

ORDINANCE NO. -N.S.

ADDING CHAPTER 11.37 TO THE BERKELEY MUNICIPAL CODE TO REDUCE SINGLE
USE PLASTIC AND PAPER CHECKOUT BAGS

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

Section 1: That Chapter 11.37 is hereby added to the Berkeley Municipal Code Title 11,
Environmental Health, to read as follows:

Chapter 11.37

BERKELEY BAG REDUCTION ORDINANCE

Sections:

- 11.37.010 Purpose and findings
- 11.37.020 Definitions
- 11.37.030 Ban on plastic checkout bags and fee for other single-use checkout bags
- 11.37.040 Effective date
- 11.37.050 Implementation
- 11.37.060 Enforcement
- 11.37.070 Severability

11.37.010 Purpose and findings.

A. It is the intent of the City of Berkeley, in enacting Chapter 11.37 to eliminate as practical plastic single-use checkout bags, encourage the use of reusable bags by consumers and retailers, and to reduce the consumption of single-use bags in general. Paper versus plastic is not the issue addressed by this ordinance. Rather, it is to urge Berkeley residents and visitors to the City to avoid single-use bags altogether in favor of reusable bags when purchasing goods.

B. Whereas the City has an obligation to protect the environment, the economy and public health, and the City has a 75 % waste reduction goal, which is to be reached by waste reduction, reuse, recycling and composting, the City of Berkeley does find the following:

1. Globally, an estimated 500 billion to 1 trillion petroleum-based plastic bags are used each year, which equals over one million per minute, the production and use of which uses over 12 million barrels of oil. Bay Area residents use 3.8 billion plastic bags per year and discard over one hundred plastic bags per second, according to the California Integrated Waste Management Board. It is estimated that about one million of these bags end up in the Bay each year.

2. The production and disposal of plastic bags causes significant environmental impacts,

including contamination of the environment, the deaths of thousands of marine animals through ingestion and entanglement, widespread litter and debasement of the urban environment, and increased waste disposal costs.

3. Most plastic checkout bags do not biodegrade, but instead persist in the environment for hundreds of years, slowly breaking down through abrasion, tearing, and photo degradation into toxic plastic bits that contaminate soil and water, while entering the food web when animals accidentally ingest these materials. Toxic substances present in plastics are known to cause death or reproductive failure in fish, shellfish and wildlife and in the humans that ingest the fish.

4. Plastic bits absorb dangerous compounds such as dichlorodiphenyldichloroethylene (DDE), Polychlorinated Biphenyl (PCB), and other toxic materials in ocean water. Plastics have been found to concentrate these toxic chemicals at levels of up to one million times the levels found in seawater.

5. The US Marine Mammal Commission estimates that 257 marine species have been reported entangled in or having ingested marine debris. Plastic can constrict the animals' movements or block their digestive system, killing the animals through starvation, exhaustion or infection from deep wounds caused by tightening material.

6. Plastic bags returned to supermarkets may be recycled into plastic lumber; however, a very low percentage of bags are actually returned. Recycling bags into lumber does not reduce the impact of making new plastic checkout bags.

7. Compostable plastic checkout bags, as currently manufactured, do not solve the problems of wildlife damage, litter, or resource use addressed by this ordinance. Compostable checkout bags are designed to remain intact until placed in a professional compost facility, so do not degrade quickly as litter or in a marine environment. Producing compostable bags consumes nearly as much fossil fuel as non-compostable bags. Mixing compostable bags with regular plastic bags prevents recycling or composting either of them. Therefore there is no exemption in this ordinance for compostable checkout bags.

8. Reusable bags are readily available with numerous sources and vendors for these bags. Many grocery and other retail stores throughout the Bay Area and Berkeley already offer reusable bags for sale at a price as low as 25 cents.

9. This ordinance recognizes that there are energy and environmental consequences of using paper bags. While paper bags do not have the end of use impacts of plastic bags, they may use comparable or more energy and resources to manufacture. For this reason, a fee on paper bags is indicated, as an incentive to reduce their use and encourage reusable bags. Paper bags that contain a minimum of 40 percent post consumer recycled content have fewer negative impacts than virgin paper bags.

10. Paper shopping bags with 40% post consumer recycled content are easily available, and such bags are in wide use by Berkeley merchants.

