



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

**Wednesday, December 1, 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 of the City Council Facilities, Infrastructure, Transportation, Environment & Sustainability Committee 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 using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/81902157907>. 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: **819 0215 7907**. 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 - October 6, 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. Adopt an Ordinance Adding a New Chapter 12.01 to the Berkeley Municipal Code Establishing Emergency Greenhouse Gas Limits, Process for Updated Climate Action Plan, Monitoring, Evaluation, Reporting and Regional Collaboration

From: Councilmember Harrison (Author), Councilmember Bartlett (Co-Sponsor) and Councilmember Hahn (Co-Sponsor)

Referred: November 15, 2021

Due: May 7, 2022

Recommendation: 1. Adopt an ordinance adding a new Chapter 12.01 to the Berkeley Municipal Code (BMC) establishing Emergency Greenhouse Gas Limits with an effective date of [], 2022.

2. Refer to the FY23-24 Budget Process \$[] consistent with implementing the requirements of Sections 12.01.040, 12.01.050, 12.01.060.

Financial Implications: See report

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

Committee Action Items

3. **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 and the Parks Commission the development of an ordinance amending the Berkeley Municipal Code to require that:
1. 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. 2. Plants friendly to pollinators be given preference for use in all City landscaping projects.

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.

4. **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: March 31, 2022

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

5. **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: March 31, 2022

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

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 November 24, 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, 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.

MINUTES

Roll Call: 2:34 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 - July 7, 2021

Action: M/S/C (Robinson/Harrison) to approve the July 7, 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. 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

Action: 2 speakers. Presentation made by planning staff. Discussion held and the committee provided staff with feedback.

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

Action: The item was continued.

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

Action: 2 speakers. Discussion held. Revised material submitted by the author. 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.

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

- None

Adjournment

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

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

Adjourned at 3:39 p.m.

I hereby certify that this is a true and correct record of the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee meeting held on October 6, 2021.

Michael MacDonald, Assistant 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.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
November 30, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Adopt an Ordinance Adding a New Chapter 12.01 to the Berkeley Municipal Code Establishing Emergency Greenhouse Gas Limits, Process for Updated Climate Action Plan, Monitoring, Evaluation, Reporting and Regional Collaboration

RECOMMENDATION

1. Adopt an ordinance adding a new Chapter 12.01 to the Berkeley Municipal Code (BMC) establishing Emergency Greenhouse Gas Limits with an effective date of [REDACTED], 2022.
2. Refer to the FY23-24 Budget Process \$[REDACTED] consistent with implementing the requirements of Sections 12.01.040, 12.01.050, 12.01.060.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Scientific evidence indicates that between the industrial period of 1850 and 2021, economic systems, namely state and free-market forms of capital accumulation and economic growth have increased global atmospheric carbon dioxide levels to a staggering 418 parts per million (ppm), beyond the established planetary boundary of 350 ppm, and warmed global average temperature by approximately 1.1 degrees Celsius. Available scientific evidence indicates there is no 'safe' level of warming beyond 350 ppm, only gradations of risk with respect to habitability.

Berkeley is already experiencing unprecedented negative effects of warming associated with 1 degree of warming, and current global growth trends and policies could push humanity past 1.5 degrees by mid-century, leading to a devastating 2-4 degrees by the end of the century. The 'Global North,' which includes Berkeley, has far exceeded its fair share of the emissions comprising and exceeding the boundary, and must reduce its emissions rapidly and justly.

The City of Berkeley has engaged with the issue of global warming for at least three decades and has unquestionably been a leader in certain climate actions. Yet, in light of the current gravity of the climate emergency, current strategies and targets are not adequate. Exceptionally risky “mitigation” strategies, namely midcentury ‘net-zero’ pledges have provided for unbridled economic and emissions growth and thus severely dwindled carbon budgets, effectively rendering Berkeley’s gradual reduction goals: 80% by 2050 (Measure G, 2005 and Resolution 64,480-N.S., 2009) and net-zero by 2045 (Resolution 69,852–N.S., 2021), untenable. The majority of risk associated with each additional ton of greenhouse gas emitted will be borne by generations who will have not consented to current reduction goals and strategies. Current policies could exacerbate or lead to exceedingly dangerous new tipping points.

