for students (Eligibility 138% AMI)
- [City of Berkeley Public Health Black Infant Health Program](#) - Counseling, social support, parenting education, and referrals to health services for African-American women who are 18 years or older, pregnant and parenting
- [City of Berkeley Senior and Disabled Rehabilitation Loan Program](#)- Up to \$100,000 interest free loan for home repairs low-income senior and disabled homeowners (80% AMI)
- City of Berkeley Transportation Division
- [East Bay Community Energy \(EBCE\)](#) – (Eligibility 120% AMI)
- [Ecology Center](#) – Community partnerships and engagement
- [Edible Schoolyard](#)- Curriculum and gardening and cooking education. Demonstration project at MLK Jr. middle school. No income guidelines
- [FreeBikes](#) – Supports Electric Bike lending libraries
- [GRID Alternatives](#) – Administers equitable clean mobility and renewables through Access Clean California (Eligibility 400% Federal Poverty Level)
- [Habitat for Humanity](#) – Contractor for City funded Housing Rehab programs for repairs between \$15,000-\$150,000 (Eligibility 80% AMI)

- [Northern California Land Trust \(NCLT\)](#) – Develops and manages affordable housing for income qualified tenants and coops. (60-80% AMI)
- [Rising Sun Center for Opportunity](#) – Workforce training and high road jobs (Eligibility people with barriers to employment)
- [Rebuilding Together](#) – Contractor for City funded Housing Rehab programs. Two programs: Safe at Home for housing rehab and Community Facility Improvement for upgrades for nonprofit organizations (Eligibility 80% AMI)
- [Satellite Affordable Housing Associates \(SAHA\)](#) – Develops and manages affordable housing for income qualified tenants
- [Solar on Multifamily Affordable Housing \(SOMAH\) program](#) - State funding program for solar on low income multifamily households (Eligibility 80% AMI)
- [Spectrum Services](#) – State funded weatherization programs (200% Federal Poverty or about 30% AMI)
- [Stopwaste](#) – Represent Alameda County for BayREN
- [TransForm](#) – Promotes equity in transportation, more walkable and bikeable streets
- [Waterside Workshops](#) – Engages youth and community for hands-on learning in bike maintenance and provides bike rentals

Research with Partner Organizations

Below is a summary of the feedback we have heard from partner organizations in regards to potential Climate Equity Fund programs/partnerships.

- Capacity
 - Some organizations are interested but some have challenges (staffing, COVID outreach – harder to go into people’s houses for installs, etc.)
 - Amount of money (\$600,000) will not go very far
 - Funds should be available for engagement and operations - not just equipment
 - One-time money is hard to build a program around
 - Some organizations are interested in building capacity and relationships that can endure past the one-time funding
- Community priorities
 - Need to work with the impacted communities to hear what is most needed, understand priorities and move from engagement to empowerment and co-creation
 - Resilience benefits beyond electrification are important
 - Home rehab projects that community members are most interested according to 37 projects completed by Habitat for Humanity - Roofing (13), Electrical (11), HVAC (10), Exterior carpentry (porches, stairs, ramps and fences), Painting (9), Plumbing (10)
- Income Qualifications
 - Income requirements are burdensome and should be flexible (for both the administrator and the applicant)

- Look for ways to pre-qualify applicants through partners organizations or services
 - Stacking benefits when there are different income eligibility requirements is challenging
- Unintended impacts
 - Must have assurances in place so that any upgrades don't increase utility bills or jeopardize housing affordability (more important to have people stay in their homes than have them be electric)
- Procurement and contracts
 - RFP process is challenging from community partners, may preclude potential partners that don't have as many resources to participate in procurement process
 - Consider leveraging existing City of Berkeley funding opportunities such as the Housing Trust Fund RFP or other process, but need to ensure that it is transparent and fair
 - Consider ways to reduce burden of responding to competitive RFP, such as Letter of Interest
 - Some organizations will not be interested if the contract administrative requirements are too burdensome (especially given the amount of money available)
 - Organizations prefer to receive funds upfront rather than submit receipts for work completed - consider how to ensure that organizations will use the funds and be accountable
 - Finance Department prefers amending existing contracts, City departments with existing contracts prefer that we set-up new contracts
- Measuring success
 - How will success for these pilot funds be measured? (Including non-GHG emissions reductions)
- Program Delivery
 - Partner with organizations that people already have relationship with and trust
 - Rebates for low-income communities don't work, they need programs with minimum capital outlay and direct installation
 - The cost of electrification building retrofits – especially for multifamily buildings – is very high relative to total funding
 - Consider giving away items instead of making people borrow/share (e.g. air purifiers, bikes)

Attachment 2

Electrification Strategy Equity Guardrails



ACCESS TO HEALTH & SAFETY BENEFITS

Ensure equitable access to marginalized communities and others most impacted by climate change, to health, safety and comfort benefits from electrification for both home owners and renters. Due to the upfront costs of electrification, many households will need financial support to have access to high quality upgrades and the benefits of electrification, including long-term cost savings.



ACCESS TO ECONOMIC BENEFITS

Ensure all community members, especially marginalized communities have equitable access to affordable funding and financing mechanisms, and to high-road job opportunities.



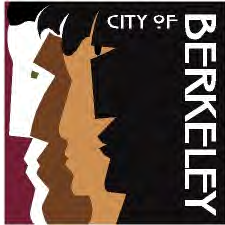
MAXIMIZE EASE OF INSTALLATION

Ensure that incentives and programs for the community provide meaningful support to renters, owners, and marginalized community members to provide a simple process that minimizes the burdens and impacts associated with the installation of high quality electric equipment installed by a fairly paid and well trained workforce



PROMOTE HOUSING AFFORDABILITY & ANTI-DISPLACEMENT

Ensure upgrades don't displace renters or overburden homeowners. Programs should support housing production, housing preservation, and tenant protections.



Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: July 27, 2021

Item Number: 17

Item Description: Creation of Climate Equity Action Fund

Submitted by: Councilmember Harrison

On June 22, 2021 the Budget & Finance Committee voted unanimously to send to Councilmember Harrison's item to Council with a positive recommendation to create a Climate Equity Action Fund and an annual process for the Energy Commission (or successor) and Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee (FITES), in consultation with community groups, to provide input to staff and Council about eligible categories of fund expenditures (e.g., transportation modal shift or building electrification) to maximize equitable emissions reductions and impacts for eligible households.

Subsequently on June 29, 2021 the Council passed the Mayor's Supplemental Budget Recommendations, which included \$600,000 in seed funding for the Climate Equity Action Fund.

This supplemental item includes the outstanding elements recommended by the Budget & Finance Committee and funded by the Council through the budget process. These include the Resolution necessary to establish the fund as a repository of grant and municipal funds for equitable climate-related pilot programs for low-income households at or below 50% of Area Median Income or as otherwise designated by Council and direction to the Energy Commission (or successor) and FITES to provide input to staff and Council about eligible categories of fund expenditures.



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
July 27, 2021

To: Honorable Mayor and Members of the City Council
From: Councilmember Harrison
Subject: Resolution Establishing a Pilot Climate Equity Action Fund to Assist Low-Income Residents with Transition to Zero-Carbon Transportation and Buildings

RECOMMENDATION

1. Adopt a Resolution establishing:
 - a. a Climate Equity Action Fund as a repository of grant and municipal funds for equitable climate-related pilot programs for low-income households at or below 50% of Area Median Income or as otherwise designated by Council; and
 - b. an annual process for the Energy Commission (or successor) and Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee (FITES), in consultation with community groups, to provide input to staff and Council about eligible categories of fund expenditures (e.g., transportation modal shift or building electrification) to maximize equitable emissions reductions and impacts for eligible households.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The City of Berkeley and broader world is facing a grave climate emergency, requiring municipalities to rapidly transition towards zero carbon economy by 2030. Transitioning Berkeley's economy will require significant investment on the part of both government and residents. Lower-income communities are most impacted by global climate change and have the least financial ability to address it. It is in the public interest to establish a Climate Equity Action Fund to assist low-income residents with the cost of transitioning from a carbon-based city. On June 29, 2021 the Council passed the Mayor's Supplemental Budget Recommendations, which included \$600,000 in seed funding for the Climate Equity Action Fund. This item establishes a Climate Equity Action Fund as a depository of funds related to climate equity and asks the Energy Commission (or successor) and FITES Committee, in consultation with community groups, to provide input to staff and Council on at least an annual basis about categories of fund expenditures that have the most benefit for low-income households and to maximize equitable emissions reduction impacts.

BUDGET AND FINANCE POLICY COMMITTEE RECOMMENDATION

On April 26, 2021 Councilmember Harrison and Mayor Arreguín (authors) submitted the attached resolution and accompanying report. On June 22, 2021, the Budget and Finance Policy Committee took the following action:

Action: 4 speakers. Discussion held. M/S/C (Harrison/Arreguin) to send the item to Council with a positive recommendation to recommend the creation of a Climate Equity Action Fund as well as an annual process for the Energy Commission (or successor) and Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee (FITES), in consultation with community groups, to provide input to staff and Council about eligible categories of fund expenditures (e.g., transportation modal shift or building electrification) to maximize equitable emissions reductions and impacts for eligible households.

Vote: All Ayes

BACKGROUND

According to the best available science, a 50% reduction in emissions is needed worldwide by 2030 or earlier in order to delay extremely catastrophic warming. Implicit in the U.N.'s global 2050 net-zero targets to keep emissions as close as possible to 1.5 degrees Celsius is the assumption that wealthy nations and cities will near zero by 2030.¹

The people of Berkeley, especially low-income people, are already disproportionately impacted by the effects of climate change and fossil fuel pollution. Low-carbon technology can often be out of reach of many low-income households, and without direct assistance, many will be left behind.

