



City of Berkeley ZERO WASTE COMMISSION Regular Meeting

Monday, October 25, 2021 at 7:00 p.m.

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

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City of Berkeley Zero Waste Commission 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 attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device, please use this URL to join the meeting:

<https://us02web.zoom.us/j/82587046286>

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 by rolling over the bottom of the screen. **To join by phone: Dial 1-669-900-9128 and enter Meeting ID: 82587046286#.** If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair. Note: Your phone number will appear on the videoconference screen.

MEETING AGENDA

PRELIMINARY MATTERS:

- 7:00 pm 1. Call to Order by Chair and Roll Call by Secretary
- **Christienne de Tournay (Chair)**, appointed by CM Sophie Hahn, District 5
 - **Annette Poliwka (Vice Chair)**, appointed by Mayor Jesse Arreguin
 - **Steven Sherman**, appointed by CM Rashi Kesarwani, District 1
 - **Rachel Doughty**, appointed by CM Terry Taplin, District 2
 - **Antoinette Stein**, appointed by CM Ben Bartlett, District 3
 - **Margo Schueler**, appointed by CM Kate Harrison, District 4
 - **Sandra Curtis**, appointed by CM Susan Wengraf, District 6
 - **Nicole Ulakovic**, appointed by CM Rigel Robinson, District 7
 - **David Grubb**, appointed by CM Lori Droste, District 8
- 7:05 pm 2. Approve Meeting Agenda and Order of Agenda Items
- 7:10 pm 3. Approve Draft Action Minutes:
- September 27, 2021 Regular Meeting*

- 7:15 pm 4. Public Comment on Items Not on the Agenda
Speakers are allotted up to two minutes. Speakers may be allotted less time at the discretion of the Chair.
- 7:25 pm 5. Commissioner Announcements
Commissioners may make general announcements; no action will be taken.
- 7:30 pm 6. Staff Updates:
- Staff Appreciation for the Zero Waste Commissioners
 - Zero Waste Division Staffing
 - City Council Zero Waste Rates Worksession
 - Mattress Recycling Pilot Program
 - Textile Recycling Program
 - Single-Use Foodware Ordinance Implementation
 - SB 1383 Implementation

DISCUSSION AND ACTION ITEMS:

Members of the public may provide comments at the beginning of each discussion item and prior to the vote of the Commission on any action items. Speakers are allotted up to 2 minutes.

- 7:40 pm 1. Discuss Commission restructuring and action to provide feedback on Zero Waste Definitions and Functions to include in the new enabling legislation for the new Climate and Environment Commission*
- 8:40 pm 2. Discussion and possible action on the following October 12 Council Referral:
- Refer to Berkeley's Zero Waste and Energy Commissions (or successor Commission) to hold joint meetings regarding the proposed Ordinance regulating the use of carryout and pre-checkout bags and promoting the use of reusable bags with a target by of December 31, 2021*
- 8:50 pm 3. Discuss Future Agenda Items
- 9:00 pm 4. Adjournment

INFORMATION ITEMS:

Information items may be moved to discussion but no action will be taken.

- Links to Zero Waste USA Zero Waste Definitions forwarded by Chrise de Tournay:
 - <https://zwia.org/zero-waste-community-principles/>
 - <https://zerowasteusa.org/zwia-business-principles/>
- Webinar invite and informative link forwarded by Sandra Curtis:
[**The Growth of PET Bottle Recycling in Japan | IGES.**](#)
- Invite to the Reusies™ forwarded by Steven Sherman:
<https://www.thereusies.org/ticketing-and-voting/#tickets>
- Staff forwarded press release re: new legislation signed by Governor Newsom:
[Governor Newsom Signs Legislation to Tackle Plastic Pollution, Promote a More Sustainable & Renewable Economy and Protect Californians from Toxic Chemicals](#)

COMMUNICATIONS:

Communications from the public are included as links or attachments in the agenda packet.

- No communications from the public were received prior to packet distribution.

***Indicates material included in the agenda packet**

**** Indicates material to be available at the meeting**



ADA Disclaimer: This meeting is being held in a wheelchair-accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer:

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Public Works Department located at the address below.