This item is timely in light of ongoing reports that national “pledges” under Paris Agreement could lead to at least 3 degrees of catastrophic warming, the inability for Congress to pass meaningful domestic and international climate policies and legislation, and the failure of world leaders to reach an effective and substantive agreement at the 26th UN Climate Change Conference of the Parties (COP26) in Glasgow.

BACKGROUND

The ordinance establishes emergency greenhouse gas limits aimed at reducing sector-based greenhouse gas emissions 90% below 2000 levels and consumption-based emissions 90% below 2013 levels by 2030. These limits would bring Berkeley closer to its global ‘fair share’ and science-based reduction obligations, and could help achieve reductions at scale as part of a program of regional coordination and collaboration.

While such targets are ambitious, mitigating and minimizing global warming risk and maximizing adaptation, resilience and adherence to planetary boundaries earlier in the century rather than later will likely result in less disruption to society over the long term, and will generate opportunities for more inclusive and sound democratic decision making as compared to waiting until atmospheric carbon levels reach increasingly catastrophic levels.

These limits are consistent with the City’s 2006 “precautionary principle” established by BMC 12.29, and which states:

“The purpose of this chapter is to promote the health, safety, and general welfare of the community by minimizing health risks, improving air quality, protecting the quality of ground and surface water, minimizing consumption of resources, and minimizing the City’s contribution to global climate change by implementing in a phased manner, as provided in this chapter, the City’s use of a precautionary principle approach in its decisions.”

As enacted by Council, BMC 12.29 requires the City to apply the following precautionary principle tenets in the course of action and decision-making:

1. Anticipatory Action: Anticipatory action may prevent harm. Government, business, community groups, and the public share this responsibility.

2. Right to Know: The community has a right to know complete and accurate information on potential health and environmental impacts associated with the selection of products, services, operations or plans.
3. Alternatives Assessment: Examine a full range of alternatives and select the alternative with the least potential impact on health and the environment including the alternative of doing nothing.
4. Consideration of Significant Costs: Consider significant short-term and long-term costs in comparing product alternatives, when feasible. This includes evaluation of significant costs expected during the lifetime of a product, (e.g. raw materials, manufacturing and production, transportation, use, clean-up, acquisition, extended warranties, operation, supplies, maintenance, disposal costs, long and short-term environmental and health impacts); and that expected lifetime compared to other alternatives.
5. Participatory Decision Process: Decisions applying the Precautionary Principle should be transparent, participatory by including community input, and informed by the best available information.

The ordinance requires the City to develop a new Climate Action Plan and consistent with these GHG limits and precautionary principle tenets, and to establish relevant legislative and budgetary timelines to help the City reach its objectives.

In addition, the ordinance requires the City to consider post-growth climate mitigation strategies and policies as potential alternatives to the growth and market-based and other policies that created the crisis and remain a persistent obstacle to meaningful action. The City's policies and programs *must not* aim to merely increase economic growth for growth's sake, but rather to support the provision of basic human needs and happiness.

It also provides an institutional framework to build solidarity with neighboring Bay Area communities and jurisdictions to achieve collective limits that could change rate of global warming while simultaneously providing sister cities in other countries precious time to improve living standards and pursue decarbonization.

ENVIRONMENTAL SUSTAINABILITY

This item is consistent with the latest climate science and the precautionary principle established by BMC 12.29.

ATTACHMENTS

1. Proposed Ordinance adding a new Chapter 12.01.

FINANCIAL IMPLICATIONS

Staff time will be necessary to implement the new ordinance. This item refers \$[] to the FY23-24 Budget Process consistent with implementing the requirements of Sections 12.01.040, 12.01.050, 12.01.060.

CONTACT PERSON

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

ORDINANCE NO. –N.S.

ADDING CHAPTER 12.01 TO THE BERKELEY MUNICIPAL CODE TO ESTABLISH
EMERGENCY GREENHOUSE GAS EMISSIONS LIMITS

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

Section 1. That Chapter 12.01 of the Berkeley Municipal Code is added to read as follows:

Chapter 12.01

EMERGENCY GREENHOUSE GAS EMISSIONS LIMITS

Sections:

12.01.010 Findings and purpose.

12.01.020 Definitions.

12.01.030 Greenhouse Gas Emissions Limits.

12.01.040 Climate Action Plan.

12.01.050 Monitoring, Evaluation, And Reporting.

12.01.060 Regional Collaboration.

12.01.070 Severability.

12.01.080 Construction.

12.01.090 Effective date.

12.01.010 Findings and purpose.

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

- A. Available scientific evidence indicates that between the industrial period of 1850 and 2021 economic systems, namely state and free-market forms of capital accumulation and economic growth, have increased global atmospheric carbon dioxide levels to a staggering 418 parts per million (ppm) beyond the established planetary boundary of 350 ppm, and warmed global average temperature by approximately 1.1 degrees Celsius. The 'Global North,' which includes Berkeley, has far exceeded its fair share the emissions comprising and exceeding the boundary, and must reduce its emissions rapidly and equitably.
- B. Available scientific evidence indicates there is no 'safe' level of warming beyond 350 ppm, only gradations of risk with respect to habitability. Berkeley, California, the United States, and the world is already experiencing unprecedented negative effects of warming associated with 1 degree of warming, and current global growth trends and policies will push humanity past 1.5 degrees as early as the 2030s and 3 to 4 degrees by the end of the century. Global warming between 1.5 to 2 degrees Celsius is expected to further accelerate existential risks to health and safety including but not limited to, extreme weather, mass extinction, water and food shortages, violent conflict, fire, forced migration, economic collapse, disease, heat stress, and sea level rise. The majority of risk associated with each additional ton of greenhouse gas emitted will be borne by generations who will have not consented to current reduction strategies.
- C. In the twenty-first century, Berkeley, California, and the United States have largely and irresponsibly relied on ineffective market-based mechanisms, unrealistic expectations of absolutely decoupling GDP growth from energy use, speculative mass deployment of negative emission reduction technologies and 'net-zero' practices to offset continued fossil fuel production and consumption, and underappreciation of irreversible tipping points, aerosol masking, and non-carbon greenhouse gasses. In light of the current gravity of the climate emergency, these strategies have unequivocally failed; between Measure G and 2018, each jurisdiction only reduced greenhouse gasses by a respective 10%, 12%, and 26%, while at the same time globally, nearly a third of all anthropogenic carbon dioxide was emitted. Exceptionally risky strategies pursued by the Global North, namely midcentury 'net-zero' pledges have provided for unbridled economic and emissions growth and thus severely dwindled carbon budgets, effectively rendering Berkeley's gradual reduction goals: 80% by 2050 (Measure G, 2005 and Resolution 64,480-N.S., 2009) and net-zero by 2045 (Resolution 69,852–N.S., 2021), untenable.
- D. It is the intent of the Council to adopt stringent and equitable science-based greenhouse gas emissions limits and related action plans and reports, consistent with the precautionary principle approach established by Chapter 12.29, for the purpose of achieving the rapid, far-reaching, unprecedented and just changes in all aspects of society associated with mitigating and minimizing global warming risk and maximizing adaptation, resilience and adherence to planetary boundaries.
- E. The Council further intends to endeavor to build solidarity with neighboring communities and jurisdictions to achieve collective limits that could change rate of global warming while simultaneously providing sister cities in other countries precious time to improve living standards and pursue decarbonization.

12.01.020 Definitions.

A. "Climate Action Plan" means the document required under Section 12.01 outlining the specific actions the City will endeavor to take to reduce Greenhouse gas emissions and to mitigation, resilience and adaptation efforts with respect to climate impacts.

B. "Consumption-Based Greenhouse Gas Emissions" means all the Greenhouse Gas emissions associated with producing, transporting, using, and disposing of products and services consumed by a particular community or entity in a given time period, including emissions generated outside the boundaries of the community or the geographic area where the entity is located.

C. "Greenhouse Gas" means any and all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

D. "Sector-Based Greenhouse Gas Emissions" means all of the Greenhouse Gas emissions generated within the geographic boundaries of the City in a given time period.

E. "Responsible Production and Consumption" means improving how materials and products are extracted, manufactured, delivered, acquired, used, reused, recycled, and disposed of to ensure that the production and consumption of materials and products promote basic human needs, are distributed in a socially equitable manner, and carried out in a way that minimizes environmental impacts over the lifecycle of those materials and products while matching the carrying capacity of the earth's resources and adding value so as not to jeopardize present and future generations. "Lifecycle" means the complete material life of a product, good, or service, including resource extraction, manufacture, assembly, construction, maintenance, transportation, operations or use, and end of life (reuse, recycling/composting, and disposal). "Carrying capacity" means the number or amount of people, plants, and other living organisms that an ecosystem can support indefinitely without causing environmental degradation.

