

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 KRISTEN A. JENSEN, State Bar #130196
WAYNE SNODGRASS, State Bar #148137
3 JAMES M. EMERY, State Bar #153630
Deputy City Attorneys
4 San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
5 San Francisco, California 94102-4682
Telephone: (415) 554-4675
6 Facsimile: (415) 554-4699
E-Mail: wayne.snodgrass@sfgov.org
7

8 Attorneys for Respondents
CITY AND COUNTY OF SAN FRANCISCO, et al.
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12 UNLIMITED JURISDICTION
13

14 SAVE THE PLASTIC BAG COALITION,
an unincorporated association,

15 Petitioner,

16 vs.

17 CITY AND COUNTY OF SAN
FRANCISCO, a political subdivision of the
18 State of California and a municipal
corporation; SAN FRANCISCO PLANNING
19 DEPARTMENT, an agency of the City and
County of San Francisco; SAN FRANCISCO
20 DEPARTMENT OF THE ENVIRONMENT,
an agency of the City and County of San
21 Francisco; and DOES 1-100, inclusive,

22 Respondents.
23
24
25
26
27
28

Case No. CPF-12-511978

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF RESPONDENTS' DEMURRER
TO SECOND CAUSE OF ACTION IN WRIT
PETITION AND COMPLAINT**

Hearing Date: June 28, 2012
Hearing Judge: Hon. Teri Jackson
Time: 1:30 p.m.
Place: Dept. 503

Date Action Filed: February 29, 2012
Trial Date: Not set

Attached Documents: Exs. A-E

1 **REQUEST FOR JUDICIAL NOTICE**

2 Respondents City and County of San Francisco *et al.* hereby request that this Court take
3 judicial notice of the following documents pursuant to Sections 452(a), (b) and (c) and 453 of the
4 California Evidence Code, in connection with respondents' demurrer to the second cause of action in
5 petitioner Save the Plastic Bag Coalition's writ petition and complaint.

6 A. California Legislature Statutes 2006, Chapter 845 (Assembly Bill No. 2449), approved
7 by the Governor on September 30, 2006. Evidence Code §§ 452(b) and (c) respectively authorize
8 judicial notice of legislative enactments issued by or under the authority of any public entity in the
9 United States and of official acts of the legislative department of any state of the United States. A true
10 and correct copy of Statutes 2006, Chapter 845 is attached hereto as Exhibit A.

11 B. City and County of San Francisco Ordinance No. 81-07, enacted by the San Francisco
12 Board of Supervisors and signed by the Mayor in April 2007. Evidence Code § 452(b) authorizes
13 judicial notice of legislative enactments issued by or under the authority of any public entity in the
14 United States. A true and correct copy of Ordinance No. 81-07 is attached hereto as Exhibit B.

15 C. City and County of San Francisco Ordinance No. 33-12, enacted by the San Francisco
16 Board of Supervisors and signed by the Mayor in February 2012. Evidence Code § 452(b) authorizes
17 judicial notice of legislative enactments issued by or under the authority of any public entity in the
18 United States. A true and correct copy of Ordinance No. 33-12 is attached hereto as Exhibit C.

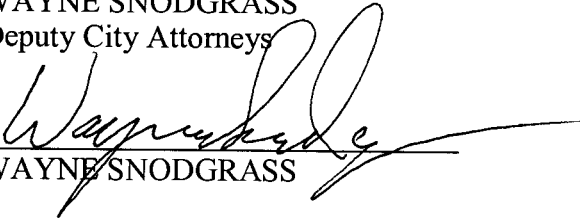
19 D. The Complete Bill History of California Senate Bill 144, which enacted California's
20 Retail Food Code (codified at Health & Safety Code Sections 113700 *et seq.*). SB 144 was adopted by
21 the California Legislature in April 2006 and signed by the Governor in May 2006. Evidence Code
22 § 452(c) authorizes judicial notice of official acts of the legislative department of any state of the
23 United States. A true and correct copy of the SB 144 Bill History, obtained from Westlaw.com, is
24 attached hereto as Exhibit D.