The City's Electric Mobility Roadmap notes that key to ensuring equity in access to electric mobility is to improve its affordability, including through subsidized e-bike and EV charging incentive pilots and public transit passes.

¹ IPCC, 2018: Summary for Policymakers. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. *World Meteorological Organization, Geneva, Switzerland, 32 pp.*
<https://www.ipcc.ch/sr15/chapter/spm/>.

In addition, Berkeley's Existing Building Electrification strategy includes recommendations for potential pilot projects prioritizing low-income communities with rebates and incentives. According to recent research conducted by the California Energy Commission, low-income residents will face the brunt of natural gas price increases as a result of communitywide electrification trends, highlighting the necessity of increasing access and affordability of all-electric technologies for low-income communities.

While incentives are currently available to Berkeley residents for all-electric water heating and cooking appliances from BayRen and East Bay Community Energy (EBCE), lower-income households face structural barriers in accessing those incentives. As an example, rebates often provide only for high-end purchases rather than leases of items such as solar arrays and for premium appliances rated as Energy Star, which many lower-income households cannot afford.² Lower-income households are often denied the opportunity both to save money in energy costs and create cleaner, more efficient homes.

Additionally, with regard to building decarbonization, rebates are typically aimed at property owners that have sufficient capital available to replace natural gas building systems as part of a larger renovation or on an ad hoc basis when systems fail. These programs are not necessarily geared towards those with limited upfront capital and those less acquainted with the often confusing and complex all-electric building systems available to property owners. Rebates are also not necessarily geared towards the benefit of renters, such as those living in affordable housing complexes.

Existing BayRen incentives are in most cases not enough to cover the bulk of the all-electric retrofit. Further, BayRen's \$1,000 electric-heat pump space heater incentive will be out of reach for most Berkeleyans, regardless of income, as it requires the property owner to replace an existing gas heating system *combined* with an existing air conditioning unit. Air conditioning units have historically been a rarity in Bay Area homes in the more temperate climate zones such as Berkeley, and therefore this incentive will have little impact on Berkeleyans, and leaves a large gap across Berkeley's decarbonization strategy. Therefore, larger and more flexible incentives for low-income households and/or opportunities to lease, rent (and still receive rebates) or purchase low-carbon systems are needed.

Berkeley Climate Equity Action Fund Pilot – Initial Proposal for FY 2022

² Marti Frank, "Expanding Access to Energy Efficient Appliances," <https://ilsr.org/local-energy-rules-podcast-homepage/>.

In March 2021, Congress passed a \$1.9 trillion economic stimulus and recovery bill in response to the COVID-19 crisis. The law provides the City of Berkeley with approximately \$68 million dollars of one-time flexible funding that can be used to offset revenue reductions and costs associated with the City's COVID-19 response in addition to certain infrastructure projects. Congress provided local jurisdictions with flexibility about how to allocate these funds, and any excess equity resulting from using federal funds to supplant existing or planned appropriations. On June 29, 2021 the Council passed the Mayor's Supplemental Budget Recommendations, which included \$600,000 in seed funding for the Climate Equity Action Fund.

The initial purpose of the Climate Equity Action Fund is to provide direct subsidies to low-income residents to help them transition away from fossil fuel building and transportation infrastructure.

Low-income households that qualify would be defined as those at or below 50% of Area Median Income (about \$59,000 per year for a family of 3), with a certain percentage of funds reserved for very-low-income families earning below 138% of the Federal Poverty Level (about \$30,000 per year for a family of 3). However, in recognition that equity requires consideration of more than just income alone, the Resolution provides for Council to approve other equitable investments and uses as recommended by staff in consultation with the community.

This item refers to the Energy (or successor) Commission and the FITES Committee on an annual basis to recommend how to best appropriate funds to maximize equitable emissions reduction impacts of funds to include, but not limited to:

- ***Transportation Modal Shift***

Income qualified subsidies for:

1. Renting or purchasing bicycles, electric bicycles, scooters, and other forms of micro mobility. The City of Berkeley is working with nearby jurisdictions to create a municipal micro-mobility rental program;
2. EV charging infrastructure, including membership in ChargePoint and other charging systems;
3. Public transit passes, including the AC Transit EasyPass.

- ***Building Decarbonization***

Income qualified subsidies for:

1. purchasing and installing induction stoves and electric ovens, heat pump water heaters, heat pump space heaters, energy-efficient refrigerators and heat pump washers and dryers;
2. electric panel upgrades associated with electrification of appliances;
3. leasing or purchasing solar arrays;
4. weatherization;
5. purchasing and installing smart thermostats and smart plugs/energy monitoring devices;
6. permit fees in connection with electrification retrofits and solar installation.

On November 3, 2020, Berkeley voters narrowly defeated Measure HH, which would have established a Climate Equity Action Fund and provided \$2.4 million annually through an increase in the electricity and gas portion of the Utility Users Tax. In contrast to Measure HH, Council's one-time allocation will not result in any tax increases as it relies on a one-time appropriation of General Fund monies associated with the American Rescue Act. However, by establishing a Climate Equity Action Fund, the Council would create a locus for grant funds and for future appropriate appropriations, whether through the General Fund or otherwise.

Berkeley Climate Equity – Moving into the Future

The FITES Committee is currently considering a separate ordinance expanding eligibility for the Seismic Transfer Tax Rebate Program for electrification. Since only individuals who can afford to buy and sell property in Berkeley qualify for the proposed transfer tax rebate program, the Climate Equity Action Fund in subsequent years would be an equitable companion program aimed at lower-income populations, but could draw upon the same source of revenue.

Examples of Equitable Climate Programs Provided by Other Jurisdictions

Neighboring jurisdictions already offer their residents various equitable income-based subsidies related to the climate transition. For example, Marin County maintains the Natural Gas Appliance Replacement Rebate Program known as Electrify Marin. This program is funded through a one-time grant from the Bay Area Air Quality Management District and provides generous subsidies for all-electric appliances and electric service panel upgrades. While funding is universal, it also provides qualified supplemental assistance such that low-income residents can equitably receive substantially more funding:

Appliance Type	Standard Rebate	Income Qualified Rebate
Heat Pump Water Heater	\$1,000	\$2,000
Heat Pump Space Heater		
Central Heat Pump	\$1,000	\$4,500
Mini-Split Heat Pump	\$800	\$3,000
Induction Cooking		
Range (Cooktop & Oven)	\$500	\$500
Cooktop only	\$250	\$250
Service Panel Upgrade	\$500	\$1,200

In addition, the City and County of San Francisco Public Utilities Commission provides residents with solar installation rebates through its GoSolarSF program; these rebates are in addition to those from PG&E. The program offers generous additional subsidies to low-income residents, nonprofit/municipal and nonprofit affordable housing applicants:

Incentive Levels for Calendar Year 2021	
CleanPowerSF & Hetch Hetchy Residential Basic*	\$0/kW
Add on if eligible: Environmental Justice or CalHome Loan	\$100/kW. Cap: 4.0 kW per meter.
Add on if eligible: City Installer	\$250/kW. Cap: 4.0 kW per meter.
Add on if eligible: Low-Income	\$2,000/kW. Cap: 4.0 kW per meter.
Business*	\$0/kW
Nonprofit/Municipal	\$1,000/kW. Cap: \$50,000 per service site.
Nonprofit Residential	\$1,000/kW. Cap: \$50,000 per service site.
Multi-Unit Residential Virtual Net Metering*	\$0/kW
Net Energy Metering Aggregation (NEM-A)*	\$0/kW

Several cities and countries offer financial incentives to purchase electric bikes as part of their GHG emissions reduction strategy.³ Sonoma’s Community Choice Aggregator, Sonoma Clean Power, recently offered up to \$1,000 for qualified customers to purchase electric bikes. Eligible customers included those who participate in CARE/FERA rates or income-qualified programs such as SNAP (aka food stamps), Medicaid/Medical, Cash Assistance Program for Immigrants (CAPI), Women Infants and Children (WIC), Head

³ “Electric Bike Subsidies and Grants Around the World. US, UK, Canada, and more,” eBikeHQ, <https://ebikeshq.com/electric-bike-subsidies-grants-around-world/>

Start, and many others. In addition, long term electric bike leasing and lease to own programs help to remove the cost barrier to electric bike use and ownership. Swapfiets has been offering leasing for \$20/month in several European cities, with roughly 35,000 leases in Amsterdam and 200,000 elsewhere in Europe.⁴

Currently, all Berkeley residential property owners are eligible for electrification incentives through BayRen, which does not provide a differential subsidy based on income. These rebates could be leveraged in combination with supplemental Berkeley Climate Equity Action fund subsidies for maximum impact:

Eligible Program Measures & Rebate Amounts

Measure	Rebate Amount
Operations and Maintenance Measures	
Smart Thermostat (must be listed on the ENERGY STAR qualified product list for Smart Communicating Thermostat)	\$150
Duct sealing ≤ 10% total leakage (Ducts or Furnace/Air Handler/FAU located in garage disqualify this measure)	\$200
Duct Replacement ≤ 5% total leakage	\$800
Building Shell Measures	
Attic insulation ≥ R-44 (includes attic air sealing)	\$0.75 / ft ² (not to exceed \$1,000 per home)
Wall insulation ≥ R-13 (2x4 framing) or ≥ R-19 (2x6 framing)	\$0.70 / ft ² (not to exceed \$1,000 per home)