F. "Post-Growth Emissions Mitigation" means Greenhouse Gas mitigation strategies and policies that acknowledge and support the following:

- (1) rapid emissions reductions may not be compatible with economic policies that support limitless growth, especially growth in the production and consumption of commodities that do not support basic human needs,
- (2) in jurisdictions with high aggregate wealth there may be a disassociation between additional capital accumulation, economic growth, and GDP, and key social outcomes, to include but not limited to, health, social wellbeing, happiness and equity,
- (3) fairer distribution of income and wealth, and guaranteed access to universal public services.

12.01.030 Emergency Greenhouse Gas Emissions Limits.

A. The following Greenhouse Gas emissions limits are hereby established:

- (1) By 2030, reduce Sector-Based Greenhouse Gas Emissions [90%] below 2000 levels.
- (2) By 2030, reduce Consumption-Based Greenhouse Gas Emissions to [5] mtCO₂e per household or less, equivalent to a [90%] reduction compared to 2013 levels.
- (3) By 2026, the Council shall determine an appropriate deadline for achieving 100% zero emissions across both Sector and Consumption-Based inventories.

12.01.040 Climate Action Plan.

A. By [], 2022, the City Manager or designee shall prepare and submit for relevant Council policy committee and Council approval a Climate Action Plan (CAP) which shall

do all of the following:

- (1) Align with the emissions limits established in Section 12.01.030.
 - (2) Consider equitable Post-growth Climate Mitigation strategies and policies.
 - (3) Incorporate an equity framework that addresses historic racial, class-based, and social inequalities; prioritizes social, economic, and environmental benefits derived from implementing the CAP; and ensures an equitable distribution of those benefits. This framework shall consider:
 - (a) The engagement and prioritization of those who are most impacted by climate change and have historically had the least influence in decision-making processes, including low-income communities of color, communities with disabilities, and other impacted populations;
 - (b) Burdens and/or unintended consequences of related actions, especially for low-income communities of color, communities with disabilities, and other vulnerable populations; and
 - (c) Social interventions needed to secure workers' rights and livelihoods when economies are shifting to responsible production and consumption, collectively referred to as a "just transition" framework, and other impacts on workforce and job opportunities.
 - (4) Include, but not be limited to, the following elements: energy supply; transportation and land use; building operations; housing; Responsible Production and Consumption; carbon sequestration and water conservation.
 - (5) Identify strategies and/or make recommendations to achieve emissions limits for all elements. The CAP shall recommend approaches on goals and principles. Each strategy or recommendation shall:
 - (a) Identify parties responsible for implementation;
 - (b) Incorporate an estimated cost; and
 - (c) Incorporate estimated legislative and budgetary timelines based consistent with Section 12.01.030; and
 - (d) Contain key performance indicators and explicit equity metrics to measure progress.
- B. The City Manager or their designee shall update the Climate Action Plan at least every two years.

12.01.050 Monitoring, Evaluation, And Reporting.

- A. The City shall demonstrate its long-term commitment to reducing Greenhouse Gas emissions and advancing racial and social equity by measuring and reporting emissions, tracking key performance indicators and equity metrics, and monitoring the City's progress on meeting its climate action goals and commitments.
- B. The City Manager or their designee shall, with the assistance from relevant City agencies:
- (1) Measure and monitor Sector-Based Greenhouse Gas Emissions, including municipal emissions, using best available global protocols for preparing Citywide Greenhouse Gas emission inventories.
 - (2) Measure production and consumption emissions using best available global methodologies for preparing consumption-based emission inventories.
 - (3) Evaluate Sector-Based Greenhouse Gas Emissions against set limits, document production and consumption emissions, and produce an annual Greenhouse Gas emissions report.
 - (4) Establish a monitoring and reporting process for the implementation of the CAP that:
 - (a) Tracks key performance indicators and equity metrics for strategies to help

monitor their progress and implementation;

(5) Request and receive data from City departments to support:

(a) The annual Greenhouse Gas emissions inventory. City departments may be asked to provide data on, but not limited to, the following: their energy use; types of fuels used for their operations; fuel volume; vehicle-miles travelled (if applicable) within their jurisdictions; and private sector Greenhouse Gas emission sources regulated by the department. Departments may also be requested to verify emission estimates and assumptions and review resulting reports;

(b) Monitoring and reporting of Climate Action Plan implementation. City departments may be asked to provide data on key performance indicators and equity metrics related to adopted strategies and actions; and

(6) Coordinate with other City agencies to monitor, track, and report on climate action progress to local, state, national, and global partners.