25 E. A letter dated April 26, 2005, with attachment, from California State Senator George
26 Runner to the Members of the California State Senate Health Committee, concerning Senate Bill 144,
27 which was then pending before that Committee. This letter and attachment were obtained from the
28 Legislative Intent Service. This Court may take judicial notice of this document as part of the

1 legislative history of the California Retail Food Code. (*See, e.g., Bernard v. City of Oakland* (2012)
2 202 Cal.App.4th 1553, 1562.) A true and correct copy of the April 26, 2005 and exhibit is attached
3 hereto as Exhibit E.
4
5

6 Dated: June 6, 2012
7

8 DENNIS J. HERRERA
9 City Attorney
10 JAMES M. EMERY
11 WAYNE SNODGRASS
12 Deputy City Attorneys

13
14 By: 
15 WAYNE SNODGRASS

16
17 Attorneys for Respondents
18 CITY AND COUNTY OF SAN FRANCISCO, et al.
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Assembly Bill No. 2449

CHAPTER 845

An act to add and repeal Chapter 5.1 (commencing with Section 42250) to Part 3 of Division 30 of the Public Resources Code, relating to recycling.

[Approved by Governor September 30, 2006. Filed with Secretary of State September 30, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2449, Levine. Recycling: plastic carryout bags.

The California Integrated Waste Management Act of 1989 establishes an integrated waste management program and establishes requirements for the recycling and reuse of various products, including metallic discards, compost, plastic packaging containers, and newsprint. Existing law requires every manufacturer that manufactures specified plastic trash bags to ensure that at least 10% of the weight of the regulated bags, or that at least 30% of the weight of the material used, in all of its plastic products intended for sale in this state is recycled plastic postconsumer material.

This bill would require the operator of a store, as defined, to establish an at-store recycling program that provides an opportunity for a customer of the store to return clean plastic carryout bags to that store. The bill would require a plastic carryout bag provided by a store to have specified information printed or displayed on the bag, and would require the placement of a plastic carryout bag collection bin in each store that is visible and easily accessible to the consumer. The bill would also require the operator of a store to make reusable bags, as defined, available to customers, for purchase.

The bill would require a manufacturer of plastic carryout bags to develop educational materials to encourage the reducing, reusing, and recycling of plastic carryout bags and to make the materials available to stores, as specified.

The bill would declare that certain matters regarding plastic carryout bags are matters of statewide interest and concern. The bill would prohibit a city, county, or other public agency from adopting, implementing, or enforcing an ordinance, resolution, regulation, or rule that requires a store to collect, transport, or recycle plastic carryout bags or conduct additional auditing or reporting, or imposing a plastic carryout bag fee upon a store, except as specified.

The bill would authorize a city, county, or the state to impose civil liability, in specified amounts, and would require any civil penalties collected to be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action.

The bill would authorize any penalties collected by the Attorney General to be expended by the Attorney General, upon appropriation by the Legislature, to enforce the bill's requirements.

The bill's provisions would become operative on July 1, 2007.

The bill's requirements would be repealed on January 1, 2013, unless a later enacted statute deletes or extends that date.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) On a global level, the production of plastic bags has significant environmental impacts each year, including the use of over 12 million barrels of oil, and the deaths of thousands of marine animals through ingestion and entanglement.

(2) Each year, an estimated 500 billion to 1 trillion plastic bags are used worldwide, which is over one million bags per minute, and of which billions of bags end up as litter each year.

(3) Most plastic carryout bags do not biodegrade which means that the bags break down into smaller and smaller toxic bits that contaminate soil and waterways and enter into the food web when animals accidentally ingest those materials.

(b) It is the intent of the Legislature, in enacting Chapter 5.1 (commencing with Section 42250) Part 3 of Division 30 of the Public Resources Code, to encourage the use of reusable bags by consumers and retailers and to reduce the consumption of single-use bags.

SEC. 2. Chapter 5.1 (commencing with Section 42250) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 5.1. AT-STORE RECYCLING PROGRAM

42250. For purposes of this chapter, the following definitions shall apply:

(a) "Manufacturer" means the producer of a plastic carryout bag sold to a store.

(b) "Operator" means a person in control of, or having daily responsibility for, the daily operation of a store, which may include, but is not limited to, the owner of the store.

(c) "Plastic carryout bag" means a plastic carryout bag provided by a store to a customer at the point of sale.

