

1 [Environment Code - Checkout Bags; Checkout Bag Charge]

2

3 **Ordinance amending the San Francisco Environment Code by: 1) amending**
 4 **Section 1702, to extend the restrictions on checkout bags from supermarkets and**
 5 **chain pharmacies to all retail establishments and food establishments in the City, and**
 6 **clarify terms; 2) adding Section 1703.5, to require stores to add a checkout bag charge**
 7 **of 10 cents, rising to 25 cents, if they provide a customer with a checkout bag;**
 8 **3) amending Section 1704, to provide for outreach and education for stores and**
 9 **customers; 4) setting an operative date of October July 1, 2012; and, 5) 4) making**
 10 **environmental findings.**

11

12 NOTE: Additions are *single-underline italics Times New Roman*;
 13 deletions are *strike-through italics Times New Roman*.
 Board amendment additions are double-underlined;
 Board amendment deletions are ~~strike through normal~~.

14

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

16 Section 1. Environmental Findings. The Planning Department has determined that the
 17 actions contemplated in this ordinance comply with the California Environmental Quality Act
 18 (Cal. Pub. Res. Code §§ 21000 et seq.), and, on November 10, 2011, issued a Categorical
 19 Exemption Determination for the proposed amendments under CEQA Guidelines Classes 7
 20 and 8 (14 Cal. Code Regs. §§ 15307 and 15308). Said determination is on file with the Clerk
 21 of the Board of Supervisors in File No. 101055 and is incorporated herein by reference. In
 22 approving this ordinance, and upon consideration of the whole record, including public
 23 testimony, the Board hereby affirms and adopts the Categorical Exemption Determination.

24

25 / / /

1 Section 2. Findings.

2 1. The City and County of San Francisco has adopted citywide goals of 75 percent
3 landfill diversion by 2010 and zero waste by 2020.

4 2. The broad use of single-use checkout bags and their typical disposal creates an
5 impediment to achievement of San Francisco's landfill diversion goals.

6 3. Plastic checkout bags are difficult to recycle and contaminate material that is
7 processed through San Francisco's recycling and composting programs.

8 4. Single-use checkout bags create significant litter problems in San Francisco's
9 neighborhoods, and also litter parks, community beaches, sewer systems, and the San
10 Francisco Bay.

11 5. The production and disposal of single-use checkout bags has significant
12 environmental impacts, including the contamination of the environment, the depletion of
13 natural resources, use of non-renewable polluting fossil fuels, and the increased clean-up and
14 disposal costs.

15 6. Of all single-use checkout bags, plastic checkout bags have the greatest impacts on
16 litter and marine life.

17 7. Governments in several countries have placed fees on bags, including the Republic
18 of Ireland, which achieved a 90 percent decrease in the use of single-use plastic checkout
19 bags due to the fee.

20 8. Studies document that banning plastic checkout bags and placing a mandatory
21 charge on paper checkout bags will dramatically reduce the use of both types of bags and
22 increase customers' use of reusable bags.

23 9. Reusable bags are readily available with numerous sources and vendors for these
24 bags. Many stores in San Francisco and throughout the Bay Area already offer reusable bags
25 for sale at a price as low as 25 cents.

1 Section 3. The San Francisco Environment Code is hereby amended by amending
2 Sections 1702 and 1704, and adding Section 1703.5, to read as follows:

3 **SEC. 1702. DEFINITIONS.**

4 For the purposes of this Ordinance, the following words shall have the following
5 meanings:

6 (a) "ASTM Standard" means the American Society for Testing and Materials (ASTM)'s
7 ~~International Standard Specification for Compostable Plastics D6400~~ ~~standard D6400 for~~
8 ~~compostable plastic~~, as that standard may be amended from time to time.