Communications Disclaimer:

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

Commission Secretary:

Heidi Obermeit, Recycling Program Manager,
Zero Waste Division, 1201 2nd St. Berkeley, CA 94710
510-981-6357

hobermeit@cityofberkeley.info

MINUTES

The meeting was convened at 7:03 p.m. with Chrise de Tournay, Chair, presiding.

ROLL CALL

Present: Chrise de Tournay, Steven Sherman, Rachel Doughty, Antoinette Stein, Margo Schueler, Sandra Curtis, Nicole Ulakovic, David Grubb (7:15pm arrival)
LOA: Annette Poliwka
Absent: None

STAFF PRESENT: Greg Apa, Heidi Obermeit

MEMBERS OF THE PUBLIC PRESENT: 8

PUBLIC COMMENTS (on non-agenda items): 1

ACTION MINUTES:

1. Approval of the September 27, 2021 Regular Meeting Agenda

Action Taken: M/S/C (de Tournay/Doughty) to approve the agenda for the September 27, 2021 regular meeting.

Ayes: Unanimous; Abstain: None; Absent: Poliwka, Grubb

2. Approval of the July 26, 2021 Meeting Minutes

Action Taken: M/S/C (de Tournay/Stein) to approve the July 26, 2021 regular meeting minutes.

Ayes: Unanimous; Abstain: None; Absent: Poliwka, Grubb

3. Adjust the November 2021 Zero Waste Commission regular meeting date from Monday, November 22 to Monday, November 15

Action Taken: M/S/C (de Tournay/Stein) to adjust November 2021 regular meeting date to November 15.

Ayes: Unanimous; Abstain: None; Absent: Poliwka

Public comments: 0

4. Discuss SB1383 implementation status and possible action to support the City of Berkeley Opt-In to the Alameda County Waste Management Authority's Organics Reduction and Recycling Ordinance

Action Taken: M/S/C (Sherman/de Tournay) to support the adoption of a City of Berkeley ordinance opting in to the countywide Organics Reduction and Recycling Ordinance.

Ayes: Unanimous; Abstain: None; Absent: Poliwka

Public comments: 0

5. Discuss Commission restructuring and possible action to create a subcommittee to advise and comment on draft enabling legislation for the new Climate and Environment Commission

No action taken; discussion only. Commissioners will review current Zero Waste Commission enabling legislation and will discuss feedback/proposed changes at the Commission's October meeting.

Public comments: 2

6. Discuss Single Use Foodware and Litter Reduction Ordinance Implementation

No action taken; discussion only.

Public comments: 0

7. Discuss Future Agenda Items:

- Commission Consolidation (at least 1hr to discuss new enabling legislation)
- Compost Process (compostable bags – what happens to them at processing facility)
- Possible Plastic Bag Ordinance Referral from Council

Public comments: 0

8. Adjournment at 8:59 p.m.

M/S/C (de Tournay/Stein) to adjourn the meeting.

Ayes: Unanimous; Abstain: None; Absent: Poliwka

The next regular meeting of the Zero Waste Commission will be held on Monday, October 25, 2021 at 7:00 p.m. by virtual videoconference/teleconference. The link to access the virtual meeting will be posted to the Community Calendar: www.cityofberkeley.info/communitycalendar/

Respectfully Submitted:

Heidi Obermeit, Secretary

Current Zero Waste Commission Enabling Legislation Definitions and Functions

Section 3.40.020 Definitions.

A. Zero Waste: Zero waste means establishing a system in which waste is minimized, and each discard becomes a useful feedstock for other processes in the ecology and economy. Zero waste practices include but are not limited to reducing the waste generated in ordinary commerce, promoting use of sustainable, non-toxic materials and processes in manufacturing, purchasing recycled content materials and establishing systems for collection and processing of discards to promote sustainable use.

B. The term "Solid Waste Management Commission" as used elsewhere in this Berkeley Municipal Code, including Berkeley Municipal Code Sections 2.04.040 and 12.38.060, shall mean Zero Waste Commission.