(d) "Reusable bag" means either of the following:

(1) A bag made of cloth or other machine washable fabric that has handles.

(2) A durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse.

(e) "Store" means a retail establishment that provides plastic carryout bags to its customers as a result of the sale of a product and that meets either of the following requirements:

(1) Meet the definition of a "supermarket" as found in Section 14526.5.

(2) Has over 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

42251. (a) The operator of a store shall establish an at-store recycling program pursuant to this chapter that provides an opportunity for a customer of the store to return to the store clean plastic carryout bags.

(b) A retail establishment that does not meet the definition of a store, as specified in Section 42250, and that provides plastic carryout bags to customers at the point of sale may also adopt an at-store recycling program, as specified in this chapter.

42252. An at-store recycling program provided by the operator of a store shall include all of the following:

(a) A plastic carryout bag provided by the store shall have printed or displayed on the bag, in a manner visible to a consumer, the words "PLEASE RETURN TO A PARTICIPATING STORE FOR RECYCLING."

(b) A plastic carryout bag collection bin shall be placed at each store and shall be visible, easily accessible to the consumer, and clearly marked that the collection bin is available for the purpose of collecting and recycling plastic carryout bags.

(c) All plastic bags collected by the store shall be collected, transported, and recycled in a manner that does not conflict with the local jurisdiction's source reduction and recycling element, pursuant to Chapter 2 (commencing with Section 41000) and Chapter 3 (commencing with Section 41300) of Part 2.

(d) The store shall maintain records describing the collection, transport, and recycling of plastic bags collected for a minimum of three years and shall make the records available to the board or the local jurisdiction, upon request, to demonstrate compliance with this chapter.

(e) The operator of the store shall make reusable bags available to customers within the store, which may be purchased and used in lieu of using a plastic carryout bag or paper bag. This subdivision is not applicable to a retail establishment specified pursuant to subdivision (b) of Section 42251.

42253. The manufacturer of a plastic carryout bag shall develop educational materials to encourage the reducing, reusing, and recycling plastic bags and shall make those materials available to stores required to comply with this chapter.

42254. (a) The Legislature finds and declares that all of these are matters of statewide interest and concern:

(1) Requiring a store to collect, transport, or recycle plastic carryout bags.

(2) Imposing a plastic carryout bag fee upon a store.

(3) Requiring a store to conduct auditing or reporting with regard to plastic carryout bags.

(b) Unless expressly authorized by this chapter, a city, county, or other public agency shall not adopt, implement, or enforce an ordinance, resolution, regulation, or rule to do any of the following:

(1) Require a store that is in compliance with this chapter to collect, transport, or recycle plastic carryout bags.

(2) Impose a plastic carryout bag fee upon a store that is in compliance with this chapter.

(3) Require auditing or reporting requirements that are in addition to what is required by subdivision (d) of Section 42252, upon a store that is in compliance with this chapter.

(c) This section does not prohibit the adoption, implementation, or enforcement of any local ordinance, resolution, regulation, or rule governing curbside or drop off recycling programs operated by, or pursuant to a contract with, a city, county, or other public agency, including any action relating to fees for these programs.

(d) This section does not affect any contract, franchise, permit, license, or other arrangement regarding the collection or recycling of solid waste or household hazardous waste.

42255. (a) A city, county, or the state may impose civil liability in the amount of five hundred dollars (\$500) for the first violation of this chapter, one thousand dollars (\$1,000) for the second violation, and two thousand dollars (\$2,000) for the third and subsequent violation.

(b) Any civil penalties collected pursuant to subdivision (a) shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action. The penalties collected pursuant to this section by the Attorney General may be expended by the Attorney General, upon appropriation by the Legislature, to enforce this chapter.

42256. This chapter shall become operative on July 1, 2007.

42257. This chapter shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

EXHIBIT B

FILE NO. 070085

ORDINANCE NO. 81-07

1 [Plastic Bag Reduction Ordinance.]

2
3 Ordinance amending the San Francisco Environment Code by adding Chapter 17,
4 sections 1701 through 1709, to: (1) require the use of compostable plastic, recyclable
5 paper and/or reusable checkout bags by grocery stores located in the City and County
6 of San Francisco, and (2) provide penalties for violations.