(7) Report its findings in a progress report to the Council and public every year.

(8) Report on at least a biannual basis to relevant Council policy committees and commissions to support policy and budget development consistent with reduction limits established in Section 12.01.030.

12.01.060 Regional Collaboration.

The Council and City staff, working alongside the public, shall endeavor to build solidarity and coalitions with neighboring communities, jurisdictions, and agencies to achieve equitable collective Greenhouse Gas limits and observe planetary boundaries.

11.63.070 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.

12.01.080 Construction.

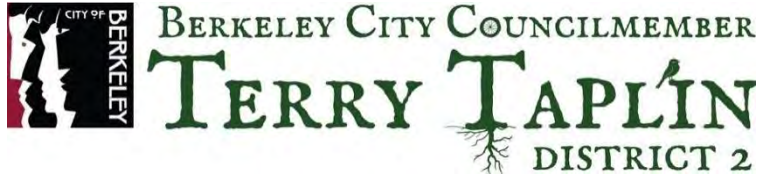
This Chapter is intended to be a proper exercise of the City's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

12.01.090 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.



CONSENT CALENDAR

xx/xx/2021

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 **and the Parks Commission** the development of an ordinance amending the Berkeley Municipal Code to require that:

1. 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.
2. **Plants friendly to pollinators be given preference for use in all City landscaping projects.**

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 be 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

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

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

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

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 filtering toxic materials before they reach the waterfront. Native plants also provide critical food and habitat for local birds and pollinators.⁴ While the use of native plants would already be helpful for supporting pollinators, special consideration should also be given to the most pollinator-friendly plants. Supporting pollinators has shown to result in stronger local biodiversity.⁵ 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.⁶

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.⁷ 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, drought resistant, and pollinator-friendly 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.⁸

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.⁹

CONTACT

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

ATTACHMENTS

1. Resolution
2. Westchester County Ordinance
3. Easy to Grow East Bay Native Plant List
4. California Pollinator Plants

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

⁵ https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/plantsanimals/pollinate/?cid=NRCS143_022326

⁶ <https://perma.cc/FK54-B7L7>

⁷ <https://law.pace.edu/sites/default/files/Team%20%233%20Brief.pdf>

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

⁹ <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

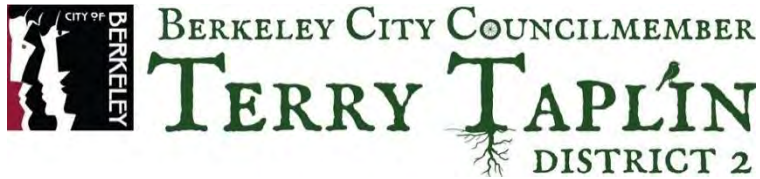
WHEREAS, native plants provide critical food and habitat for native animals and pollinators that are at risk under future climate conditions, and

WHEREAS, pollinator-friendly plants provide a natural boost to local biodiversity, 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 and the Parks Commission 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. The selection process for native and drought resistant plants in City landscaping projects give preference to pollinator plants.
3. Contracts with the City of Berkeley involving landscaping and/or plantings shall, when appropriate, require the use of native and drought resistant plant materials.