11. The effectiveness of a fee for single-use checkout bags has been demonstrated in Ireland where a fee of 25 cents per bag resulted in a 90 percent reduction in their use, in favor of reusable bags.

12. State law currently prohibits local jurisdictions from placing fees on single-use checkout plastic bags. Therefore several California cities have adopted or are pursuing a ban as the most effective remaining means to eliminate the impacts these plastic bags cause. State law does not prohibit jurisdictions from placing fees on paper bags.

11.37.020 Definitions.

A. For the purposes of this Chapter, the following definitions apply:

1. "Checkout bags" means bags provided by retailers to customers at the point of sale to hold customers' purchases. "Checkout bags" does not include bags used to contain loose items prior to checkout, such as meat, produce and bulk goods, and does not include pre-packaged products.

2. "Plastic bag" or "plastic checkout bag" means a single-use checkout bag of any size that is provided at point of sale to customers by a retail store. Plastic bags include both compostable and non-compostable checkout bags.

3. "Single-use paper bag" means a checkout bag provided by a retail store at the point of sale that is made from paper and is not a reusable bag.

4. "Reusable bag" means any bag with handles that is specifically designed and manufactured for multiple reuse, and is either 1) made of cloth or other washable fabric, or 2) made of durable material, including plastic that is at least 2.25 mils thick.

5. "Retail products store" or "retail store" means any public establishment located within the geographical limits of the City of Berkeley, engaged in the sales of personal consumer or household items to the customers who will use such items, and that provides checkout bags to its customers.

6. "First-phase store" means a retail stores with a square footage equal to or greater than 10,000 square feet or with annual gross sales equal to or greater than \$2,000,000.

7. "Second-phase store" means a retail store with square footage less than 10,000 square feet and with annual sales less than \$2,000,000.

8. "Exempted uses" means those point-of-purchase or delivery sales, which include wet goods necessitating the use of a plastic bag, including to-go food products.

11.37.030 Ban on Plastic bags and fee for single-use checkout bags

A. No retail store shall provide plastic checkout bags to customers at the point of sale,

except as permitted in this Chapter.

B. Single-use paper checkout bags provided to customers shall contain a minimum of 40 percent post consumer recycled paper fiber, and be recyclable in the City of Berkeley's curbside recycling program.

C. Retail stores shall charge a 25-cent fee for each single-use paper checkout bag provided to customers at the point of sale. Council shall review the fee amount every two years from the date of adoption, to judge its effectiveness.

D. The fee imposed pursuant to this section shall not be charged to customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, the State Department of Social Services Food Stamp program, or other government-subsidized purchase programs for low-income residents.

E. Notwithstanding the prohibition in Section 11.37.030 A, single-use plastic carryout bags may be distributed by food providers for the purpose of safeguarding public health during the transportation of prepared take-out intended for consumption off the food providers premises.

F. Retail stores are strongly encouraged to make reusable bags available for sale to customers at a reasonable price.

G. Retail stores shall indicate on the customer transaction receipt the number of paper checkout bags provided, and the total amount of the fee charged.

11.37.040 Effective Date

A. This Ordinance shall become effective six (6) months after final reading by Council.

B. First-phase stores, as defined, shall be subject to this ordinance on the effective date.

C. Second-phase stores, as defined, shall be allowed an additional six-month period to comply with the provisions of this ordinance.

11.37.050 Implementation.

A. Sixty days before this ordinance becomes operative, the City of Berkeley shall mail or deliver a copy of it to every retail products store within the City of Berkeley.

B. The City will distribute to each store a placard designed to inform shoppers of the City's policy for checkout bags.

C. The City of Berkeley Finance Department shall provide a copy of this ordinance to every new store that applies for a business license in the City of Berkeley.

11.37.060 Enforcement.

A. The City Manager or his/her designee has responsibility for enforcement of this Chapter. The City Manager or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, entering the premises of any affected retail store during normal business hours to verify compliance.

B. Violation of this Chapter is a misdemeanor, but may be charged as an infraction.

C. Violations of this Chapter are also subject to administrative citation under Chapter 1.28.

D. Violation of this Chapter is hereby declared to be a public nuisance. In addition to any other remedies or penalties which may be available, any violation described in the preceding paragraph shall be subject to abatement by the City, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by an injunction issued by the Superior Court in a civil action, based upon a showing by the City that said violation exists.

E. Remedies under this Section are cumulative.

11.37.070 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 proscribed 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.