

COMPARISON OF STATE & COUNTY LAW TO PROPOSED BERKELEY ORDINANCE



Law: Public Resources Code Sections 42281 et seq., Senate Bill 270, Proposition 67,

Applicability:



Retail/grocery stores with annual sales > \$2 million that sell some perishable items



Large retail stores with a pharmacy > 10,000 sq. ft. of retail space



Convenience stores, food marts, or liquor stores that sell e.g. milk, bread, soda, & snack foods, and that have a Type 20 or Type 21 alcohol license

Regulation:



Bans flimsy plastic film carryout bags: **×**



Thicker film and other "reusable" carryout bags: **\$0.10 min**



Paper carryout bags: **\$0.10 min + 20-40% Recycled Material**



at home • at work • at school

Law: Alameda County Waste Management Authority Ord. 2016-2

Applicability:



Restaurant, take-out food & food-trucks



All other stores w/ enclosed structure selling goods e.g., clothing, food & personal items

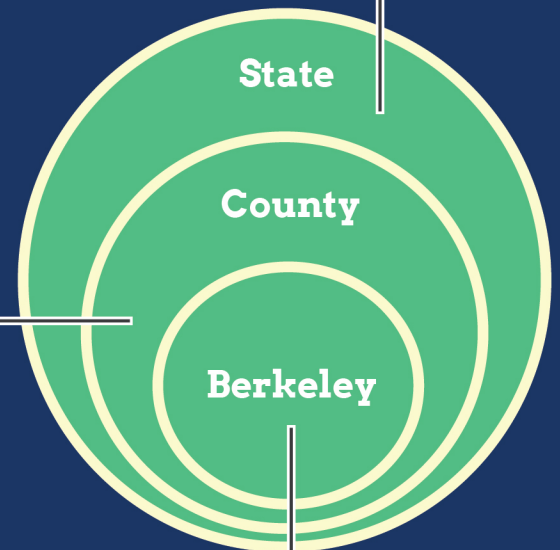
Regulation:



Thicker film and other "reusable" carryout bags: **\$0.10 min**



Paper carryout bags: **\$0.10 min + 40% Recycled Material**



Law: Proposed Ordinance BMC 11.62

Applicability:



Restaurant, take-out food and food-truck establishments



All other stores selling goods e.g., clothing, food & personal items



Events requiring a street permit



City of Berkeley sponsored events

Regulation:



Bans thicker film bags: **×**



Paper carryout bags: **\$0.10 min &**



Pre-checkout bags (e.g. produce) **Starting in 2023: 100% Recycled Paper**



Bans compostable plastic

Reusable non-film Bags

What is unique about our ordinance in comparison to state and county law?

Pre-Checkout Bags:

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

Carryout bags:

- Bans thicker plastic film carryout bags for:
 - restaurants, take-out food stores, and food trucks.
 - permitted events and city-sponsored events
 - any other commercial establishment not regulated by the state¹
- Defines reusable carryout bags as non-plastic film across:
 - restaurants, take-out food stores, and food trucks.
 - permitted events and city-sponsored events
 - any other commercial establishment not regulated by the state
- Charges \$0.10 for paper bags at:
 - restaurants, take-out food stores, and food trucks.
- *Second phase 2023*: requires any paper carryout bag provided by the following be 100% recycled material:
 - restaurants, take-out food stores, and food trucks.
 - permitted events and city-sponsored events
 - any other commercial establishment not regulated by the state

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

7/21 FITES COMMITTEE

COUNCILMEMBER HARRISON

Proposed Berkeley Ordinance

Regulating Carryout &
Pre-checkout Bags





https://www.youtube.com/watch?v=KgfOEMloO_g



<https://aequoreusvita.weebly.com/effects-of-plastic-bags-to-marine-wildlife.html>



<https://www.marineconservation.org.au/actions/ban-heavyweight-plastic-bags/>



https://timothyburgess.typepad.com/tim_burgess_city_view/_plastic-bags/

Thicker plastic bags *impact* marine life

Goal: continue to eliminate unnecessary plastic

7/21 FITES COMMITTEE

COUNCILMEMBER HARRISON

Plastic & paper bags needlessly accumulate

Goal: continue to adopt policies that encourage *reductions and reuse*



Our landfill in Livermore, CA

<http://www.mettatechnologies.com/BULL.html>



<https://www.gettyimages.com/detail/news-photo/wind-turbines-stand-in-the-background-of-a-bulldozer-as-it-news-photo/94861357>