⁴ Feargus O'Sullivan, "How Paris Hopes to Build an E-Bike Boom," September 24, 2019, <https://www.citylab.com/transportation/2019/09/electric-bikes-paris-bicycle-rental-france-e-bike-subsidy/598192>. See also, Alex Ledson, "This Is The New Transport Trend Sweeping Europe" Oct 10, 2020, <https://www.forbes.com/sites/alexledson/2020/10/10/this-is-the-new-transport-trend-sweeping-europe/?sh=3667577c100b>

Resolution Establishing a Pilot Climate Equity Action Fund to Assist Low-Income Residents with Transition to Zero-Carbon Transportation and Buildings

CONSENT CALENDAR
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Heating and Cooling Measures	
High efficiency central gas furnace ≥ 95% AFUE w/ Variable Speed Motor (must replace existing central gas furnace)	\$300
High efficiency split central air conditioner ≥ 17 SEER High efficiency packaged central air conditioner ≥ 16 SEER (must replace entire load associated with existing central AC)	\$800
High efficiency heat pump ≥ 17 SEER / 9.4 HSPF (must replace entire load associated with electric heating system or heat pump or for electrification must replace existing central natural gas furnace and air conditioner with ducted direct exchange (non mini-split) heat pump or replace wall furnace and window air conditioner with a ductless mini-split heat pump.)	\$1,000
Water Heating Measures	
High efficiency storage gas water heater medium usage ≥ 0.64 UEF, high usage ≥ 0.68 UEF Instantaneous water heater ≥ 0.87 UEF (must replace existing gas storage water heater)	\$400
Heat pump water heater ≥ 3.1 UEF (must replace existing gas or electric water heater)	\$1,000
Bonus Rebates	
Combine one or more Building Shell measures with a Heating or Cooling measure (measures must be completed simultaneously)	\$500
Combine attic with exterior wall insulation (measures must be completed simultaneously)	\$500
Downsize heating and/or cooling system compared to existing system (requires a minimum 12 kBtu or 1 ton input reduction)	\$100
Building air sealing ≥ 30% total leakage reduction (must be combined with another measure, otherwise requires blower door test-in and test-out to qualify as a standalone building shell measure)	\$150
Combustion Appliance Safety (CAS) test-out (CAS test-out required for all measures. Not available as a standalone rebate. Only one per service address)	\$150
Electrification Appliance Measures	
*Induction electric range (no hybrid) or cooktop (must replace existing natural gas range or cooktop)	\$300
*Heat pump clothes dryer ≥ 4.50 Combined Energy Factor (CEF) (must replace existing natural gas clothes dryer and listed as ENERGY STAR Efficient heat pump clothes dryer.)	\$300

Electrification measures can replace gas equipment.

In addition, EBCE and Stopwaste currently offer Berkeley customers through the Home+ Energy Efficiency Program an additional \$1,000 incentive to help cover the installation cost of heat pump water heaters for a total of \$2,000 when combined with BayRen incentives. Again, these rebates do not provide for supplemental funding for lower-income households.

Finally, the city of Portland recently allocated \$8.6 million through the newly voter-approved Portland Clean Energy Community Benefits Fund grants to fund organizations conducting low-income energy retrofits.

FINANCIAL IMPLICATIONS

On June 29, 2021 the Council passed the Mayor’s Supplemental Budget Recommendations, which included \$600,000 in seed funding for the Climate Equity Action Fund. This item would result in depositing Council’s one-time investment of \$500,000 from excess equity to seed a Climate Equity Action Fund, and an additional \$100,000 for Finance Department and OESD staff costs associated with administering applications and disbursement of Fund monies.

Resolution Establishing a Pilot Climate Equity Action Fund to Assist Low-Income Residents with Transition to Zero-Carbon Transportation and Buildings

CONSENT CALENDAR
July 27, 2021

ENVIRONMENTAL SUSTAINABILITY

Supporting low-income incentives for building decarbonization and transportation modal shift will complement and accelerate Berkeley's ongoing efforts to reduce carbon emissions at an emergency and equitable pace in line with the Climate Action Plan, Climate Emergency Declaration, Mobility Roadmap and Existing Building Electrification Strategy.

CONTACT PERSON

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

RESOLUTION NO. ##,###-N.S.

RESOLUTION ESTABLISHING A CLIMATE EQUITY ACTION FUND

WHEREAS, the City of Berkeley and broader world is facing a grave climate emergency, requiring municipalities to rapidly transition towards a zero-carbon economy by 2030; and

WHEREAS, transitioning Berkeley's economy will require significant investment on the part of both government and residents; and

WHEREAS, lower-income communities are most impacted by global climate change and have the least financial ability to address it; and

WHEREAS, low-carbon technology and infrastructure can often be out of reach for many low-income households and, without direct assistance, many will be left behind; and

WHEREAS, City's Electric Mobility Roadmap and Existing Building Electrification strategy both cite the importance of ensuring equity in access to carbon-free technology and infrastructure; and

WHEREAS, on June 29, 2021 the Council passed the Mayor's Supplemental Budget Recommendations, which included \$600,000 in seed funding for the Climate Equity Action Fund; and

WHEREAS, it is in the public interest to establish a Climate Equity Action Fund to assist low-income residents with the cost of transitioning from a carbon-based city; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager establish a Climate Equity Action Fund as a repository of city, regional, state, and federal funds related to climate equity for low-income households at or below 50% of Area Median Income, or as designated by Council.

BE IT FURTHER RESOLVED that the Berkeley Energy Commission, or successor, and the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee, in consultation with community groups, provide input to staff and Council on at least an annual basis about eligible categories of fund expenditures to maximize equitable emissions reductions and impacts for eligible households.

BE IT FURTHER AND FINALLY RESOLVED that any unexpended funds shall carry over from year to year.

ORDINANCE NO. –N.S.

ADDING CHAPTER 11.62 TO THE BERKELEY MUNICIPAL CODE TO REGULATE PLASTIC THE USE OF CARRYOUT AND PRODUCE BAGS AT RETAIL AND FOOD SERVICE ESTABLISHMENTS AND PROMOTING THE USE OF REUSABLE BAGS

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

Section 1. That Chapter 11.62 of the Berkeley Municipal Code is added to read as follows:

Chapter 11.62

PLASTIC BAGS – RETAIL AND FOOD SERVICE ESTABLISHMENTS REGULATING THE USE OF CARRYOUT AND PRODUCE BAGS AND PROMOTING THE USE OF REUSABLE BAGS

Sections:

11.62.010 Findings and Purposepurpose.

11.62.020 Definitions.

~~11.62.030 Types of Checkout Bags permitted at Retail Service and Food Service Establishments.~~

~~11.62.040 Checkout Bag charge for paper or Reusable Checkout Bags at Retail Service establishments.~~

11.62.030 Carryout Bag restrictions for Covered Entities.

11.62.040 Produce Bag restrictions for Grocery Stores.

~~11.62.050 Use of Compostable Produce Bags at Retail Service Establishments~~**General exemptions.**

~~11.62.060 Hardship Exemption~~

Undue hardship exemption.

~~11.62.070 City of Berkeley—purchases prohibited.~~

11.62.080 Duties, responsibilities and authority of the City of Berkeley.

~~11.62.080 City of Berkeley—purchases prohibited~~

11.62.090 Liability and ~~Enforcement.~~enforcement.

11.62.100 Severability.

11.62.110 Construction.

~~11.62.120 Chapter supersedes existing laws and regulations.~~

~~11.62.130 Effective Date.~~

date.

11.62.010 Findings and ~~Purpose~~purpose.

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

- A. Single-use plastic bags, ~~plastic produce bags,~~ and plastic ~~product~~produce bags are a ~~major~~significant contributor to street litter, ocean pollution, marine and other wildlife harm and 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 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 ~~implicitly~~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 ~~regulates and Alameda County Waste Management Authority both regulate~~ single-use, ~~paper, and reusable~~ carryout bags ~~as directed~~respectively under ~~Senate Bill SB 270, but numerous local governments, including San Francisco and Palo Alto, have imposed more stringent regulations/~~Proposition 67 and Ordinance 2012-02 (as amended by Ordinance 2016-02). However, neither currently address ~~problems related to reduce the toll plastic bags inflict upon the environment.~~
- ~~G.F.~~ ~~Stores often provide customers with plastic~~ pre-checkout bags to ~~package~~carry fruits, vegetables, and other loose or bulky items while shopping, before reaching the checkout area. ~~They~~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 ~~or,~~ reuse or compost.
- ~~H.G.~~ ~~SB 270 permits local governments to increase~~also does not regulate the price of bags provided at the point of sale by restaurants and ~~leaves open any regulation on pre-checkout~~streets events, including farmers' markets. While the County's Ordinance 2016-02 regulates restaurant carryout bags, such as at meat or vegetable stands within grocery stores.it falls short of completely phasing out single-use film bags, and does not impose a meaningful point of sale charges for reusable and paper bags.
- ~~H.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 currently impose regulations ~~on~~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.
- ~~H.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.

11.62.20 Definitions.

~~"Checkout~~A. "Carryout Bag" means a bag provided ~~by a Retail Service Establishment~~ at the ~~checkstand~~check stand, cash register, point of sale or other ~~point of departure~~location for the purpose of transporting food or merchandise out of ~~the establishment~~. ~~Checkout~~Covered Entity. Carryout Bags do not include Produce ~~Bags~~ or Product Bags.

