

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Erica Major, Assistant Clerk
Land Use and Transportation Committee

DATE: April 22, 2019

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, which is being referred to the Small Business Commission for comment and recommendation.

File No. 190417

Ordinance amending the Environment Code to raise the amount stores must charge for checkout bags from 10 cents to 25 cents per bag; to require that pre-checkout bags provided to customers before they reach the point of sale be recyclable or compostable; and affirming the Planning Department's determination under the California Environmental Quality Act.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

___ **No Comment**
___ **Recommendation Attached**

Chairperson, Small Business Commission

cc: Dominica Donovan

1 [Environment Code - Checkout Bag Charge; Recyclable or Compostable Pre-Checkout Bags]

2
3 **Ordinance amending the Environment Code to raise the amount stores must charge for**
4 **checkout bags from 10 cents to 25 cents per bag; to require that pre-checkout bags**
5 **provided to customers before they reach the point of sale be recyclable or**
6 **compostable; and affirming the Planning Department's determination under the**
7 **California Environmental Quality Act.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. Environmental Findings.

17 The Planning Department has determined that the actions contemplated in this
18 ordinance comply with the California Environmental Quality Act (California Public Resources
19 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
20 Supervisors in File No. ___ and is incorporated herein by reference. The Board affirms this
21 determination.

22 Section 2. Findings.

23 (a) Americans use 100 billion plastic bags a year, which require 12 million barrels of
24 oil to manufacture. The average American family takes home almost 1,500 plastic shopping
25 bags each year. Each bag is used for an average of just 12 minutes. Only 1% of plastic bags

1 are recycled, meaning that the average family recycles only about 15 bags per year, and the
2 rest end up in landfills or littered.

3 (b) Stores often provide customers with plastic pre-checkout bags to package fruits,
4 vegetables, and other loose or bulky items while shopping, before reaching the checkout area.
5 These bags are typically clear in color, made from polyethylene or other plastic film, and are
6 extremely thin. They share many of the same physical qualities as single-use plastic carryout
7 bags no longer permitted in California, and are difficult to recycle or reuse.

8 (c) As recently as 2010, volunteers documented more than 65,000 plastic bags
9 littered along California beaches and rivers during annual coastal clean ups, accounting for
10 7.4% of all items littered, and ranking as the third most commonly collected item behind only
11 cigarette butts and fast food packaging.

12 (d) In 2007, San Francisco was among the first cities in the nation to prohibit stores
13 from providing single-use plastic checkout bags. In 2012, San Francisco added a mandatory
14 10-cent charge for other permitted checkout bag types, including recyclable paper,
15 compostable, and reusable bags.

16 (e) In August 2014, California became the first state in the nation to pass a bill,
17 Senate Bill 270, prohibiting stores from providing single-use plastic carryout bags to
18 customers at the point of sale. It also requires a 10-cent minimum charge for permitted types
19 of carryout bags provided at the point of sale.

20 (f) While SB 270 expressly occupies the field of regulation of reusable grocery,
21 single-use, and recycled paper carryout bags—and defines each type of bag as one provided
22 to a customer at the point of sale—the bill permits a municipality with an ordinance relating to
23 such bags to continue to enforce and implement that ordinance, if it was adopted before
24 September 1, 2014. SB 270 forbids municipalities from adopting amendments to such
25 ordinances that relate to these carryout bags, except to increase the amount a store shall

1 charge to an amount no less than 10 cents per bag. The bill does not address bags provided
2 to customers prior to the point of sale. After a referendum on the bill made it onto the 2016
3 statewide ballot, Californians voted in favor of its implementation by a 52 percent majority.

4 (g) SB 270 requires stores to use money collected from carryout bag charges only
5 for compliance costs, actual costs of providing recycled paper or reusable grocery bags, or
6 costs associated with a store's educational materials or educational campaign encouraging
7 use of reusable grocery bags.

8 (h) In 2016, with 40% of the population of the state of California covered by local
9 single-use plastic bag bans, coastal clean-up data for that year showed plastic grocery bag
10 litter had dropped by 66% and accounted for less than 2% of items littered.

11 (i) Based on a survey conducted by the Department of Environment in 2018, 43%
12 of surveyed retailers in San Francisco offer plastic reusable checkout bags, 51% offer
13 recyclable paper bags, and 6% offer both types.

14 (j) Numerous studies have demonstrated that charging for checkout bags results in
15 demonstrable behavior change, prompting more customers to use a reusable bag or bring
16 their own bag.