7/21 FITES COMMITTEE

COUNCILMEMBER HARRISON

Gaps in County & State law

Goal: close loopholes

COMPARISON OF STATE & COUNTY LAW TO PROPOSED BERKELEY ORDINANCE



Law: Public Resources Code Sections 42281 et seq., Senate Bill 270, Proposition 67,

Applicability:

- Retail/grocery stores with annual sales > \$2 million that sell some perishable items
- Large retail stores with a pharmacy > 10,000 sq. ft. of retail space
- Convenience stores, food marts, or liquor stores that sell e.g. milk, bread, soda, & snack foods, and that have a Type 20 or Type 21 alcohol license

Regulation:

- Bans flimsy plastic film carryout bags: **×**
- Thicker film and other "reusable" carryout bags: **\$0.10 min**
- Paper carryout bags: **\$0.10 min + 20-40% Recycled Material**



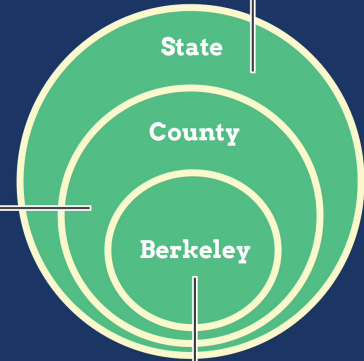
Law: Alameda County Waste Management Authority Ord. 2016-2

Applicability:

- Restaurant, take-out food & food-trucks
- All other stores w/ enclosed structure selling goods e.g., clothing, food & personal items

Regulation:

- Thicker film and other "reusable" carryout bags: **\$0.10 min**
- Paper carryout bags: **\$0.10 min + 40% Recycled Material**



Law: Proposed Ordinance BMC 11.62

Applicability:

- Restaurant, take-out food and food-truck establishments
- All other stores selling goods e.g., clothing, food & personal items
- Events requiring a street permit
- City of Berkeley sponsored events

Regulation:

- Bans thicker film bags: **×**
 - Paper carryout bags
 - Pre-checkout bags (e.g. produce)
 - Bans compostable plastic
 - Reusable non-film Bags
- \$0.10 min & Starting in 2023: 100% Recycled Paper**

Pre-Checkout Bags:

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

Carryout bags:

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

What's Unique?

Ordinance Overview

100% Recycled / Postconsumer bags

Duro and other brands provide lines of such bags

Phase in requirement by 2023?



<https://www.webstaurantstore.com/duro-brown-printed-100-recycled-shopping-bag-with-handles-12-x-7-x-17-bundle/433B12717REC.html>



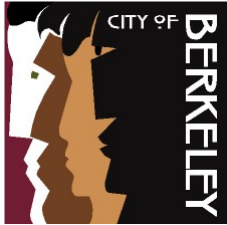
<https://www.webstaurantstore.com/duro-20-lb-shorty-brown-paper-bag-bundle/433B20SHBG.html>



7/21 FITES
COUNCILMEMBER HARRISON

Thank You





Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL

Meeting Date: July 21, 2021

Item Number: 1

Item Description: Proposed Ordinance Regulating Carryout and Pre-checkout Bags

Submitted by: Councilmember Harrison

Overview of the substantive/major changes:

- Expanded the definition of "Covered Entity" to include "any other commercial establishment..." that is not regulated by the state.
- Removed meat from the definition of "Pre-Checkout Bag."
- Excepted film and other bags used to encapsulate liquid/semi-liquid soup containers from definition of product bags.
- Removed price regulation for Reusable Carryout Bags (thus reverting to the county's price).
- Provided an exception to the Pre-checkout restrictions so that Covered Entities and Grocery Stores can provide plastic film bags for meats and seafood upon request only.
- Added ten cent charge for all Pre-checkout bags
- Added section preventing regulated entities (at state, county and city levels) to unreasonably deny customers from bringing their own containers and bags.
- Requires entities providing carryout or pre-checkout bags regulated under the Berkeley ordinance to provide them for free to customers in the WIC, Calfresh or SFP. This is adapted/inspired from the state and county ordinances.
- Overhauled the exemption section to track the Disposable Foodware Ordinance waiver process.