~~"Recyclable Paper Checkout Bag"~~B. "Covered Entity" means a paper bag that meets any of the following criteria:

- ~~1. Contains no old growth fiber;~~
- ~~2. Is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content;~~

Displays the word "Recyclable"(1) any restaurant, take-out food establishment or other business (including, but not limited to, food sales from vehicles or temporary facilities open to the public) that receives 90% or more of its revenue from the sale of prepared and ready-to-consume foods and/or drinks to the public and is not subject to the requirements of Public Resources Code Section 42281; and

(2) 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.

C. "Customer" means any Person obtaining goods from a Covered Entity or Grocery Store.

"Grocery Store" means a supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of goods that include perishable or nonperishable food items;

"Recycled Content Paper Bag" means either a Carryout Bag provided by a covered Entity or a Produce Bag provided by a Grocery Store that contains no old growth fiber and a minimum of one hundred percent (100%) 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 along with ~~the~~ the words "Recyclable," the name and location of the manufacturer, and the percentage of postconsumer recycled content.

"Reusable Bag" means a bag with handles 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 machine washable or is made from a material that can 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;

3. (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 post-consumer/postconsumer recycled content in an easy-to-read size font; material used, if any; and

4. ~~Or is made from alternative material or meets alternative standards approved by the City Manager or their designee.~~

~~"Reusable Checkout Bag" means all Checkout Bags defined as reusable under Cal. PRC §42280-42288, such as cloth or other washable woven bags, but do not include film bags considered reusable under Cal. PRC §42280-42288.~~

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

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

"Produce Bag" means a bag provided to a customer to carry produce, meats, bulk food, or other food items to the point of sale inside a store and protects food or merchandise from being damaged or contaminated by other food or merchandise ~~when items are placed together in a Reusable Checkout Bag or Recyclable Paper Checkout Bag.~~

~~"Compostable Produce Bags" means paper bags and bags made of plastic-like material if the material meets the ASTM Standard Specifications for compostability D6400 or D6868, or the product is Biodegradable Products Institute (BPI) certified, or is considered acceptable within the City's compost collection program.~~

~~"Product Bag" means a bag provided to a customer to protect merchandise from being damaged or contaminated by other merchandise when items are placed together in a Reusable Checkout Bag or Recyclable Paper Checkout Bag; a bag "Product Bag" are bags that are integral to the packaging of the product; a bag provided to the Customer to hold prescription medication dispensed from a pharmacy; or a bag without handles that is designed to be placed over articles of clothing on a hanger.~~

~~"Retail Food Establishment" means any establishment, located or providing food within the City, which provides prepared and ready to consume food or beverages, for public consumption including but not limited to any Retail Service Establishment, eating and drinking service, takeout service, supermarket, delicatessen, restaurant, food vendor, sales outlet, shop, cafeteria, catering truck or vehicle, cart or other sidewalk or outdoor vendor or caterer which provides prepared and ready to consume food or beverages, for public consumption, whether open to the general public or limited to certain members of the public (e.g., company cafeteria for employees).~~

~~"Retail Service Establishment" means a for-profit or not-for-profit business that where goods, wares or merchandise or services are sold for any purpose other than resale in the regular course of business (BMC Chapter 9.04.135).~~

~~11.62.030 Types of Checkout Bags permitted at Retail Service and Food Service Establishments.~~

11.62.30 Retail Service Establishments and Food Service Establishments 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 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 establishment or event.

B. A Covered Entity may provide or make available for sale to a customer-only Customer:

(1) Recycled Content Paper Bags at no charge;

(2) Reusable Bags for a minimum price of twenty-five cents (\$0.25).

11.62. Checkout Bags, Compostable 040 Produce Bags, or Recyclable Paper Checkout Bags for the purpose of carrying away goods or Bag restrictions for Grocery Stores.

A. No Grocery Store or Covered Entity shall provide Produce Bags other materials from the point of sale, subject to the terms of this Chapter. than Recycled Content Paper Bags and Reusable Bags.

Exception: Single-use plastic bags

11.62.050 General exemptions

1. A. Bags exempt from the Chapter include those integral to the packaging of the product, Product Bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste or yard waste bags.

~~B. Effective [], 2020, farmers markets shall only provide Compostable Produce Bags to hold produce, meats, bulk food or other food items. Single-use Plastic Checkout Bags, Produce Bags or Product Bags shall not be provided by farmers markets for produce or meat.~~

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

11.62.040 Checkout Bag charge for paper or Reusable Checkout Bags at Retail Service Establishments.

~~A. Effective [], 2020, no Retail Service Establishment shall provide a Compostable Produce Bag, Recyclable Paper Checkout Bag or Reusable Checkout Bag to a customer at the point of sale, unless the store charges the customer a Checkout Bag charge of at least twenty-five cents (\$0.25) per bag to cover the costs of compliance with the Chapter, the actual costs of providing Recyclable Paper Checkout Bags, educational materials or other costs of promoting the use of Reusable Checkout Bags.~~

~~B. Retail Service Establishments shall establish a system for informing the customer of the charge required under this section prior to completing the transaction. This system can include store clerks inquiring whether customers who do not present their own Reusable Checkout Bag at point of checkout want to purchase a Checkout Bag.~~

~~C. The Checkout Bag charge shall be separately stated on the receipt provided to the customer at the time of sale and shall be identified as the Checkout Bag charge. Any other transaction fee charged by the Retail Service Establishment in relation to providing a Checkout Bag shall be identified separately from the checkout bag charge. The Checkout Bag charge may be completely retained by the Retail Service Establishment and used for public education and administrative enforcement costs.~~

~~D. Retail services establishments shall keep complete and accurate records of the number and dollar amount collected from Recyclable Paper Checkout Bags and Reusable Checkout Bags sold each month and provide specifications demonstrating that paper and reusable bags meet the standards set forth in Section 11.62.030 using either the electronic or paper reporting format required by the city. This information is required to be made available to city staff upon request up to three times annually and must be provided within seven days of request. Reporting false information, including information derived from incomplete or inaccurate records or documents, shall be a violation of the Chapter. Records submitted to the city must be signed by a responsible agent or officer of the establishment attesting that the information provided on the form is accurate and complete.~~

~~**11.62.050 Use of Compostable Produce Bags at Retail Service Establishments.**
Effective [], 2020, Retail Service Establishments shall only provide Compostable Produce Bags to carry produce, meats, bulk food, or other food items to point of sale within the store.~~

~~**11.62.060 Hardship Exemption.**
Undue hardship— exemption.~~

~~A. The City Manager, or their designee, may exempt a retail service or food service establishmentCovered Entity or Grocery Store from the requirements of this Chapter for a period of up to ~~one year~~, [x months], upon sufficient evidence by the applicant that the provisions of this Chapter would cause undue hardship. An undue hardship exemption request must be submitted in writing to the ~~city~~City. The phrase "undue hardship" may include, but is not limited to, the following:~~

~~1. Situations where there are no acceptable alternatives to single-use plastic Checkout Bags for reasons which are unique to the Retail Service Establishment or Food Service Establishment.~~

~~2. (1) Situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.~~

~~B. Retail Service Establishments shall not enforce the ten cent (\$0.25) store charge for customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, or in CalFresh, or in the Supplemental Nutrition Assistance Program (SNAP).~~

~~**11.62.070****11.62.070 City of Berkeley—purchases prohibited.**~~

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

~~**11.62.080 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 Retail Service Establishment'sCovered Entity or Grocery Store's premises to verify compliance.~~

~~11.62.080 City of Berkeley—purchases prohibited.~~

~~The City of Berkeley shall not purchase any Foodware or Bag that is not Compostable, Recyclable or Reusable under Disposable Foodware and Bag Standards in Section 11.64.080, nor shall any City-sponsored event utilize non-compliant Disposable Foodware and Bag.~~

11.62.090 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 11.64.090 ~~62.060~~.
- 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.

11.62.100 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.

11.62.110 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.

~~11.62.120 Chapter supersedes existing laws and regulations~~ **Effective date.**

~~The provisions of this Chapter shall supersede any conflicting law or regulations.~~

~~11.62.130 Effective Date.~~

The provisions in this ordinance are effective [], 2020~~2022~~.

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.

ORDINANCE NO. –N.S.

ADDING CHAPTER 11.62 TO THE BERKELEY MUNICIPAL CODE TO REGULATE
THE USE OF CARRYOUT AND PRODUCE 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 11.62 of the Berkeley Municipal Code is added to read as follows:

Chapter 11.62

**REGULATING THE USE OF CARRYOUT AND PRODUCE BAGS AND PROMOTING
THE USE OF REUSABLE BAGS**

Sections:

11.62.010 Findings and purpose.

11.62.020 Definitions.

11.62.030 Carryout Bag restrictions for Covered Entities.

11.62.040 Produce Bag restrictions for Grocery Stores.

11.62.050 General exemptions.

11.62.060 Undue hardship exemption.

11.62.070 City of Berkeley—purchases prohibited.

11.62.080 Duties, responsibilities and authority of the City of Berkeley.

11.62.090 Liability and enforcement.

11.62.100 Severability.

11.62.110 Construction.

11.62.120 Effective date.

11.62.010 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 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 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 problems related to pre-checkout 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. SB 270 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 falls short of completely phasing out single-use film bags, and does not impose a meaningful point of sale charges for reusable and paper bags.
- 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 currently 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.

