

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 this Chapter to reduce the number of plastic single-use checkout bags used, disposed and discharged into the environment, to encourage the use of reusable bags by consumers and retailers, and to reduce the consumption of single-use bags in general. The issue addressed by this ordinance is not “paper versus plastic”. Rather, the purpose of this Chapter is to encourage 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. Bay Area residents use 3.8 billion plastic bags per year, 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. Volunteers at the 2009 annual Coastal Cleanup collected 3500 bags in 3 hours on the Berkeley Shoreline.

2. The production and disposal of plastic bags causes significant environmental impacts, including contamination of the environment, the deaths 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 plastic bits that contaminate soil and water, while entering the food web when animals accidentally ingest these materials.

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, it is estimated that only 4% of plastic bags are actually recycled. Recycling plastic 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 bags are designed to remain intact until placed in a commercial compost facility, so they do not degrade quickly as litter or in a marine environment. Production of 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. Although 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 the use of reusable bags.

10. Paper bags that contain a minimum of 40% post consumer recycled content have fewer negative impacts than virgin paper bags. Paper shopping bags with 40% post consumer recycled content are easily available, and such bags are already in wide use by many 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.

13. Reducing plastic bag litter will help the City to meet regulatory requirements to reduce trash in storm water runoff by 40% by 2014, and the goal of zero trash discharge by 2020.

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 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 3.0 mils thick.

5. "Merchandise bag" means a checkout bag that is made from paper, has a pinched bottom, and is either totally flat or has a gusset.

6. "Shopping bag" is a single-use paper bag, with fabric or twisted paper handles, and a height of 14 or more inches.

7. "Sack" or "Grocery Sack" means a single-use paper bag, with or without handles, that is made with a flat bottom, and is equivalent to a standard size of 1/8 barrel, or larger, or has a height of 14 or more inches.

8. "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.

9. "First - Phase Store" means a retail store located within the geographical limits of the City of Berkeley that meets either of the following requirements: (1) Is a supermarket with gross annual sales of two million dollars (\$2,000,000) or more and which sells a line of dry grocery, canned goods or non-food items and some perishable items, or (2) Has over 10,000 square feet of retail space that generates sales or use tax, and has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code. For purposes of determining which retail establishments are supermarkets, the City shall use the annual updates of the Progressive Grocer Marketing Guidebook and any computer printouts developed in conjunction with the guidebook.

10. Second-Phase Store means every retail store that is not a First Phase store.

11. "Prepared food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further preparation to be consumed. "Prepared food" does not include any raw uncooked meat product or fruits or vegetables, which are not chopped, squeezed, or mixed.

12. "Take-out food" means prepared food or beverages requiring no further preparation to be consumed, and which are generally purchased in order to be consumed off a restaurant or retail food vendor's premises.

11.37.030 Ban on Plastic bags - fee for Single-use Checkout bags

A. No retail store may 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% post consumer recycled paper fiber, and be recyclable in the City of Berkeley's curbside recycling program.

C. Retail stores shall charge a fee for each single-use paper sack, grocery sack or shopping bag provided to customers at the point of sale. The fee shall be in an amount as set forth in a resolution adopted by the City Council.

D. The City Manager or his/her designee shall review the effectiveness of the fee annually, and shall recommend to the City Council any adjustments to the fee that are necessary to prevent an increase in the use of paper checkout bags of any sort, as a result of the ban on plastic bags. Upon receiving the recommendation, the Council shall adopt the recommendation with or without any adjustments it deems appropriate to prevent an increase in the use of paper checkout bags.

E. The fee imposed pursuant to this section shall not be charged for merchandise bags or paper bags less than 14 inches tall.

F. 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.

G. Notwithstanding the prohibition in Section 11.37.030 A. single-use plastic carryout bags may be distributed by food vendors during the transportation of prepared take-out food intended for consumption off the food vendor's premises.

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

I. 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 Chapter 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 Chapter becomes operative, the City of Berkeley shall mail or deliver a copy of it to every store within the City of Berkeley.

B. The City will distribute to each retail 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 retail 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 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.