ORDINANCE NO. –N.S.

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

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

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

Chapter 11.63

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

Sections:

11.63.010 Findings and purpose.

11.63.020 Definitions.

11.63.030 Carryout Bag restrictions for Covered Entities.

11.63.040 Pre-checkout Bag restrictions for Grocery Stores and Covered Entities.

11.63.050 Unreasonable denial of customer bags or containers.

11.63.060 General exemptions.

11.63.070 Waivers—applicability and process to obtain.

11.63.080 City of Berkeley—purchases prohibited.

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

11.63.100 Liability and enforcement.

11.63.110 Severability.

11.63.120 Construction.

11.63.130 Effective date.

11.63.010 Findings and purpose.

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

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

11.63.020 Definitions.

- A. "Carryout Bag" means a bag provided at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of a Covered Entity. Carryout Bags do not include Pre-checkout or Product Bags.
- B. "Covered Entity" means any of the following:
 - (1) any restaurant, take-out food establishment or other business (including, but not limited to, food sales from vehicles or temporary facilities open to the public) that

receives 90% or more of its revenue from the sale of prepared and ready-to-consume foods and/or drinks to the public and is not subject to the requirements of Public Resources Code Section 42281; and

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

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

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

D. "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;

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

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

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

(2) has a minimum volume of 15 liters;

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

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

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

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

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

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

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

11.63.030 Carryout Bag restrictions for Covered Entities.

- A. No Covered Entity shall provide or sell a Carryout Bag other than 100% Recycled Content Paper Bags or Reusable Carryout Bags at the check stand, cash register, point of sale or other location to a Customer for the purpose of transporting food or merchandise out of such Covered Entity.
- B. A Covered Entity may provide or make available for sale to a Customer a 100% Recycled Content Paper Bags for a minimum price of ten cents (\$0.10).

11.63.040 Pre-checkout Bag restrictions for Grocery Stores and Covered Entities.

- A. No Grocery Store or Covered Entity shall provide Pre-checkout Bags other than 100% Recycled Content Paper Bags.
 - 1. Exception: Covered Entities and Grocery Stores may provide plastic film bags as Pre-checkout Bags to Customers for the sole purpose of separating meats and seafood only upon the specific request of a Customer. Covered Entities shall not solicit Customers with respect to this exception.
- B. A Grocery Store or Covered Entity may make available for sale to a Customer Pre-checkout Bags for a minimum price of ten cents (\$0.10).

11.63.050 Unreasonable denial of customer bags or containers.

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

11.63.060 General exemptions.

- A. Bags exempt from the Chapter include Product Bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste or yard waste bags.
- B. Nothing in this Chapter prohibits customers from using bags of any type that they bring to the establishment themselves or from carrying away merchandise or materials that are not placed in a bag at point of sale, in lieu of using bags provided by the establishment.
- C. Notwithstanding the requirements of Sections 11.63.30 and 11.63.40, Covered Entities and Grocery Stores, except as subject to the requirements of Public Resources Code Section 42281, providing 100% Recycled Content Paper Bags as Carryout Bags at the point of sale or Pre-Checkout Bags before the point of sale, shall provide such bags at no cost to a Customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code; a Customer participating in CalFresh pursuant to Chapter 1 commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code; and a Customer participating in the Supplemental Food Program pursuant to

Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code.