9 (b) "Compostable Plastic Bag" means a plastic ~~Checkout Bag~~ ~~bag~~ that ~~(1)~~ conforms to ~~at~~
10 ~~least the minimum standards of~~ California labeling law (Public Resources Code Section 42355 et
11 seq.), ~~and meets which requires meeting the~~ current ASTM D6400 Standard Specifications for
12 compostability; ~~(2) is certified and is~~ labeled as meeting the ASTM Standard by a recognized
13 ~~third-party independent~~ verification entity, such as the Biodegradable Product Institute, ~~and is~~
14 ~~labeled "Compostable" on both sides of the bag either in green color lettering that is at least one inch~~
15 ~~in height, or as otherwise specified, or within a green color band that is at least one inch in height in~~
16 ~~order to be readily and easily identifiable.~~ ; ~~(3) conforms to requirements to ensure that the renewable~~
17 ~~based product content is maximized over time as set forth in Department of the Environment~~
18 ~~regulations;~~ ~~(4) conforms to requirements to ensure that products derived from genetically modified~~
19 ~~feedstocks are phased out over time as set forth in Department of the Environment regulations;~~ ~~and (5)~~
20 ~~displays the phrase "Green Cart Compostable" and the word "Reusable" in a highly visible manner on~~
21 ~~the outside of the bag.~~

22 (c) "Checkout ~~Bag~~ ~~bag~~" means a carryout bag that is provided by a store to a customer
23 ~~at the point of sale.~~ "Checkout Bag" does not include:

24 (1) Bags used by consumers inside stores to: (A) package loose bulk items, such as
25 fruit, vegetables, nuts, grains, candy, cookies, or small hardware items; (B) contain or wrap frozen

1 foods, meat, or fish, whether prepackaged or not; (C) contain or wrap flowers, potted plants, or other
2 items where damage to a good or contamination of other goods placed together in the same
3 bag dampness may be a problem; or (D) contain unwrapped prepared foods or bakery goods; or,

4 (2) Bags provided by pharmacists to contain prescription drugs; or,

5 (3) (2) Newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold in
6 packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags.

7 (d) "Department" means the Department of the Environment.

8 (e) "Director" means the Director of the Department of the Environment.

9 (f) "Food Establishment" means a "food preparation and service establishment" as defined in
10 Health Code Section 451 and permitted under Health Code Section 452. "Highly visible manner"
11 means (1) for compostable plastic bags, displaying both of the following in green lettering contrasting
12 with the bag's background color that is at least two inches high: (i) the phrase "Green Cart
13 Compostable" either on the front and back of the bag together with a solid green band at least one-
14 half inch thick circling the circumference of the bag, or repeatedly, as a band of text or text alternating
15 with solid stripe, circling the circumference of the bag, and (ii) the word "Reusable" displayed on the
16 front and/or back of the bag; and (2) for recyclable paper bags, displaying the words "Reusable" and
17 "Recyclable" on the front and/or back of the bag in blue lettering contrasting with the bag's
18 background color that is at least two inches high, and (3) for both compostable plastic bags and
19 recyclable paper bags, as otherwise required by Department of the Environment regulations.

20 (g) "Person" means an individual, trust, firm, joint stock company, corporation,
21 cooperative, partnership, or association.

22 (h) "Pharmacy" means a retail use where the profession of pharmacy by a pharmacist licensed
23 by the State of California in accordance with the Business and Professions Code is practiced and
24 where prescriptions (and possibly other merchandise) are offered for sale, excluding such retail uses
25 located inside a hospital.

1 ~~(h) (i)~~ "Recyclable" means material that can be sorted, cleansed, and reconstituted
2 using San Francisco's available recycling collection programs for the purpose of using the
3 altered form in the manufacture of a new product. Recycling does not include burning,
4 incinerating, converting, or otherwise thermally destroying solid waste.

5 ~~(i) (j)~~ "Recyclable Paper Bag" means a paper *Checkout Bag bag* that meets all of the
6 following requirements: (1) is 100 % recyclable, using the standards for San Francisco's
7 available curbside recycling collection program; (2) contains no old growth fiber; (3) ~~(2)~~ is
8 ~~made of 100% recycled content, including recyclable overall and~~ contains a minimum of 40%
9 post-consumer recycled content, and the Department may modify the requirements for
10 recycled content by regulation adopted after a public hearing and at least 60 days' notice,
11 based upon environmental benefit, cost, and market availability; and (4) ~~(3)~~ is labeled
12 displays the word ~~words~~ "Reusable" and "Recyclable" on the front and/or back of the bag in blue
13 lettering contrasting with the bag's background color, in lettering that is at least one inch in
14 height in a highly visible manner on the outside of the bag; and, (4) ~~is labeled with~~ the name of
15 the manufacturer, the location (country) where manufactured, and the percentage of
16 post-consumer recycled content in an easy-to-read size font.