C. Highest and Best Use: Recovering materials for "highest and best use" means to realize the highest value of the embodied energy and materials from discarded products and packaging, according to the following hierarchy:

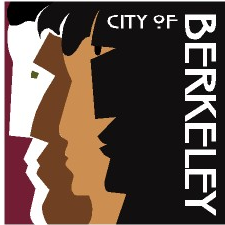
1. Reuse.
 - a. Reuse of the product for its original purpose.
 - b. Reuse of the product for an alternate purpose.
 - c. Reuse of its parts.
 - d. Reuse of the materials.
2. Recycle.
 - a. Recycling of inorganic materials in closed loop systems.
 - b. Recycling of inorganic materials in single-use applications.
 - c. Composting or mulching of organic materials to sustain soils and avoid use of chemical fertilizers.
 - d. Composting or mulching of organic materials to reduce erosion and litter, and to retain moisture.

Determination of highest and best use requires an ongoing re-evaluation of commodity value in the marketplace, cost of collection, processing and marketing; and other outside factors that may bear on the ultimate economic return. The determination of highest and best use includes consideration of the full range of costs including environmental and health aspects. (Ord. 6904-NS § 3 (part), 2006)

Section 3.40.060 Functions.

The functions of the commission shall be as follows:

- A. To develop a local plan for reducing the amount of solid waste generated in the City and sent to landfill by 75 percent by 2010;
- B. To prepare and evaluate a feasible zero waste plan and programs for the City, based upon sound ecological principles, such as "highest and best use," and coordinated to the maximum practical extent with other sustainability plans and programs for the City, and for the region as a whole;
- C. To directly and continuously consider, study and work upon the problems of solid waste management for the City until a suitable zero waste system has been devised and put into operation, the target date for which shall be no later than 2000;
- D. To cooperate with citizens' groups working on proposals concerning any aspect of zero waste; provided, that nothing in this chapter shall be deemed to forestall consideration by the City Council of any proposals regarding solid waste management and zero waste practices which may be made by citizens' groups prior to the target dates set forth herein. (Ord. 6904-NS § 4 (part), 2006; Ord. 4576-NS § 9, 1972)



Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: September 14, 2021

Item Number: 38

Item Description: Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Committee

Submitted by: Councilmember Harrison

- Updated the item recommendation to clarify that the December 31, 2021 date for conducting hearings is *a goal*, not a deadline.
- Updated the ordinance to:
 - clarify the definition of Food Product Store and film content of Reusable Carryout Bags;
 - streamline the waiver process.



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
From: Councilmember Harrison
Subject: Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee

RECOMMENDATION

Refer to Berkeley's Zero Waste and Energy Commissions (or successor Commission) to hold joint meetings regarding the proposed Ordinance regulating the use of carryout and pre-checkout bags and promoting the use of reusable bags with a target by of December 31, 2021.

As part of the series of meetings, the Commissions should:

1. strive to conduct community/business outreach and education events to include, but not limited to the following entities:
 - a. all stores and events that provide pre-checkout bags (e.g., grocery stores, convenience stores, food marts, and food vendors);
 - b. all restaurants, take-out food stores, food trucks, permitted events, and any other commercial establishment not regulated by the state that provide carryout bags; and
2. make any recommendations with respect to any amendments and appropriate phasing to the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee.

POLICY COMMITTEE RECOMMENDATION

On July 21, 2021 the FITES Committee took the following action:

Action: M/S/C (Harrison/Robinson) to make a positive recommendation to the City Council that the Council direct the Zero Waste and Energy Commission (or successor Commission) to hold joint meetings to conduct community outreach and

education events and recommend proposed changes and appropriate phasing to the FITES Committee.

Vote: All Ayes

BACKGROUND

On December 10, 2019, Councilmember Harrison and cosponsor Councilmember Hahn submitted a draft Ordinance regulating the use of carryout and pre-checkout bags and promoting the use of reusable bags. The Agenda Committee referred the item to the FITES Committee on November 25, 2019.

By closing loopholes in state and county law, the ordinance is aimed at avoiding unnecessary waste, promoting reuse, reducing greenhouse gas emissions, and protecting land/sea wildlife and the urban environment.

Committee consideration of the item was initially delayed due to examination of statewide preemption issues and the COVID-19 pandemic. Subsequently, the item has gone through a number of revisions.

The latest draft of the ordinance has been crafted to consider and complement existing regulations at the state and county levels. With respect to the regulation of carryout bags, this ordinance is intended to *only* regulate entities for which the City is not preempted by the state. Neither the state nor county regulate pre-checkout bags, however, the proposed ordinance would. This ordinance does not regulate bags that are integral to the manufacturing of products, i.e., product bags, and provides and provides a limited exemption process.