11.62.20 Definitions.

- A. "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. Carryout Bags do not include Produce or Product Bags.
- B. "Covered Entity" means any of the following:

(1) any restaurant, take-out food establishment or other business (including, but not limited to, food sales from vehicles or temporary facilities open to the public) that receives 90% or more of its revenue from the sale of prepared and ready-to-consume foods and/or drinks to the public and is not subject to the requirements of Public Resources Code Section 42281; and

(2) 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.

C. "Customer" means any Person obtaining goods from a Covered Entity or Grocery Store.

"Grocery Store" means a supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of goods that include perishable or nonperishable food items;

"Recycled Content Paper Bag" means either a Carryout Bag provided by a covered Entity or a Produce Bag provided by a Grocery Store that contains no old growth fiber and a minimum of one hundred percent (100%) 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.

"Reusable Bag" means a bag with handles 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 machine washable or is made from a material that can 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 primarily made of plastic film, regardless of thickness.

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

"Produce Bag" means a bag provided to a customer to carry produce, meats, bulk food, or other food items to the point of sale inside a store and protects food or merchandise from being damaged or contaminated by other food or merchandise.

"Product Bag" are bags that are integral to the packaging of the product; a bag provided to the Customer to hold prescription medication dispensed from a pharmacy; or a bag without handles that is designed to be placed over articles of clothing on a hanger.

11.62.30 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 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 establishment or event.

B. A Covered Entity may provide or make available for sale to a Customer:

- (1) Recycled Content Paper Bags at no charge;
- (2) Reusable Bags for a minimum price of twenty-five cents (\$0.25).

11.62.040 Produce Bag restrictions for Grocery Stores.

No Grocery Store or Covered Entity shall provide Produce Bags other than Recycled Content Paper Bags and Reusable Bags.

11.62.050 General exemptions

A. Bags exempt from the Chapter include Product Bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste or yard waste bags.

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.

11.62.060 Undue hardship exemption.

A. The City Manager, or their designee, may exempt a Covered Entity or Grocery Store from the requirements of this Chapter for a period of up to [x months], upon sufficient evidence by the applicant that the provisions of this Chapter would cause undue hardship. An undue hardship exemption request must be submitted in writing to the City. The phrase "undue hardship" may include, but is not limited to, the following:

- (1) Situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.

11.62.070 City of Berkeley—purchases prohibited.

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

11.62.080 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 Grocery Store's premises to verify compliance.

11.62.090 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 11.62.060.
- 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.

11.62.100 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.

11.62.110 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.

11.62.120 Effective date.

The provisions in this ordinance are effective [], 2022.

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.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
December 10, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Harrison and Hahn
Subject: Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate Plastic Bags at Retail and Food Service Establishments

RECOMMENDATION

Adopt an ordinance adding a Chapter 11.62 to the Berkeley Municipal Code to regulate plastic bags at retail and food service establishments.

BACKGROUND

Californians throw away 123,000 tons of plastic bags each year, and much of it finds its way into regional and international waterways.¹ The situation is only getting worse with 18 billion more pounds of plastic added to the already colossal amount in our seas.² Today, there are 100 million tons of trash in the North Pacific Subtropical Gyre;³ in some parts, plastic outweighs plankton 6 to 1.⁴

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 has also recently made substantial progress on its restriction of plastic litter in the city through the Single Use Foodware and Litter Reduction ordinance (BMC Chapter 11.64).⁵ 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

¹ Environment California, “Keep Plastic Out of the Pacific,”

<https://environmentcalifornia.org/programs/cae/keep-plastic-out-pacific>.

² 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).

³ 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/>.

⁴ Environment California, “Keep Plastic Out of the Pacific,”

<https://environmentcalifornia.org/programs/cae/keep-plastic-out-pacific>.

⁵ Berkeley Municipal Code, Chapter 11.64 Single Use Foodware and Litter Reduction.

other items used to hold, serve, eat, or drink Prepared Food.”⁶ 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 law with regard to plastic bags.

California currently prohibits the sale of 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. State law also fully exempts plastic bags in grocery stores used for carrying produce from the shelf to the check stand.⁷

This proposed ordinance intends to expand the scope of existing regulation to further reduce plastic waste across these exempt categories, 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 mandates that stores of a certain size and type offer only reusable bags at checkout and sets a minimum price of at least \$0.10.⁸ As a result, thin film bags, known as t-shirt bags, are no longer available at larger retail and grocery stores.

The scope of state regulation includes minimum percentage of post-consumer recycled plastics the bag must include 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. Legislation often 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%

⁶ Berkeley Municipal Code Section 11.64.020D.

⁷ 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/>.

⁸ California Legislature, Senate Bill 270, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140SB270

post-consumer recycled material⁹; 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 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.¹⁰ This erroneous legislative assumption can be addressed at the local level.

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.¹¹ By not addressing plastic produce bags and defining reusable bags as any film bag exceeding 2.25 mils, current regional and local law shares many of the shortcomings of state legislation.¹²¹³

Local Restrictions on Plastic Bags

Contested but upheld in a 2016 ballot measure,¹⁴ SB 270 set a statewide code that has been built upon by numerous local governments, including many in the Bay Area.

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 ordinance¹⁵ 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.

⁹ [In 2020, the percentage required will increase to 40% post-consumer recycled material.](#)

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

¹¹ 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>.

¹² 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>.

¹³ 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>.

¹⁴ 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))

¹⁵ 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.¹⁶ It decided in July 2019¹⁷ to both increase the amount of money charged for checkout bags from \$0.10 to \$0.25 and ban what it calls “pre-checkout bags”—defined as a “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.¹⁸ 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.¹⁹

Yet there are some cities that have gone even farther in their restriction of single-use plastics. Although Capitola does not ban produce/pre-checkout bags, it notably redefined the thickness of a reusable bag as equal or exceeding 4 mils, instead of 2.25 mils.²⁰ 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 “the provision of plastic carryout bags at any point of sale.”²¹ It exempts compostable bag and *non*-film plastic bags and does away with any distinction between reusable and non-reusable film bags based on their thickness. Where the New York ban falls short is in its regulation of non-checkout bags: bags for produce, meat, newspapers, take-out food and garments remain legal.

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

Past Efforts in Berkeley

¹⁶ 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).

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

¹⁸ 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>.

¹⁹ 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>.

²⁰ 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>.

²¹ New York State Governor’s Office, “An act to amend the environmental conservation law, in relation to prohibiting plastic carryout bags,” <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/PlasticBagBan.pdf>.

Berkeley attempted to pass its own plastic bag ban in 2010.²² In the years following councilmembers have pushed for reform, calling for an ordinance to improve upon county and state legislation.²³ Yet the threat of lawsuits²⁴ and movement on the state and county level appear to have delayed local reform.

The Proposed Ordinance

This proposed ordinance picks up where prior attempts failed, bringing Berkeley 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:

- Plastic bag regulations would now apply to a number of retail service establishments previously omitted from the state ban. Restaurants and food vendors would no longer be able to distribute single-use plastic carryout bags. Grocery stores and other retailers selling prepared food would be required to move away from single-use plastic produce bags.
- Retail service establishments of all sizes would be included, closing exemptions for smaller stores.
- Reusable plastic bags would be redefined as non-film plastic bags, adjusting the criteria to more accurately reflect common perceptions of reusability and the tendency for consumers treat all film bags as disposable, regardless of thickness.
- The price per non-plastic bag increases from \$0.10 to \$.25, to avoid a substitution effect.

The most common concern in reducing plastic bag waste is that the alternatives are even less sustainable. Substituting paper bags for plastic could be equally, if not more, hazardous for the environment because of the energy, transport and disposal processes required.²⁵ Cloth bags are also imperfect options, because of the large amount of energy and water necessary to produce them.²⁶ The California ban on bags thinner than 2.25

²² Berkeley City Council, "Berkeley Bag Reduction Ordinance," https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Solid_Waste/BagReductionDraftOrdinance.100316.pdf.

²³ 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.

²⁴ 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/>.

²⁵ The Environmental Literacy Council, "Paper or Plastic?" <https://enviroliteracy.org/environment-society/life-cycle-analysis/paper-or-plastic/>.

²⁶ Patrick Barkham, "Paper bags or plastic bags: which are best?" <https://www.theguardian.com/environment/shortcuts/2011/dec/20/paper-plastic-bags-which-best>.

mils may also have resulted in a substitution toward thicker and less sustainable film bags.²⁷ Moreover, international studies confirm that even single-use bags are reused to a limited degree for other household functions, such as garbage disposal or to pick up dog feces.²⁸ A University of Sydney economist found that garbage bag consumption increased when California placed restrictions on single-use plastic bags, likely because consumers no longer had as many free single-use film bags at hand in which to dispose their waste. Yet that same study also concluded that the benefits of the ban were still significant: Californians consumed 28 million pounds fewer plastic than they did before.²⁹

Still, eliminating plastic bags cannot be the only approach to combat the cycle of consumer waste. It must come, as this ordinance would ensure, in combination with higher prices and greater requirements for the percentage of recycled content in paper bags. Any paper bags sold in Berkeley must per this resolution contain no old growth fiber, be 100% recyclable overall and contain a minimum of 40% post-consumer recycled content.

Data from Alameda County as a whole seems to indicate that when the cost of single-use paper bags was set at \$0.10, consumption *decreased* by approximately 40% within three years.³⁰ The same report revealed that “plastic bags found in storm drains decreased by 44 percent, indicating that the ordinance has been successful in reducing single use plastic bag litter.” Further price increases have been shown to realize even larger benefits.

