

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.