7 Note: Additions are single-underline italics Times New Roman;
8 deletions are ~~strikethrough italics Times New Roman~~.
9 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

11 Section 1. Findings.

12 (a) The City and County of San Francisco has a duty to protect the natural
13 environment, the economy, and the health of its citizens.

14 (b) The City and County of San Francisco has adopted citywide goals of 75%
15 landfill diversion by 2010 and zero waste by 2020.

16 (c) The expansive usage of plastic shopping bags and their typical disposal creates
17 an impediment to San Francisco's landfill diversion goals.

18 (d) Plastic shopping bags are difficult to recycle and currently contaminate material
19 that is processed through San Francisco's recycling and composting programs.

20 (e) Plastic shopping bags create significant litter problems in San Francisco's
21 neighborhoods, highlighted by local residents in a series of public meetings held by the
22 Department of the Environment, and also litter community beaches, sewer systems and the
23 San Francisco Bay.

24 (f) Plastic ~~grocery-shopping~~ bags have significant environmental impacts each
25 year, including the felling of over 14 million trees, and use of over 12 million barrels of oil for

1 bags in the U.S., as well as the death of over 100,000 marine animals from plastic
2 entanglement.

3 (g) Governments in several countries have banned or taken action to discourage
4 the use of plastic bags, including the Republic of Ireland, which has achieved a 90% decrease
5 in shopping bag usage.

6 Section 2. The San Francisco Environmental Code is hereby amended by adding
7 Chapter 17, Section 1701 through 1709, to read as follows:

8 **SEC. 1701. SHORT TITLE.**

9 *This Ordinance shall be entitled the "Plastic Bag Reduction Ordinance."*

10 **SEC. 1702. DEFINITIONS.**

11 *For the purposes of this Ordinance, the following words shall have the following meanings:*

12 (a) *"ASTM Standard" means the American Society for Testing and Materials (ASTM)'s*
13 *International standard D6400 for compostable plastic, as that standard may be amended from time to*
14 *time.*

15 (b) *"Compostable Plastic Bag" means a plastic bag that (1) meets the conforms to*
16 *California labeling law (Public Resources Code Section 42355 et seq.), which requires*
17 *meeting the current ASTM-Standard Specifications -Standards- for compostability; (2) contains*
18 *less than 75% petroleum derived content—the percentage to be reviewed annually with the*
19 *target of achieving no products derived from petroleum by 2010 is certified and labeled as*
20 *meeting the ASTM-Standard by a recognized verification entity such as the Biodegradable*
21 *Product Institute; (3) contains no products derived from genetically modified organisms, and*
22 *conforms to requirements to ensure that the renewable based product content is maximized*
23 *over time as set forth in Department of the Environment regulations; (4) conforms to*
24 *requirements to ensure that products derived from genetically modified feedstocks are phased*
25

1 out over time as set forth in Department of the Environment regulations; and (5) displays the
2 word-phrase "Green Cart Compostable" and the word "Reusable" in a highly visible manner on
3 the outside of the bag.

4 (c) "Checkout bag" means a carryout bag that is provided by a grocery store to a customer
5 at the point of sale.

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

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

8 (f) "Grocery Store" means a retail establishment located within the geographical
9 limits of the City and County of San Francisco that meets either of the following requirements:

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

16 ~~(2) has over 5,000 square feet of retail space that generates sales or use tax pursuant~~
17 ~~to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with~~
18 ~~Section 7200) of Division 2 of the Revenue and Taxation Code) is a retail pharmacy with at~~
19 ~~least five locations under the same ownership within the geographical limits of San Francisco~~
20 ~~that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of~~
21 ~~Division 2 of the Business and Professions Code~~

22 (f) "Highly visible manner" means (1) for compostable plastic bags, displaying the word
23 both of the following in green lettering contrasting with the bag's background color that is at
24 least two inches high: (i) the phrase "Green Cart Compostable" either on the front and back
25

1 of the bag together with a solid green band at least one-half inch thick circling the
2 circumference of the bag, or repeatedly, as a band of text or text alternating with solid stripe,
3 circling the circumference of the bag, and (ii) the word "Reusable" displayed on the front and
4 and/or either back of the bag or repeatedly in a band circling the circumference of the bag in
5 green lettering contrasting with the bag's background color that is at least two inches high ;;
6 and (2) for recyclable paper bags, displaying the word-words "Reusable" and "Recyclable" on the
7 front or and/or back of the bag in blue lettering contrasting with the bag's background color that is at
8 least two inches high, and (3) for both compostable plastic bags and recyclable paper bags, as
9 otherwise required by Department of the Environment regulation regulations.