FISCAL IMPLICATIONS

Staff or contractor costs for the launch, for outreach and education, enforcement, administration and analysis.

ENVIRONMENTAL SUSTAINABILITY

Reducing the amount of discarded plastic bags—previously classified as multi-use—in the city of Berkeley will result in less over all waste and fewer plastic that makes it into local and regional waterways.

²⁷ Christian Britschgi, “California Plastic Bag Bans Spur 120 Percent Increase in Sales of Thicker Plastic Garbage Bags,” <https://reason.com/2019/04/11/california-plastic-bag-bans-spur-120-per/>.

²⁸ NPR Planet Money, “Are Plastic Bag Bans Garbage?” <https://www.npr.org/sections/money/2019/04/09/711181385/are-plastic-bag-bans-garbage>.

²⁹ Rebecca L.C. Taylor, “Bag leakage: The effect of disposable carryout bag regulations on unregulated bags,” <https://www.sciencedirect.com/science/article/pii/S0095069618305291>.

³⁰ Alameda County Waste Management Authority, “Addendum to the Final Environmental Impact Report Mandatory Recycling and Single Use Bag Reduction Ordinances,” <http://reusablebagsac.org/resources/addendum-final-environmental-impact-report-2016>.

Furthermore, a switch toward bags made from polyester or plastics like polypropylene, which are more sustainable than film bags and sold at many grocery stores will lead to greater environmental sustainability.³¹

CONTACT PERSON

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

³¹ Claire Thompson, "Paper, Plastic or Reusable?" https://stanfordmag.org/contents/paper-plastic-or-reusable?utm_source=npr_newsletter&utm_medium=email&utm_content=20190408&utm_campaign=money&utm_term=nprnews.

ORDINANCE NO. –N.S.

ADDING CHAPTER 11.62 TO THE BERKELEY MUNICIPAL CODE TO REGULATE PLASTIC BAGS AT RETAIL AND FOOD SERVICE ESTABLISHMENTS

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

Section 1. That Chapter 11.62 of the Berkeley Municipal Code is added to read as follows:

Chapter 11.62

PLASTIC BAGS - RETAIL AND FOOD SERVICE ESTABLISHMENTS

Sections:

11.62.010 Findings and Purpose.

11.62.020 Definitions.

11.62.030 Types of Checkout Bags permitted at Retail Service and Food Service Establishments.

11.62.040 Checkout Bag charge for paper or Reusable Checkout Bags at Retail Service establishments.

11.62.050 Use of Compostable Produce Bags at Retail Service Establishments.

11.62.060 Hardship Exemption

11.62.070 Duties, responsibilities and authority of the City of Berkeley.

11.62.080 City of Berkeley--purchases prohibited

11.62.090 Liability and Enforcement.

11.62.100 Severability.

11.62.110 Construction.

11.62.120 Chapter supersedes existing laws and regulations.

11.62.130 Effective Date.

11.62.010 Findings and Purpose.

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

- A. Single-use plastic bags, plastic produce bags, and plastic product bags are a major contributor to street litter, ocean pollution, marine and other wildlife harm and 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 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 implicitly 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 regulates single-use carryout bags as directed under Senate Bill 270, but numerous local governments, including San Francisco and Palo Alto, have imposed more stringent regulations to reduce the toll plastic bags inflict upon the environment.
- G. Stores often provide customers with plastic pre-checkout bags to package fruits, vegetables, and other loose or bulky items while shopping, before reaching the checkout area. They share many of the same physical qualities as single-use plastic carryout bags no longer permitted in California, and are difficult to recycle or reuse.
- H. SB 270 permits local governments to increase the price of bags provided at the point of sale and leaves open any regulation on pre-checkout bags, such as at meat or vegetable stands within grocery stores.
- I. The City of Berkeley 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 on bags.
- J. 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.

11.62.20 Definitions.

"Checkout Bag" means a bag provided by a Retail Service Establishment at the checkstand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. Checkout Bags do not include Produce Bags or Product Bags.

"Recyclable Paper Checkout Bag" means a paper bag that meets the following criteria:

- 1. Contains no old growth fiber;
- 2. Is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content;
- 3. Displays the word "Recyclable" on the outside of the bag along with the manufacturer, the location (country) where manufactured and the percentage of post-consumer recycled content in an easy-to-read size font;

4. Or is made from alternative material or meets alternative standards approved by the City Manager or their designee.

"Reusable Checkout Bag" means all Checkout Bags defined as reusable under Cal. PRC §42280-42288, such as cloth or other washable woven bags, but do not include film bags considered reusable under Cal. PRC §42280-42288.

"Produce Bag" means a bag provided to a customer to carry produce, meats, bulk food, or other food items to the point of sale inside a store and protects food or merchandise from being damaged or contaminated by other food or merchandise when items are placed together in a Reusable Checkout Bag or Recyclable Paper Checkout Bag.

"Compostable Produce Bags" means paper bags and bags made of plastic-like material if the material meets the ASTM Standard Specifications for compostability D6400 or D6868, or the product is Biodegradable Products Institute (BPI) certified, or is considered acceptable within the City's compost collection program.

"Product Bag" means a bag provided to a customer to protect merchandise from being damaged or contaminated by other merchandise when items are placed together in a Reusable Checkout Bag or Recyclable Paper Checkout Bag; a bag to hold prescription medication dispensed from a pharmacy; or a bag without handles that is designed to be placed over articles of clothing on a hanger.

"Retail Food Establishment" means any establishment, located or providing food within the City, which provides prepared and ready-to-consume food or beverages, for public consumption including but not limited to any Retail Service Establishment, eating and drinking service, takeout service, supermarket, delicatessen, restaurant, food vendor, sales outlet, shop, cafeteria, catering truck or vehicle, cart or other sidewalk or outdoor vendor or caterer which provides prepared and ready-to-consume food or beverages, for public consumption, whether open to the general public or limited to certain members of the public (e.g., company cafeteria for employees).

"Retail Service Establishment" means a for-profit or not-for-profit business that where goods, wares or merchandise or services are sold for any purpose other than resale in the regular course of business (BMC Chapter 9.04.135).

11.62.030 Types of Checkout Bags permitted at Retail Service and Food Service Establishments.

- A. Retail Service Establishments and Food Service Establishments shall provide or make available to a customer only Reusable Checkout Bags, Compostable Produce Bags, or Recyclable Paper Checkout Bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this Chapter.
 1. Exception: Single-use plastic bags exempt from the Chapter include those integral to the packaging of the product, Product Bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste or yard waste bags.
- B. Effective [], 2020, farmers markets shall only provide Compostable Produce Bags to hold produce, meats, bulk food or other food items. Single-use Plastic Checkout Bags, Produce Bags or Product Bags shall not be provided by farmers markets for produce or meat.

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

11.62.040 Checkout Bag charge for paper or Reusable Checkout Bags at Retail Service Establishments.

- A. Effective [], 2020, no Retail Service Establishment shall provide a Compostable Produce Bag, Recyclable Paper Checkout Bag or Reusable Checkout Bag to a customer at the point of sale, unless the store charges the customer a Checkout Bag charge of at least twenty-five cents (\$0.25) per bag to cover the costs of compliance with the Chapter, the actual costs of providing Recyclable Paper Checkout Bags, educational materials or other costs of promoting the use of Reusable Checkout Bags.
- B. Retail Service Establishments shall establish a system for informing the customer of the charge required under this section prior to completing the transaction. This system can include store clerks inquiring whether customers who do not present their own Reusable Checkout Bag at point of checkout want to purchase a Checkout Bag.
- C. The Checkout Bag charge shall be separately stated on the receipt provided to the customer at the time of sale and shall be identified as the Checkout Bag charge. Any other transaction fee charged by the Retail Service Establishment in relation to providing a Checkout Bag shall be identified separately from the checkout bag charge. The Checkout Bag charge may be completely retained by the Retail Service Establishment and used for public education and administrative enforcement costs.
- D. Retail services establishments shall keep complete and accurate records of the number and dollar amount collected from Recyclable Paper Checkout Bags and Reusable Checkout Bags sold each month and provide specifications demonstrating that paper and reusable bags meet the standards set forth in Section 11.62.030 using either the electronic or paper reporting format required by the city. This information is required to be made available to city staff upon request up to three times annually and must be provided within seven days of request. Reporting false information, including information derived from incomplete or inaccurate records or documents, shall be a violation of the Chapter. Records submitted to the city must be signed by a responsible agent or officer of the establishment attesting that the information provided on the form is accurate and complete.

11.62.050 Use of Compostable Produce Bags at Retail Service Establishments.

Effective [], 2020, Retail Service Establishments shall only provide Compostable Produce Bags to carry produce, meats, bulk food, or other food items to point of sale within the store.

11.62.060 Hardship Exemption.

- A. Undue hardship. The City Manager, or their designee, may exempt a retail service or food service establishment from the requirements of this Chapter for a period of up to one year, upon sufficient evidence by the applicant that the provisions of this Chapter would cause undue hardship. An undue hardship request must be submitted in writing to the city. The phrase "undue hardship" may include, but is not limited to, the following:
 - 1. Situations where there are no acceptable alternatives to single-use plastic Checkout Bags for reasons which are unique to the Retail Service Establishment or Food Service Establishment.

2. Situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.
- B. Retail Service Establishments shall not enforce the ten cent (\$0.25) store charge for customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, or in CalFresh, or in the Supplemental Nutrition Assistance Program (SNAP).