As currently drafted, the ordinance does the following across the following bag types and entities:

Carryout bags:

- Bans thicker plastic film carryout bags, except for bags that contain hot liquids, for:
 - restaurants, take-out food stores, and food trucks.
 - permitted events and city-sponsored events
 - any other commercial establishment not regulated by the state¹
- Defines reusable carryout bags as non-plastic film across:
 - restaurants, take-out food stores, and food trucks.
 - permitted events and city-sponsored events
 - any other commercial establishment not regulated by the state

¹ e.g., smaller clothing stores/book/furniture/electronic/gift stores, clothing stores/book/furniture/electronic/gift stores that don't sell perishable goods and have < \$2 million revenue, grocery stores under \$2 million that don't sell alcohol, convenience stores that don't sell alcohol, small pharmacies < 10k square feet etc.

- Charges \$0.10 for paper bags at:
 - restaurants, take-out food stores, and food trucks.
- *Second phase 2023*: requires any paper carryout bag provided by the following be 100% recycled material:
 - restaurants, take-out food stores, and food trucks.
 - permitted events and city-sponsored events
 - any other commercial establishment not regulated by the state

Pre-Checkout Bags:

- Bans all but paper pre-checkout bags, except upon request for meat/seafood, across:
 - all stores & events
- Charges \$ 0.10 min. for any paper pre-checkout bag; *Second phase in 2023*: requires any paper pre-checkout bag to be 100% recycled across:
 - all stores & events
- Defines pre-checkout bags as non-plastic film:
 - all stores & events

In addition, the ordinance prevents stores from unreasonably denying customers from bringing their own reusable bags and containers.

As part of its consideration of the proposed ordinance, the FITES Committee provided direction at its July 21, 2021 meeting that the Zero Waste and Energy Commissions (or successor Commission) should hold joint meetings with respect to the ordinance aimed at conducting community/business outreach and education events to include the people and entities regulated by the ordinance and to make recommendations regarding any amendments and appropriate phasing of the law to FITES.

The Zero Waste and Energy Commissions respectively focus on issues ranging from City solid waste policy and goals to climate protection and energy conservation. It is in the public interest for the Council to engage its citizen-led commissions to assist in the outreach process to community members and businesses that may be impacted by the proposed ordinance.

FISCAL IMPACTS

Noticing and providing assistance to Commissioners to conduct a series of community outreach meetings will require staff time.

Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee

CONSENT CALENDAR
September 14, 2021

ENVIRONMENTAL SUSTAINABILITY

By closing loopholes in state and county law, the ordinance is aimed at avoiding waste, promoting reuse, reducing greenhouse gas emissions, and protecting land/sea wildlife and the urban environment.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

ATTACHMENTS:

1. Infographic Comparing State and County Laws to the Proposed Berkeley Ordinance
2. Proposed Ordinance Adding BMC Chapter 11.63 and Regulating the Use of Carryout and Pre-checkout Bags and Promoting the Use of Reusable Bags

ORDINANCE NO. –N.S.

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

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

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

Chapter 11.63

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

Sections:

11.63.010 Findings and purpose.

11.63.020 Definitions.

11.63.030 Carryout Bag restrictions for Covered Entities.

**11.63.040 Pre-checkout Bag restrictions for ~~Grocery Store~~Food Product Stores
and Covered Entities.**

11.63.050 Unreasonable denial of customer bags or containers.

11.63.060 General exemptions.

11.63.070 Waivers—applicability and process to obtain.

11.63.080 City of Berkeley—purchases prohibited.

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

11.63.100 Liability and enforcement.

11.63.110 Severability.

11.63.120 Construction.

11.63.130 Effective date.

11.63.010 Findings and purpose.

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

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

11.63.020 Definitions.

- A. "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 Pre-checkout 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; and

(3) any other commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food and personal items directly to a customer 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~~Food Product Store.