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

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

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

20 (j) "Recyclable Paper Bag" means a paper bag that meets all of the following
21 requirements: (1) contains no old growth fiber, (2) is 100% recyclable overall and contains a minimum
22 of 40% post-consumer recycled content, and (3) displays the words "Reusable" and "Recyclable" in a
23 highly visible manner on the outside of the bag.

1 (k) "Reusable Bag" means a bag with handles that is specifically designed and
2 manufactured for multiple reuse and is either (1) made of cloth or other machine washable fabric,
3 and/or (2) made of durable plastic that is at least 2.25 mils thick.

4 (l) "Grocery Store" means a retail establishment located within the geographical limits
5 of the City and County of San Francisco that meets either of the following requirements:

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

11 (2) has over 5,000 square feet of retail space that generates sales or use tax pursuant
12 to the Bradley Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with
13 Section 7200) of Division 2 of the Revenue and Taxation Code) is a retail pharmacy with at
14 least five locations under the same ownership within the geographical limits of San Francisco
15 that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of
16 Division 2 of the Business and Professions Code

17 **SEC. 1703. MANDATORY USE OF RECYCLABLE AND COMPOSTABLE CHECKOUT BAGS.**

18 (a) All Grocery Stores shall provide only the following as checkout bags to customers:
19 recyclable paper bags, and/or compostable plastic bags, and/or reusable bags.

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

22 (c) Nothing in this section shall be read to preclude Grocery Stores from making reusable
23 bags available for sale to customers.

24 **SEC. 1704. IMPLEMENTATION.**

1 The Director, after a public hearing, may adopt and may amend guidelines, rules, regulations
2 and forms to implement ~~and enforce~~ this Ordinance.

3 **SEC. 1705. ENFORCEMENT AND PENALTIES.**

4 (a) Any person who violates this Ordinance shall be guilty of an infraction. If charged as
5 an infraction, upon conviction thereof, said person shall be punished by (1) a fine not exceeding
6 \$100.00 for a first violation, (2) a fine not exceeding \$200.00 for a second violation within the same
7 year, and (3) a fine not exceeding \$500.00 for each additional violation within the same year.

8 (b) In the event that the City adopts an ordinance creating a procedure for the City
9 Administrator to impose and review ~~imposing and reviewing~~ Administrative Penalties pursuant to
10 California Government Code Section 53069.4, the City may impose Administrative Penalties for
11 violation of this Ordinance as follows: (1) in an amount not exceeding \$100.00 for the first violation,
12 (2) in an amount not exceeding \$200.00 for the second violation in the same year, and (3) in an amount
13 not exceeding \$500.00 for each subsequent violation in the same year.

14 (c) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this
15 Ordinance, including without limitation, civil penalties in an amount not exceeding \$200.00 for the first
16 violation, \$400.00 for the second violation, and \$600.00 for each subsequent violation in any given
17 year.

18 (d) The City may not recover both administrative and civil penalties for the same violation.

19 **SEC. 1706. OPERATIVE DATE.**

20 This ~~All~~ of the requirements set forth in this Ordinance shall become operative as to Stores
21 that are supermarkets six (6) months after its effective date. All of the requirements set forth in
22 this Ordinance shall become operative as to Stores that are pharmacies one (1) year after its
23 effective date.

24 **SEC. 1707. SEVERABILITY.**

1 If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held
2 to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision
3 shall not affect the validity of the remaining portions of the Ordinance. The Board of Supervisors
4 hereby declares that it would have passed this Ordinance and each and every section, subsection,
5 sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any
6 portion of this Ordinance would be subsequently declared invalid or unconstitutional.

7 **SEC. 1708. NO CONFLICT WITH FEDERAL OR STATE LAW.**

8 Nothing in this Ordinance shall be interpreted or applied so as to create any requirement,
9 power or duty in conflict with any federal or state law.