11.62.070 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 Retail Service Establishment's premises to verify compliance.

11.62.080 City of Berkeley—purchases prohibited.

The City of Berkeley shall not purchase any Foodware or Bag that is not Compostable, Recyclable or Reusable under Disposable Foodware and Bag Standards in Section 11.64.080, nor shall any City-sponsored event utilize non-compliant Disposable Foodware and Bag.

11.62.090 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 11.64.090.
- 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.

11.62.100 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.

11.62.110 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.

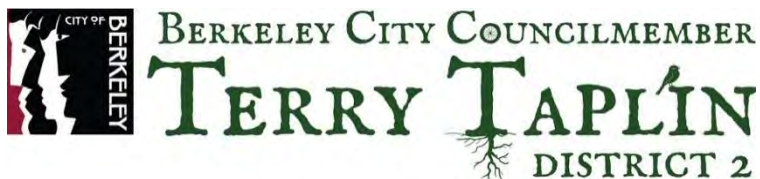
11.62.120 Chapter supersedes existing laws and regulations.

The provisions of this Chapter shall supersede any conflicting law or regulations.

11.62.130 Effective Date.

The provisions in this ordinance are effective [], 2020.

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.



CONSENT CALENDAR

September 29, 2021

FITES Committee

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin

Subject: Native and Drought Resistant Plants and Landscaping Ordinance Referral

RECOMMENDATION

Refer to the City Manager the development of an ordinance amending the Berkeley Municipal Code to require that plant materials (1) native to Berkeley and Northern California and (2) resistant to drought conditions shall be used exclusively in designing, planting, maintaining, and managing the landscape features of all City roadsides, parks, public areas, and other City properties and facilities.

BACKGROUND

As of the summer of 2021, the City of Berkeley and most of California are facing exceptional drought conditions.¹ The region's drought conditions have varied annually in the past decade, but the projects for our future under climate change are clear: California's drought will as much as triple in severity by 2050.² Drought conditions have escalated so radically that the East Bay Municipal Utility District asked residents to cut back on their water consumption.³ The City must plan for a future in which it operates successfully with significantly reduced water use and should begin using water more efficiently as soon as possible.

To plan for a long-term urban infrastructure that consumes water in a manner that reflects the drought conditions that we are certain to face in the next century, Berkeley can pursue a policy of only using native and drought-resistant plant materials in all City landscaping and public areas. While a relatively less significant consumer of water than residential and commercial buildings, the opportunity to save water by switching all City landscaping to native and drought resistant plants is immense. In addition to requiring less watering, native plant landscaping has been shown to have higher infiltration rates of water runoff, taking in water that would otherwise be discharged into sewers and

¹ <https://www.drought.gov/states/california/county/Alameda>

² <https://statesatrisk.org/california/all>

³ <https://www.berkeleyside.org/2021/04/27/east-bay-area-water-officials-declare-drought-ask-residents-to-conserve-water>

filtering toxic materials before they reach the waterfront. Native plants also provide critical food and habitat for local birds and pollinators.⁴ Furthermore, native plants that are already adapted to our local environment are more resistant to extreme weather and often do not require pesticide and fertilizer use.⁵

Various cities and counties throughout the country have pursued similar measures to implement native, drought resistant landscaping mandates that Berkeley can learn from in its own approach. These cities and counties include Westchester County, New York, Eugene, Oregon, and Chicago, Illinois.⁶ While Berkeley can learn from similar efforts elsewhere, each native plant ordinance is inherently different between each location with different local ecosystems. City staff will have to identify the native plants that are most practical and suitable for wide-scale use throughout the City and set planting policy accordingly.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Increased use of native and drought resistant plants on City property will make major strides towards increased urban biodiversity, reduced water usage in the maintenance of public lands, and increased resiliency of plantings on City property to extreme weather conditions.⁷

FINANCIAL IMPLICATIONS

Staff time and cost differences related to the exclusive use of native and drought-resistant plantings in City landscaping work. Increased use of native and drought resistant plants may lead to reduced landscaping maintenance work related to a reduced need for pesticides, fertilizers, and extra watering that non-native plants often require.⁸

CONTACT

Terry Taplin, Councilmember, District 2, (510) 981-7120

ATTACHMENTS

1. Resolution
2. Westchester County Ordinance

⁴ <https://law.pace.edu/sites/default/files/Team%20%233%20Brief.pdf>

⁵ <https://perma.cc/FK54-B7L7>

⁶ <https://law.pace.edu/sites/default/files/Team%20%233%20Brief.pdf>

⁷ <https://sustainablecitycode.org/brief/require-use-of-native-plants/>

⁸ <https://sustainablecitycode.org/brief/require-use-of-native-plants/>

RESOLUTION NO. ##,###-N.S.

REQUIRING NATIVE & DROUGHT RESISTANT PLANTS IN ALL CITY
LANDSCAPING

WHEREAS, the City of Berkeley and the State of California are facing historic drought conditions that are projected to worsen over the course of the next half century or more, and

WHEREAS, the City of Berkeley must adapt its operations to future climate conditions characterized by excessive dryness, extreme weather, and declining populations of pollinators and other local wildlife, and

WHEREAS, the exclusive use of native plants in City landscaping offers an opportunity for less water-intensive landscaping throughout Berkeley, and

WHEREAS, native plants intake and filter toxic water runoff more easily than non-native landscaping, and

WHEREAS, native plants provide critical food and habitat for native animals and pollinators that are at risk under future climate conditions, and

WHEREAS, the costs of native plant landscaping may reduce overall landscaping costs due to a decreased need for pesticides and fertilizers,

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley refers the City Manager to draft an ordinance requiring that:

1. Plant materials native to Berkeley and Northern California and resistant to drought conditions be used exclusively in designing, planting, maintaining, and managing the landscape features of all City roadsides, parks, public areas, and other City properties and facilities.
2. Contracts with the City of Berkeley involving landscaping and/or plantings shall, when appropriate, require the use of native and drought resistant plant materials.

25-2018

EXECUTIVE ORDER NO. 10 OF 2018 (AS AMENDED)

WHEREAS, the County Executive has determined to amend the provisions of Executive Order No. 10 of 2018, dated September 27, 2018 as follows:

WHEREAS, Westchester County government has the opportunity to preserve its natural heritage as well as promote sustainable landscapes by choosing native plants, i.e., plants native to the County of Westchester and the Northeast; and

WHEREAS, native plants enhance the beauty of the landscape, maintain and restore biodiversity, support native pollinators, butterflies, and birds, and protect local ecosystems and environmental health; and

WHEREAS, native plants enrich the soil by helping rain percolate into the soil through their root systems, thereby reducing erosion and water irrigation requirements and filtering storm water runoff, which, in turn, improves water quality; and

WHEREAS, native plants minimize maintenance costs and the need for chemical applications; and

WHEREAS, native plants have historical and cultural interest that help promote Westchester County's regional identity; and

WHEREAS, landscape demonstration projects promote public awareness and education and can be a catalyst for the general public to use native plants in private and commercial landscaping;

WHEREAS invasive, non-native plants threaten the natural heritage and identity of Westchester County and New York State, disrupt the ecology of natural ecosystems, displace native plant and animal species, and degrade our unique and diverse biological resources; and

WHEREAS, New York State has passed regulations prohibiting and regulating certain invasive species;

NOW, THEREFORE, I, GEORGE LATIMER as County Executive of the County of Westchester, do hereby order and direct to each and every department, board, agency, and commission of the County of Westchester, under my jurisdiction, as follows:

RECEIVED

SEP 28 2018

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER 68

1. Plant materials native to Westchester County and the Northeast or their cultivars shall be used exclusively in designing, planting, maintaining, and managing the landscape features of all County roadsides, parks, public areas, and other County properties and facilities.
2. Plans and specifications for any Westchester County contract involving landscaping and/or plantings shall, where practicable and appropriate, require the use of native plants.
3. All plant species listed as Prohibited and Regulated in New York State's NYCRR PART 575 Invasive Species Regulations shall be prohibited in all Westchester County parks and on all other County lands, along County roadsides, and in gardens surrounding County buildings, and where possible, these species shall be eradicated from County parks and other lands, as well as along County roadsides and in gardens surrounding County buildings.
4. Appropriate site and soil analyses shall be performed, matching plant characteristics with site and soil conditions, to ensure success of the planting of native plants.
5. Site design and construction as well as plant selection shall incorporate considerations such as biological needs, low maintenance, low water usage, character of plant communities at project sites, and minimal need for fertilizers and pesticides.
6. The public shall, through various means, be educated about the importance of native plants to the Westchester County landscape.
7. Outdoor demonstration projects exhibiting and promoting the benefits of native species and environmentally sound landscaping practices shall be created and maintained in Westchester County parks and parkway rest areas, at the County office building, and at Westchester Community College.
8. Public/private partnerships with educational institutions, arboreta, commercial nurseries, botanic gardens, and garden clubs shall be encouraged to increase the availability of native plants, and share knowledge about their use, maintenance and propagation.
9. This Executive Order shall apply in all instances unless the Department of Planning or the Department of Parks, Recreation and Conservation determines that no native plant fits the ecological niche in which case plants that are non-invasive and beneficial to wildlife may be permitted in place of native plants.

10. This Executive Order shall take effect immediately and shall remain in full force and effect until otherwise superseded or revoked.

A handwritten signature in cursive script, appearing to read "George Latimer", is written over a solid horizontal line.