17 (k) After the 10-cent checkout bag charge went into effect in San Francisco, stores
18 surveyed by the Department of Environment noticed, on average, over 60% of customers
19 bringing their own bags.

20 (l) In 2002, Ireland increased its checkout bag fee from 15 to 22 cents per bag,
21 leading to an annual bag use decline from almost 350 per person, to 14 per person, by 2012.
22 Plastic bags now account for only 0.14% of litter in Ireland, as compared to 5% in 2002.

23 (m) Santa Cruz reports that its 25-cent checkout bag charge has resulted in
24 significant change among customers, with 90% of customers now bringing their own bags.
25

1 (n) To date, 11 cities and counties in California have mandated a checkout bag
2 charge higher than 10 cents per bag. San Francisco must join these municipalities to both
3 reduce plastics pollution and make strides towards becoming a zero-waste City.

4 (o) At the Global Climate Action Summit in September 2018, Mayor Breed
5 committed San Francisco to new waste reduction targets that will require the City to reduce
6 total waste generation by 15%, and cut waste sent to landfill by 50%, by 2030.

7
8 Section 3. Chapter 17 of the Environment Code is hereby amended by revising
9 Section 1702 to delete the subsection letter preceding each defined term, and also to add and
10 place in correct alphabetical sequence among the existing defined terms three new defined
11 terms, to read as follows:

12 **SEC. 1702. DEFINITIONS.**

13 “Compostable Pre-Checkout Bag” means a Pre-Checkout Bag that (1) is certified by and
14 labeled with the logo of the Biodegradable Product Institute (BPI) or other third party recognized by
15 the Department as meeting ASTM D6400 Standard Specifications for compostability; (2) has a
16 minimum 15-inch mouth width to fit most kitchen compost pails; (3) conforms to at least the minimum
17 State standards for manufacturers of compostable plastic bags (as set forth in Public Resources Code
18 Section 42355 et seq., and as amended), including those in Section 42357.5 regarding bag coloring and
19 labeling; and (4) meets all additional requirements the Department may set forth in a regulation
20 adopted after a public hearing preceded by at least 60 days' notice, based upon environmental benefit,
21 cost, and market availability.

22 * * * *

23 “Pre-Checkout Bag” means a bag provided to a customer before the customer reaches the
24 point of sale, that is designed to protect a purchased item from damaging or contaminating other
25 purchased items in a Checkout Bag, or to contain an unwrapped food item, such as but not limited to

1 loose produce, meat or fish, nuts, grains, candy, and bakery goods. Pre-Checkout Bag does not include
2 bags used to pre-package items outside of San Francisco.

3 * * * *

4 “Recyclable Paper Pre-Checkout Bag” means a paper Pre-Checkout Bag that (1) is 100%
5 recyclable, using the standards for San Francisco's available curbside recycling collection program;
6 (2) contains no old growth fiber; (3) contains a minimum of 40% post-consumer recycled content, but
7 the Department may modify this requirement for recycled content by regulation adopted after a public
8 hearing preceded by at least 60 days' notice, based upon environmental benefit, cost, and market
9 availability; (4) displays the word "Recyclable" in a highly visible manner on the outside of the bag,
10 and is labeled with the name of the manufacturer, the country where manufactured, and the percentage
11 of post-consumer recycled content, all in an easy-to-read size font; (5) is certified by and labeled with
12 the logo of the Biodegradable Product Institute (BPI) or other third party recognized by the
13 Department in meeting ASTM D6400 or ASTM D6868 Standard Specifications for compostability; and
14 (6) meets all other requirements the Department may set forth in a regulation adopted after a public
15 hearing preceded by at least 60 days' notice, based upon environmental benefit, cost, and market
16 availability.

17
18 Section 4. Chapter 17 of the Environment Code is hereby amended further by
19 adding Section 1703.1 and revising Section 1703.5, to read as follows:

20 **SEC. 1703.1. MANDATORY USE OF RECYCLABLE AND COMPOSTABLE PRE-**
21 **CHECKOUT BAGS.**

22 (a) Beginning July 1, 2020, all Stores shall provide only the following as Pre-Checkout
23 Bags to customers:

24 (1) Compostable Pre-Checkout Bags; and/or

25 (2) Recyclable Paper Pre-Checkout Bags.

1 (b) Violation of the requirements set forth in subsection (a) shall subject a Store to penalties
2 set forth in Section 1705.

3
4 **SEC. 1703.5. CHECKOUT BAG CHARGE.**

5 (a) Imposing a Checkout Bag Charge.