10 **SEC. 1709. UNDERTAKING FOR THE GENERAL WELFARE.**

11 In undertaking the implementation of this Ordinance, the City is assuming an undertaking only
12 to promote the general welfare. It is not assuming, nor is it imposing on its officer and employees, an
13 obligation for breach of which it is liable in money damages to any person who claims that such breach
14 proximately caused injury.

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

17
18 By:


19 Catharine Barnes
Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 070085

Date Passed:

Ordinance amending the San Francisco Environment Code by adding Chapter 17, sections 1701 through 1709, to: (1) require the use of compostable plastic, recyclable paper and/or reusable checkout bags by stores located in the City and County of San Francisco, and (2) provide penalties for violations.

February 13, 2007 Board of Supervisors — SUBSTITUTED

March 27, 2007 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

Noes: 1 - Jew

April 10, 2007 Board of Supervisors — FINALLY PASSED

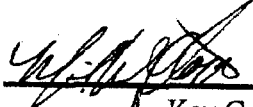
Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

Noes: 1 - Jew

File No. 070085

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on April 10, 2007 by the Board of Supervisors of the City and County of San Francisco.

4/20/07
Date Approved

 FOR
Kay Gulbengay
Interim Clerk of the Board



Mayor Gavin Newsom

EXHIBIT C

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*~~.

14 Board amendment additions are double-underlined;

15 Board amendment deletions are ~~strikethrough normal~~.

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

17 Section 1. Environmental Findings. The Planning Department has determined that the

18 actions contemplated in this ordinance comply with the California Environmental Quality Act

19 (Cal. Pub. Res. Code §§ 21000 et seq.), and, on November 10, 2011, issued a Categorical

20 Exemption Determination for the proposed amendments under CEQA Guidelines Classes 7

21 and 8 (14 Cal. Code Regs. §§ 15307 and 15308). Said determination is on file with the Clerk

22 of the Board of Supervisors in File No. 101055 and is incorporated herein by reference. In

23 approving this ordinance, and upon consideration of the whole record, including public

24 testimony, the Board hereby affirms and adopts the Categorical Exemption Determination.

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) ~~(h)~~ "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) ~~(i)~~ "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) ~~(j)~~ "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
25

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) ~~(c)~~ 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 By: 
17 THOMAS J. OWEN
18 Deputy City Attorney

19
20
21
22
23
24
25



City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 101055

Date Passed: February 14, 2012

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

November 14, 2011 City Operations and Neighborhood Services Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

November 14, 2011 City Operations and Neighborhood Services Committee - RECOMMENDED AS AMENDED

November 22, 2011 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

November 22, 2011 Board of Supervisors - CONTINUED AS AMENDED ON FIRST READING

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

December 06, 2011 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

December 06, 2011 Board of Supervisors - CONTINUED AS AMENDED ON FIRST READING

Ayes: 7 - Chiu, Chu, Cohen, Elsbernd, Farrell, Kim and Wiener
Noes: 4 - Avalos, Campos, Mar and Mirkarimi

February 07, 2012 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 10 - Avalos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener
Excused: 1 - Campos

February 07, 2012 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

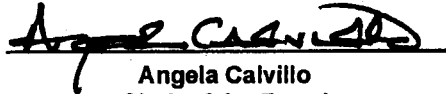
Ayes: 10 - Avalos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener
Excused: 1 - Campos

February 14, 2012 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener

File No. 101055

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 2/14/2012 by the Board of Supervisors of the City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Mayor


Date Approved

EXHIBIT D

SB 144 Senate Bill - History

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 144
AUTHOR : Runner
TOPIC : Retail food.