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

E. "100% Recycled Content Paper Bag" means either a Carryout Bag provided by a ~~C~~overed Entity or a Pre-checkout Bag provided by a ~~Grocery Store~~Food Product Store that contains no old growth fiber and 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;

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

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

(2) has a minimum volume of 15 liters;

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

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

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

(6) is not ~~primarily~~ made of plastic film, regardless of thickness. Notwithstanding this subsection, non-plastic film bags may be comprised of recycled plastic film.

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

H. "Pre-checkout Bag" means a 100% Recycled Content Paper Bag provided to a customer to carry produce, bulk food, or other food items to the point of sale inside a store.

I. "Product Bags" are bags that are integral to the packaging of a product such as film or other bags used to fully encapsulate liquid or semi-liquid takeout food items (e.g., soup

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containers) to prevent spillage; or bags designed to be placed over articles of clothing on a hanger at dry cleaning or laundry facility.

11.63.030 Carryout Bag restrictions for Covered Entities.

- A. No Covered Entity shall provide or sell a Carryout Bag other than 100% Recycled Content Paper Bags or Reusable Carryout Bags at the check stand, cash register, point of sale or other location to a Customer for the purpose of transporting food or merchandise out of such Covered Entity.
- B. A Covered Entity may provide or make available for sale to a Customer a 100% Recycled Content Paper Bags for a minimum price of ten cents (\$.10).

11.63.040 Pre-checkout Bag restrictions for ~~Grocery Store~~Food Product Stores and Covered Entities.

- A. No ~~Grocery Store~~Food Product Store or Covered Entity shall provide Pre-checkout Bags other than 100% Recycled Content Paper Bags.
- B. Notwithstanding subsection A, Covered Entities and ~~Grocery Store~~Food Product Stores may provide plastic film bags as Pre-checkout Bags to Customers for the sole purpose of separating meats and seafood only upon the specific request of a Customer. Covered Entities shall not solicit Customers with respect to this exception.
- C. A ~~Grocery Store~~Food Product Store or Covered Entity may make available for sale to a Customer Pre-checkout Bags for a minimum price of ten cents (\$.10).

11.63.050 Unreasonable denial of customer bags or containers.

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

11.63.060 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.
- C. Notwithstanding the requirements of Sections 11.63.30 and 11.63.40, Covered Entities and ~~Grocery Store~~Food Product Stores, except as subject to the requirements of Public Resources Code Section 42281, providing 100% Recycled Content Paper Bags as Carryout Bags at the point of sale or Pre-Checkout Bags before the point of sale, shall provide such bags at no cost to a Customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the

California Health and Safety Code; a Customer participating in CalFresh pursuant to Chapter 1 commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code; and a Customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code.

11.63.070 Waivers—applicability and process to obtain.

A. The City Manager shall prescribe and adopt rules, regulations and forms for Covered Entities or ~~Grocery Store~~ Food Product Stores to obtain a partial waiver from any requirement of this ordinance upon sufficient evidence by the applicant that the provisions of this Chapter would cause undue hardship. The phrase "undue hardship" may include, but is not limited to situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.

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

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

~~D.—Waivers may be granted for a specified term of up to x [x months]. During the waiver term, the Covered Entities or Grocery Store shall make diligent efforts to become compliant. Under extraordinary circumstances, should a Covered Entities or Grocery Store Food Product Store demonstrate that, at the close or expiration of a granted waiver term, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to x (x) months each may be granted. It shall be the Covered Entities or Grocery Store's responsibility to apply for any subsequent waivers in a timely manner.~~

~~E.—Notwithstanding the x (x) month maximum term for waivers set forth in Section 11.63.070 (D), in certain limited and unique circumstances existing prior to adoption of this ordinance, where the Covered Entities or Grocery Store demonstrates diligent efforts to comply but, due to insurmountable unique circumstances, may never be reasonably able to comply, the City Manager or their designee may grant a waiver for a longer specified term.~~

11.63.080 City of Berkeley—purchases prohibited.

The City of Berkeley and any City-sponsored event shall only provide or sell to a Customer 100% Recycled Content Paper Bags or Reusable Carry-out Bags for the purpose of carrying away goods or other materials from the point of sale or event.

11.63.090 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~~ Food Product Store's premises to verify compliance.

11.63.100 Liability and enforcement.

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

11.63.110 Severability.

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

11.63.120 Construction.

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

11.63.130 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.