17 ~~(j) (k)~~ "Reusable Bag" means a *Checkout Bag bag* with handles that is specifically
18 designed and manufactured for multiple reuse and meets all of the following requirements:

19 (1) Has a minimum lifetime capability of 125 or more uses carrying 22 or more pounds
20 over a distance of at least 175 feet;

21 (2) Is capable of being washed so as to be cleaned and disinfected at least
22 100 times hot water machine-washable;

23 (3) If made of plastic, is at least 2.25 mils thick and contains at least 60 percent
24 recycled content, including a minimum of 30 percent post-consumer recycled content;

1 (4) Meets the standards of the California Toxics in Packaging Prevention Act (Cal.
2 Health & Safety Code §§ 25214.11-25214.26), as amended, or any successor legislation;

3 (5) Meets any standards for minimum recycled content established by
4 regulation adopted by the Department after a public hearing and at least 60 days' notice,
5 based upon environmental benefit and market availability.

6 (6) Garment bags that meet the above criteria shall be considered reusable
7 even if they do not have handles.

8 (5) Is labeled "Reusable" on the front and/or back of the bag in lettering at least
9 one inch in height; and,

10 (6) Has printed on the bag, or on a tag that is permanently affixed to the bag,
11 the name of the manufacturer, the country where the bag was made, and the percentage of
12 post-consumer recycled material used, if any, in the manufacture of the bag.

13 (k) (4) "Store" means the following:

14 (1) Until July 1, 2013, "Store" shall mean a retail establishment located within the
15 geographical limits of the City and County of San Francisco. A "retail establishment" includes
16 any public commercial establishment engaged in the sale of personal consumer or household items to
17 the customers who will use or consume such items. ~~that meets either of the following requirements:~~

18 (2) Beginning July 1, 2013, "Store" shall also include any Food Establishment located
19 within the geographical limits of the City and County of San Francisco.

20 (1) ~~Is a full-line, self-service supermarket with gross annual sales of two million dollars~~
21 ~~(\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some~~
22 ~~perishable items. For purposes of determining which retail establishments are supermarkets, the City~~
23 ~~shall use the annual updates of the Progressive Grocer Marketing Guidebook and any computer~~
24 ~~printouts developed in conjunction with the guidebook; or~~

1 (2) ~~Is a retail pharmacy with at least five locations under the same ownership within the~~
2 ~~geographical limits of San Francisco.~~

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

5 **(a) Imposing a Checkout Bag Charge.**

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

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

12 (3) ~~Beginning July 1, 2014, no Store, including a Food Establishment, shall~~
13 ~~provide a Recyclable Paper Bag, Reusable Bag, or Compostable Plastic Bag to a customer at~~
14 ~~the point of sale, unless the Store charges the customer a Checkout Bag Charge of at least~~
15 ~~twenty-five cents (\$0.25) per bag.~~

16 (3) ~~(4) No Food Establishment shall be required to charge its customers a~~
17 ~~Checkout Bag Charge for a bag provided for a customer's left-over food from sit-down~~
18 ~~restaurant dining.~~

19 (b) **Controller's Report.** ~~After January 2013 2012, and not later than January 2014,~~
20 ~~the Controller shall perform an assessment and review of the economic impacts on~~
21 ~~businesses, both large and small, of the 10 cent Checkout Bag Charge, and attempt to~~
22 ~~forecast how that impact might change when the Charge increases to 25 cents. Based on~~
23 ~~such assessment and review, the Controller shall submit an analysis to the Board of~~
24 ~~Supervisors. The analysis shall be based on criteria deemed relevant by the Controller, but~~

1 should include a survey of whether and how the Checkout Bag Charge specifically has
2 impacted businesses' profits and losses.