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 25

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

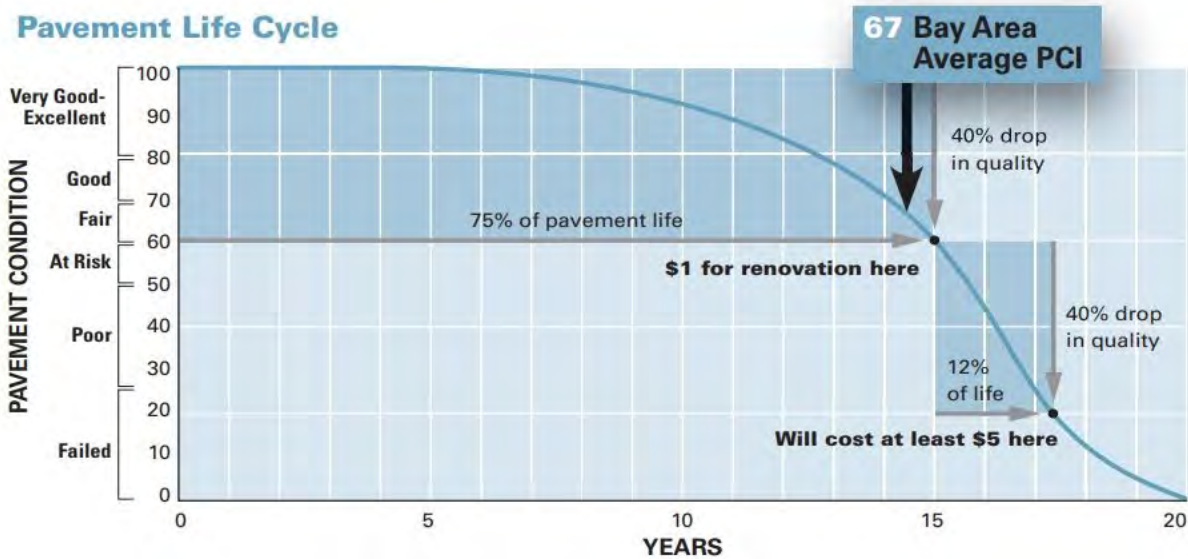
A Metropolitan Transportation Commission report warns that Berkeley's overall paving condition is "At Risk," meaning on the cusp of falling into "Failing" category.¹ The current five-year paving plan is the result of historic deferred maintenance and an underfunded, imperfect and complex balance between 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.



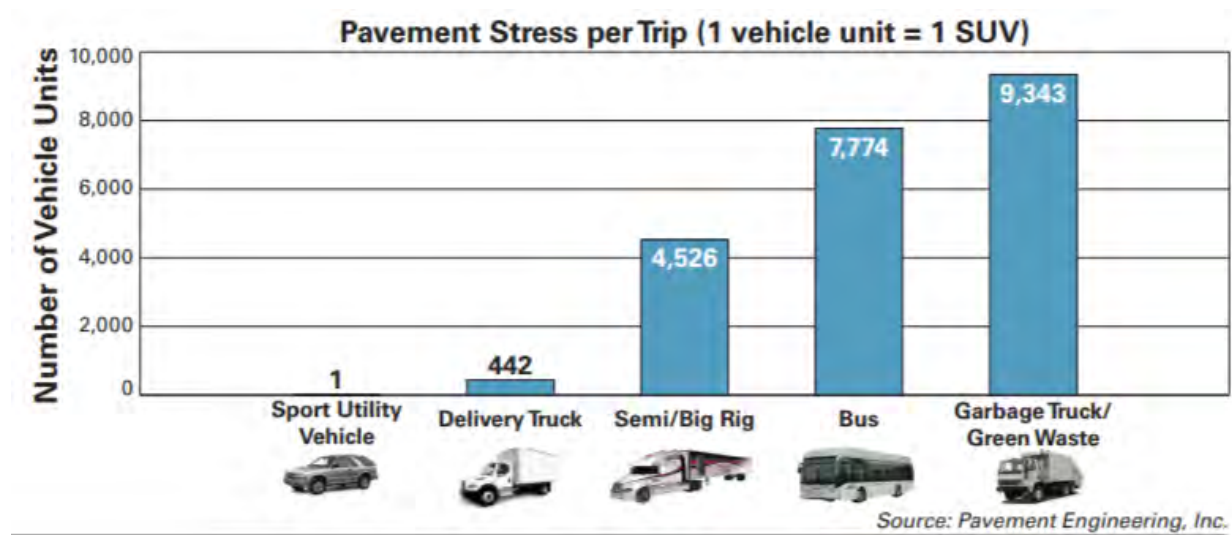
Since January 2020, the Facilities, Infrastructure, Transportation, Environment, & Sustainability (FITES) Committee has been working with the Public Works Department and Public Works Commission to explore funding opportunities to enhance the Paving Condition Index (PCI) of Berkeley’s streets. In addition, 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

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.
- ~~I.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.
- ~~J.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's~~Covered 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.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

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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.