GEORGE LATIMER
Westchester County Executive

Dated: September 28, 2018
White Plains, New York



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmembers Harrison

Subject: Refer to the City Manager to Prioritize Establishment of Impact/Mitigation Fees to Address Disproportionate Private and Public Utility Impact to the Public Right of Way

RECOMMENDATION

In order to ensure equitable support of the public right of way by private and public entities that use City facilities, refer to the City Manager and City Attorney to prioritize the following in consultation with the Facilities, Infrastructure, Transportation, Environment, & Sustainability Committee:

1. establish impact and/or mitigation fees to address disproportionate private impacts to the public right of way, such as our roads and utility poles; and
2. establish transfers between sewer, waste, or other utilities as appropriate to address impacts to the public right of way.

BACKGROUND

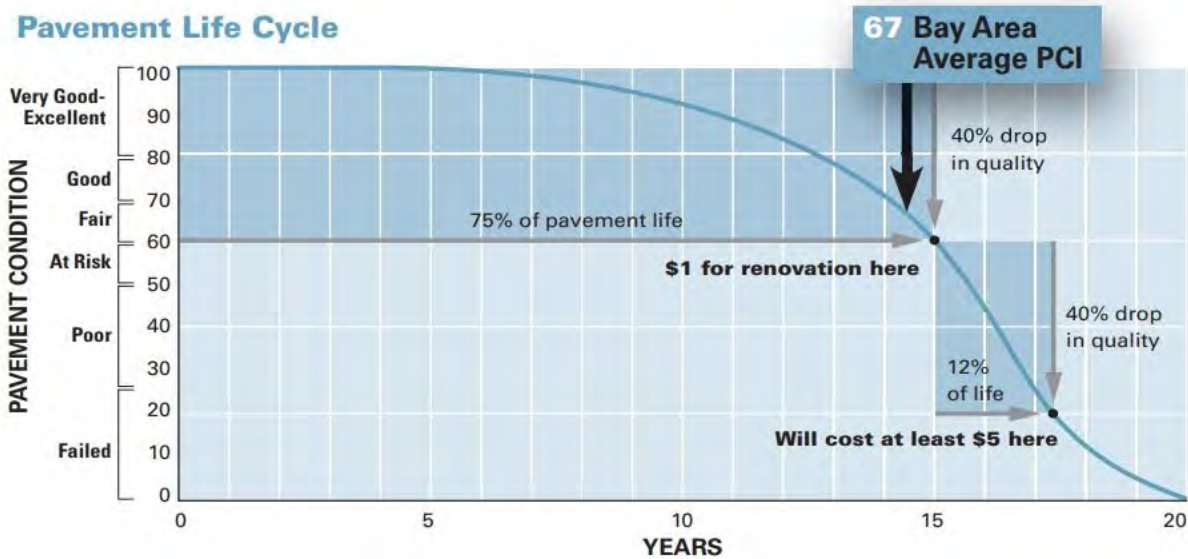
A Metropolitan Transportation Commission report warns that Berkeley's overall paving condition is "At Risk," meaning on the cusp of falling into "Failing" category.¹ The current five-year paving plan is the result of historic deferred maintenance and an underfunded, imperfect and complex balance between arterial, collector and residential streets distributed across Council districts. The City's bicycle, pedestrian and Vision Zero projects are severely underfunded. Meanwhile, neighboring cities in the Bay Area, such as Richmond, El Cerrito, San Francisco have "Excellent/Very Good" to "Fair/Good" streets conditions.

Critically, maintenance of the public right of way has been underfunded due to (1) historic lack of impact/mitigation fees levied against private corporations who

¹ "The Pothole Report: Bay Area Roads At Risk," Bay Area Metropolitan Transportation Commission, September 2018, https://mtc.ca.gov/sites/default/files/Pothole%20Report%20III_September%202018.pdf

disproportionally cause negative impacts to Berkeley’s streets and (2) an absence of transfers from public utility ratepayers to the Berkeley Public Works Department to mitigate utility-related damage to the right of way. The public right of way is key part of the City’s “commons,” a public resource that is available to all community members and to be managed for the collective benefit. As learned during recent FITES hearings, it appears that certain private actor and public utilities have not been paying their fair share to address their disproportionate impact on the condition of Berkeley’s right of way.

The Public Works Department has advised that ongoing funding under the rolling 5-Year Street Plan will not be enough to stabilize Berkeley’s streets. In fact, if street investment is not increased, Public Works warns that the City could face \$1 billion in future repair costs as the cost of deferred paving maintenance increases exponentially each year.



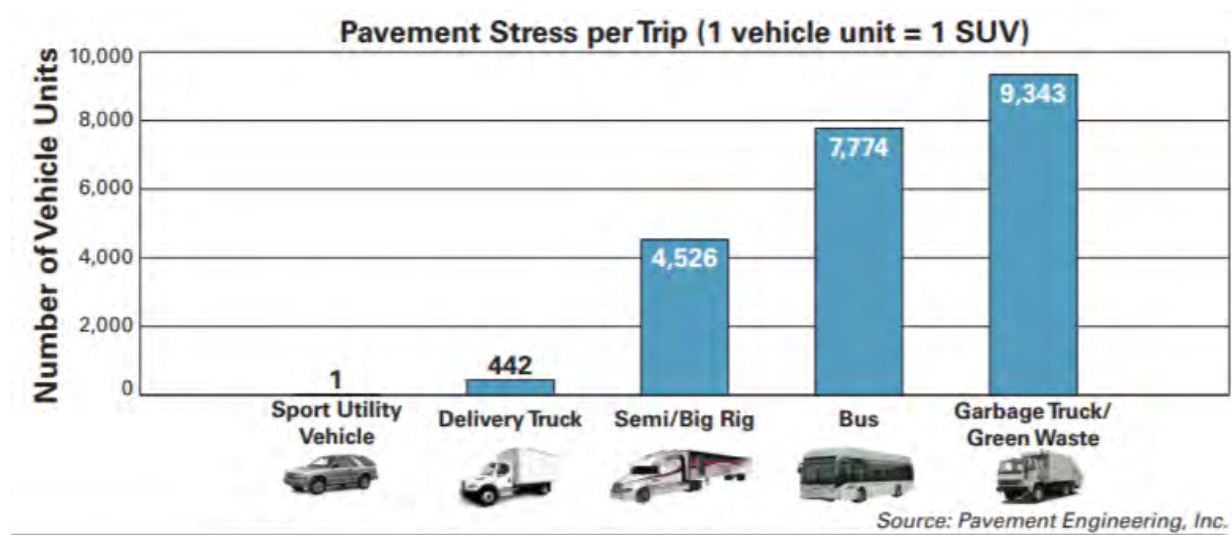
Since January 2020, the Facilities, Infrastructure, Transportation, Environment, & Sustainability (FITES) Committee has been working with the Public Works Department and Public Works Commission to explore funding opportunities to enhance the Paving Condition Index (PCI) of Berkeley’s streets. In addition, it has been reviewing the City’s Paving Policy, which was last updated in 2009, and has been working to develop a Paving Master Plan.

To stabilize street conditions, the City will likely need to pursue a combination of investment strategies ranging from increasing General Fund allocations, initiating

transfers from waste, sewer and other utility accounts, initiating impact/mitigation fees in response to heavy private vehicle use and potentially issuing bonds. However, before going to the voters for new bonds, who already pay significant sales, property and other taxes, which contribute to paving maintenance, it is critical that the Council exhaust all equitable alternatives, including leveraging the proceeds of new fees and transfers from private corporations and public utilities who contribute disproportionately to the deterioration of Berkeley’s streets and greenhouse gas emissions.

The current 2009 Paving Plan, which is being revised by the Public Works Commission, Public Works Department and the FITES Committee, explicitly specifies that “fees [may be] assessed to mitigate for excessive deterioration on and wear and tear of streets resulting from construction activities, public or private, shall be used for street rehabilitation.”² However, the FITES Committee has not been able to identify historical evidence of such fee being levied upon private users for such excessive deterioration.

During hearings on the paving policy, the FITES Committee has learned that large private vehicles such as delivery trucks, big rigs, private buses and construction vehicles contributed heavily to excessive deterioration. The same is true for vehicles acting on behalf of public utilities, such as AC Transit, the City’s Sanitary Sewer Program, Recology waste services, and gas, electric and telecommunications utilities.



² “City of Berkeley Street Rehabilitation and Repair Policy,” Public Works Department, March 2009, https://www.cityofberkeley.info/Public_Works/Sidewalks-Streets-Utility/Street_Rehabilitation_and_Repair_Policy_updated_March_2009.aspx

Refer to the City Manager to Prioritize Establishment of Impact/Mitigation Fees to Address Disproportionate Private and Public Utility Impact to the Public Right of Way

CONSENT CALENDAR
March 9, 2021

Public Works staff indicate that transfers could bring in approximately \$1 million per year in additional paving funding, but more research will need to be done to calculate potential revenue from impact fees.

It is in the public interest to ensure an equitable and rapid as possible assessment of such private and public actors for the purpose of providing supplemental funding to Berkeley's Street Repair Program.

FINANCIAL IMPLICATIONS

The item would require staff time to develop potential fees and transfers, however it could potentially offset and supplemental millions of dollars in existing City paving funding.

ENVIRONMENTAL SUSTAINABILITY

Supporting low-carbon asphalt alternatives and building bicycle and alternative mobility infrastructure will compliment and accelerate Berkeley's ongoing efforts to reduce carbon emissions at an emergency and equitable pace in line with the Climate Action Plan and Climate Emergency Declaration.

CONTACT PERSON

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