3 ~~(c)~~ ~~(b)~~ **Checkout Bag Charge to be Separately Stated on Receipt.** *The amount charged*
4 *pursuant to subsection (a) shall be separately stated on the receipt provided to the customer at the time*
5 *of sale and shall be identified as the Checkout Bag Charge. Any other transaction fee charged by the*
6 *Store in relation to providing a Checkout Bag shall be identified separately from the Checkout Bag*
7 *Charge.*

8 ~~(d)~~ ~~(e)~~ **Exemptions.**

9 *(1) A Store shall not charge the Checkout Bag Charge required under subsection (a)*
10 *where providing a Checkout Bag to a customer as part of a transaction paid for in whole or in*
11 *part through to a customer participating in the Special Supplemental Food Program for Women,*
12 *Infants, and Children (Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division*
13 *106 of the Health and Safety Code), or a customer participating in the State Department of Social*
14 *Services Food Stamp Program.*

15 *(2) A Store shall not charge the Checkout Bag Charge required under*
16 *subsection (a) for a Reusable Bag which meets the requirements of this Chapter and which is*
17 *distributed to a customer without charge during a limited duration promotional event, not to*
18 *exceed 12 seven days per year.*

19 ~~(e)~~ ~~(d)~~ **Waivers.** *Any owner or operator of a Store may petition the Director of the Department*
20 *of the Environment for a full or partial waiver of the requirements of this Section, for a period of up*
21 *to one year, if the owner or operator can (1) demonstrate that application of this Section would*
22 *create undue hardship or practical difficulty for the Store not generally applicable to other*
23 *stores in similar circumstances, or (2) establish that the business as a whole cannot, under the*
24 *terms of this Section, generate a return that is commensurate with returns on investments in*
25

1 other enterprises having corresponding risks and is sufficient to attract capital a fair rate of
2 return on investment under the terms of this Section.

3 (f) (e) **Violations.** Violations of this Section may be punished under the provisions of
4 Section 1705. Collection of the Checkout Bag Charge shall not excuse any violation of any other
5 provisions of this Chapter 17.

6
7 **SEC. 1704. OUTREACH AND IMPLEMENTATION.**

8 The Department's responsibilities for implementing this Chapter include conducting
9 outreach to stores, providing multi-lingual information to educate store employees and
10 customers, and making available lists of vendors who sell Recyclable Paper, Compostable
11 Plastic, or Reusable Bags.

12 The Director, after a public hearing, may adopt and may amend guidelines, rules,
13 regulations and forms to implement this Chapter Ordinance.

14
15 Section 4. Additional Uncodified Provisions.

16 (a) Operative Date. The provisions of this ordinance shall be operative on October
17 July 1, 2012, except as specifically provided otherwise in Section 1703.5(a)(2) and (3).

18 (b) General Welfare. In adopting and implementing this ordinance, the City and
19 County of San Francisco is assuming an undertaking only to promote the general welfare. It is
20 not assuming, nor is it imposing on its officers and employees, an obligation for breach of
21 which it is liable in money damages to any person who claims that such breach proximately
22 caused injury.

23 (c) Conflict with State or Federal Law. This ordinance shall be construed so as not to
24 conflict with applicable federal or State laws, rules or regulations. Nothing in this ordinance
25 shall authorize any City agency or department to impose any duties or obligations in conflict

1 with limitations on municipal authority established by State or federal law at the time such
2 agency or department action is taken.

3 (d) Severability. If any of the provisions of this ordinance or the application thereof to
4 any person or circumstance is held invalid, the remainder of those provisions, including the
5 application of such part or provisions to persons or circumstances other than those to which it
6 is held invalid, shall not be affected thereby and shall continue in full force and effect. To this
7 end, the provisions of this ordinance are severable.

8 (e) Amendments. In enacting this Ordinance, the Board intends to amend only those
9 words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts,
10 diagrams, or any other constituent part of the Environment Code that are explicitly shown in
11 this legislation as additions, deletions, Board amendment additions, and Board amendment
12 deletions in accordance with the "Note" that appears under the official title of the legislation.

13
14 APPROVED AS TO FORM:
15 DENNIS J. HERRERA, City Attorney

16
17 By: _____
18 THOMAS J. OWEN
19 Deputy City Attorney