11.63.070 Waivers—applicability and process to obtain.

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Covered Entities or Grocery Stores to obtain a partial waiver from any requirement of this ordinance upon sufficient evidence by the applicant that the provisions of this Chapter would cause undue hardship. The phrase "undue hardship" may include, but is not limited to situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.
- B. Waivers may be granted by the City Manager or their designees, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or their designees shall act on a waiver application no later than 90 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified term of up to x [x months]. During the waiver term, the Covered Entities or Grocery Store shall make diligent efforts to become compliant. Under extraordinary circumstances, should a Covered Entities or Grocery Store demonstrate that, at the close or expiration of a granted waiver term, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to x (x) months each may be granted. It shall be the Covered Entities or Grocery Store's responsibility to apply for any subsequent waivers in a timely manner.
- E. Notwithstanding the x (x) month maximum term for waivers set forth in Section 11.63.070 (D), in certain limited and unique circumstances existing prior to adoption of this ordinance, where the Covered Entities or Grocery Store demonstrates diligent efforts to comply but, due to insurmountable unique circumstances, may never be reasonably able to comply, the City Manager or their designee may grant a waiver for a longer specified term.

11.63.080 City of Berkeley—purchases prohibited.

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

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

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

11.63.100 Liability and enforcement.

- A. Anyone violating or failing to comply with any requirement of this Chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a

requirement of this Chapter until one year after the effective date of such requirement.

- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.63.060.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

11.63.110 Severability.

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

11.63.120 Construction.

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

11.63.130 Effective date.

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

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

ORDINANCE NO. –N.S.

ADDING CHAPTER 11.~~6263~~ TO THE BERKELEY MUNICIPAL CODE TO REGULATE THE USE OF CARRYOUT AND PRODUCEPRE-CHECKOUT BAGS AND PROMOTING THE USE OF REUSABLE BAGS

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

Section 1. That Chapter 11.~~6263~~ of the Berkeley Municipal Code is added to read as follows:

Chapter 11.~~6263~~

REGULATING THE USE OF CARRYOUT AND PRODUCEPRE-CHECKOUT BAGS AND PROMOTING THE USE OF REUSABLE BAGS

Sections:

11.~~6263~~.010 Findings and purpose.

11.~~6263~~.020 Definitions.

11.~~6263~~.030 Carryout Bag restrictions for Covered Entities.

11.~~6263~~.040 ProducePre-checkout Bag restrictions for Grocery Stores and Covered Entities.

11.~~6263~~.050 Unreasonable denial of customer bags or containers.

11.~~63~~.060 General exemptions.

~~11.62.060 Undue hardship exemption.~~

11.~~6263~~.070 Waivers—applicability and process to obtain.

11.~~63~~.080 City of Berkeley—purchases prohibited.

~~11.62.080~~**11.~~63~~.090 Duties, responsibilities and authority of the City of Berkeley.**

~~11.62.090~~**11.~~63~~.100 Liability and enforcement.**

~~11.62.100~~**11.~~63~~.110 Severability.**

~~11.62.110~~**11.~~63~~.120 Construction.**

~~11.62.120~~**11.~~63~~.130 Effective date.**

11.6263.010 Findings and purpose.

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

- A. Single-use plastic bags and plastic produce bags are a significant contributor to street litter, ocean pollution, marine and other wildlife harm and their production creates greenhouse gas emissions.
- B. The production, consumption and disposal of plastic based bags contribute significantly to the depletion of natural resources. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and present a great harm to the global environment.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain plastic bags can also contain microplastics that present a great harm to our seawater and freshwater life, which indirectly presents a threat to human life.
- D. It is in the interest of the health, safety and welfare of all who live, work and do business in the City that the amount of litter on public streets, parks and in other public places be reduced.
- E. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of plastic bag waste furthers this goal.
- F. The State of California and Alameda County Waste Management Authority both regulate single-use, paper, and reusable carryout bags respectively under SB 270/Proposition 67 and Ordinance 2012-02 (as amended by Ordinance 2016-02). However, neither currently address problems related to all establishments or pre-checkout (e.g., produce) bags to carry fruits, vegetables, and other loose or bulky items while shopping before reaching the checkout area. These bags, which are often plastic, share many of the same physical qualities as single-use plastic carryout bags no longer permitted in California, and are difficult to recycle, reuse or compost.
- G. ~~SB-270~~The State also does not regulate the price of bags provided at the point of sale by restaurants and streets events, including farmers' markets. While the County's Ordinance 2016-02 regulates restaurant carryout bags, it ~~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; allows thicker film plastic.~~
- H. The City of Berkeley currently regulates a number of disposable plastic items through the Single-Use Foodware and Litter Reduction Ordinance (Ord. 7639-NS § 1 (part), 2019), but does not ~~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 11.63.020 Definitions.