6 (1) Beginning ~~October 1, 2012~~July 1, 2020, no Store shall provide a Recyclable
7 Paper Bag or Reusable Bag to a customer at the point of sale, unless the Store
8 charges the customer a Checkout Bag Charge of at least ~~ten cents (\$0.10)~~\$0.25 per bag.

9 (2) Beginning ~~October 1, 2013~~July 1, 2020, no Store, ~~including a Food~~
10 ~~Establishment~~, shall provide a Compostable Plastic Bag to a customer at the point of
11 sale, unless the Store charges the customer a Checkout Bag Charge of at least ~~ten~~
12 ~~cents (\$0.10)~~\$0.25 per bag.

13 * * * *

14
15 Section 5. Effective and Operative Dates.

16 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
17 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
18 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
19 Mayor's veto of the ordinance.

20 (b) Section 4 of the ordinance, consisting of the addition of Section 1703.1 of the
21 Environment Code, and the revision of Section 1703.5 of the Environment Code, shall be
22 operative on July 1, 2020. The remainder of the ordinance shall be operative on its effective
23 date.

1 Section 6. Scope of Ordinance. Except as stated in the introductory language of
2 Section 3 of this ordinance, in enacting this ordinance, the Board of Supervisors intends to
3 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
4 punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that
5 are explicitly shown in this ordinance as additions, deletions, Board amendment additions,
6 and Board amendment deletions in accordance with the "Note" that appears under the official
7 title of the ordinance.

8
9 Section 7. No Conflict with Federal or State Law. Nothing in this ordinance shall be
10 interpreted or applied so as to create any requirement, power, or duty in conflict with any
11 federal or state law.

12
13 Section 8. Severability. If any section, subsection, sentence, clause, phrase, or word of
14 this ordinance, or any application thereof to any person or circumstance, is held to be invalid
15 or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
16 affect the validity of the remaining portions or applications of the ordinance. The Board of
17 Supervisors hereby declares that it would have passed this ordinance and each and every
18 section, subsection, sentence, clause, phrase, and word not declared invalid or
19 unconstitutional without regard to whether any other portion of this ordinance or application
20 thereof would be subsequently declared invalid or unconstitutional.

21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By:


24 NEHA GUPTA
25 Deputy City Attorney

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LEGISLATIVE DIGEST

[Environment Code - Checkout Bag Charge; Recyclable or Compostable Pre-Checkout Bags]

Ordinance amending the Environment Code to raise the amount stores must charge for checkout bags from 10 cents to 25 cents per bag; to require that pre-checkout bags provided to customers before they reach the point of sale be recyclable or compostable; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Since 2007, Chapter 17 of the Environment Code has required stores that provide checkout bags to customers to provide only recyclable paper bags, and/or compostable plastic bags, and/or reusable bags. Since 2012, Chapter 17 has also required stores to charge at least ten cents per recyclable paper or reusable checkout bag, and since 2013, required stores to charge at least ten cents per compostable plastic checkout bag, for bags provided to customers at the point of sale.

California Senate Bill 270, passed in 2014 and enacted by the voters in 2016 after a referendum, prohibits stores statewide from providing a single-use carryout bag to a customer at the point sale free of charge. Stores in California may only offer carryout bags at the point of sale that are reusable, made with recyclable paper, or compostable, and only for a charge not less than ten cents per bag. SB 270 expressly occupies the field of regulation of reusable grocery, single-use, and recycled paper carryout bags that stores provide to customers at the point of sale. It permits municipalities with laws regulating bags provided at the point of sale adopted prior to September 1, 2014 to continue enforcing and implementing such laws—but these municipalities may only amend their laws to increase the minimum amount stores must charge for acceptable carryout bags to an amount no less than ten cents per bag.

SB 270 also requires stores to use money collected from carryout bag charges only for costs associated with complying with the state law, actual costs of providing recycled paper or reusable grocery bags, or costs associated with a store's educational materials or educational campaign encouraging use of reusable grocery bags.

Amendments to Current Law

This ordinance would raise the amount San Francisco requires stores to charge for recyclable paper bags, and/or compostable plastic bags, and/or reusable bags, from a minimum of ten cents per bag to a minimum of 25 cents per bag.

FILE NO. 190417

This ordinance would also require stores that provide pre-checkout bags to customers before they reach the point of sale, that are designed to protect purchased items from one another in a checkout bag, or to contain unwrapped food or other loose items, to provide only compostable pre-checkout bags or recyclable paper pre-checkout bags.

These provisions would become operative on July 1, 2020.

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