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

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

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

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

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

D. "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;

E. "100% Recycled Content Paper Bag" means either a Carryout Bag provided by a covered Entity or a Produce Pre-checkout 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;.

F. "Reusable Carryout 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 by hand or machine, or is made from a material that can otherwise be cleaned or disinfected;

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

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

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

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

Produce H. "Pre-checkout Bag" means a ~~bag~~ 100% Recycled Content Paper 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.~~

I. "Product ~~Bag~~Bags" are bags that are integral to the packaging of ~~the~~a product; ~~a bag provided such as film or other bags used to the Customer~~fully encapsulate liquid or semi-liquid takeout food items (e.g., soup containers) to hold ~~prescription medication dispensed from a pharmacy; or a bag without handles that is~~prevent spillage; or bags designed to be placed over articles of clothing on a hanger at dry cleaning or laundry facility.

11.62.30 11.63.030 Carryout Bag restrictions for Covered Entities.

A. No Covered Entity shall provide or sell a Carryout Bag other than 100% Recycled Content Paper Bags or Reusable Carryout Bags at the check stand, cash register, point of sale or other location to a Customer for the purpose of transporting food or merchandise out of such ~~establishment or event~~Covered Entity.

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

~~(1) a 100%~~ Recycled Content Paper Bags ~~at no charge;~~

~~B. (2) Reusable Bags~~ for a minimum price of ~~twenty-five~~ten cents (\$0.25)—10).

11.6263.040 ~~Produce~~Pre-checkout Bag restrictions for Grocery Stores and Covered Entities.

A. No Grocery Store or Covered Entity shall provide ~~Produce~~Pre-checkout Bags other than 100% Recycled Content Paper Bags ~~and Reusable.~~

1. Exception: Covered Entities and Grocery Stores may provide plastic film bags as Pre-checkout Bags to Customers for the sole purpose of separating meats and seafood only upon the specific request of a Customer. Covered Entities shall not solicit Customers with respect to this exception.

B. A Grocery Store or Covered Entity may make available for sale to a Customer Pre-checkout Bags: for a minimum price of ten cents (\$0.10).

11.6263.050 Unreasonable denial of customer bags or containers.

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

11.63.060 General exemptions.

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

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

11.62.060 Undue hardship exemption.

C. Notwithstanding the requirements of Sections 11.63.30 and 11.63.40, Covered Entities and Grocery Stores, except as subject to the requirements of Public Resources Code Section 42281, providing 100% Recycled Content Paper Bags as Carryout Bags at the point of sale or Pre-Checkout Bags before the point of sale, shall provide such bags at no cost to a Customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code; a Customer participating in CalFresh pursuant to Chapter 1 commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code; and a Customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code.

11.63.070 Waivers—applicability and process to obtain.

~~A. A.~~ The City Manager, or their designee, may exempt a Covered Entity shall prescribe and adopt rules, regulations and forms for Covered Entities or Grocery StoreStores to obtain a partial waiver from the requirementsany requirement of this Chapter for a period of up to [x months], ordinance 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 situations~~ where compliance with the requirements of this Chapter would deprive a person of a legally protected right.

~~11.62.070~~B. Waivers may be granted by the City Manager or their designees, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.

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

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

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

11.63.080 City of Berkeley—purchases prohibited.

The City of Berkeley and any City-sponsored event shall only provide or ~~make available~~sell to a Customer 100% Recycled Content Paper Bags or Reusable Carry-out

Bags for the purpose of carrying away goods or other materials from the point of sale or event.

11.62.08063.090 Duties, responsibilities and authority of the City of Berkeley.

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

11.62.09063.100 Liability and enforcement.

- A. Anyone violating or failing to comply with any requirement of this Chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this Chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.6263.060.
- 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.

11.62.10063.110 Severability.

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

11.62.11063.120 Construction.

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

11.62.12063.130 Effective date.

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

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134

Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.