TYPE OF BILL :

Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY

2006

May 15 Chaptered by Secretary of State. Chapter 23, Statutes of 2006.
May 15 Approved by Governor.
May 1 Enrolled. To Governor at 1:30 p.m.
Apr. 27 Senate concurs in Assembly amendments. (Ayes 38. Noes 0. Page 3671.) To enrollment.
Apr. 3 In Senate. To unfinished business.
Apr. 3 Read third time. Passed. (Ayes 74. Noes 0. Page 4762.) To Senate.
Mar. 30 Read third time. Amended. To third reading.
Mar. 13 Read third time. Amended. To third reading.
Feb. 27 Read third time. Amended. To third reading.
Jan. 24 Read second time. To third reading.
Jan. 23 Read second time. Amended. To second reading.
Jan. 19 From committee: Do pass as amended. (Ayes 18. Noes 0.)
Jan. 19 Set, first hearing. Referred to APPR. suspense file.
Jan. 10 From committee with author's amendments. Read second time. Amended. Re-referred to committee.

2005

Sept. 2 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
Aug. 25 Hearing postponed by committee.
Aug. 17 Hearing postponed by committee.
Aug. 15 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
July 6 From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 14. Noes 0.) Re-referred to Com. on APPR.
June 28 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
June 20 To Com. on HEALTH.
June 2 In Assembly. Read first time. Held at Desk.
June 1 Read third time. Passed. (Ayes 34. Noes 1. Page 1343.) To Assembly.
May 27 From committee: Do pass as amended. (Ayes 13. Noes 0. Page 1292.) Read second time. Amended. To third reading.
May 17 Set for hearing May 26.
May 16 Placed on APPR. suspense file.
May 9 Set for hearing May 16.
Apr. 28 From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 9. Noes 0. Page 845.) Re-referred to Com. on APPR.
Apr. 21 Set for hearing April 27.
Apr. 20 Testimony taken. Hearing postponed by committee.
Apr. 11 Set for hearing April 20.
Apr. 6 Hearing postponed by committee.
Mar. 17 Set for hearing April 13.
Mar. 8 Set, first hearing. Hearing canceled at the request of author.
Feb. 24 Set for hearing March 16.
Feb. 24 To Com. on HEALTH.
Feb. 4 From print. May be acted upon on or after March 6.
Feb. 3 Introduced. Read first time. To Com. on RLS. for assignment. To print.

EXHIBIT E

California State Senate

SACRAMENTO OFFICE
STATE CAPITOL
SACRAMENTO, CA 95814
TEL (916) 445-6637
FAX (916) 445-4662

ANTELOPE VALLEY OFFICE
848 W. LANCASTER BLVD., SUITE 101
LANCASTER, CA 93534
TEL (661) 729-6232
FAX (661) 729-1683

VICTOR VALLEY OFFICE
14343 CIVIC DRIVE, FIRST FLOOR
VICTORVILLE, CA 92392
TEL (760) 843-8414
FAX (760) 843-8348

SANTA CLARITA OFFICE
23920 VALENCIA BLVD., SUITE 250
SANTA CLARITA, CA 91355
TEL (661) 286-1471
TEL (661) 285-1472
FAX (661) 286-2543



SENATOR GEORGE RUNNER
REPUBLICAN CAUCUS CHAIR
SEVENTEENTH SENATE DISTRICT

April 26, 2005

COMMITTEES
HEALTH
VICE CHAIR
ENVIRONMENTAL QUALITY
VICE CHAIR
BUDGET & FISCAL REVIEW
BUDGET SUBCOMMITTEE 3
LABOR AND INDUSTRIAL
RELATIONS
REVENUE AND TAXATION
TRANSPORTATION AND
HOUSING

Senate Health Committee Members
State Capitol
Sacramento, CA 95814

Dear Senators,

Last week I presented Senate Bill 144, which is sponsored by the California Retail Food Coalition, in the Senate Health Committee. There were some concerns expressed by the Health Officers' Association of California (HOAC) as well as consumer groups, and we agreed to meet with the opposition and address their concerns.

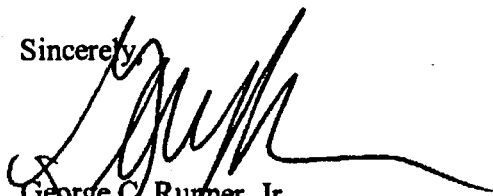
My office held a meeting last Friday where all interested stakeholders were invited to express their concerns. We made significant progress on amendments to address some of the opposition's concerns. HOAC has agreed to continue to work with us and is supportive to keep the legislation moving through the legislative process. Because of this significant progress, we hope the committee will move this legislation forward at the April 27th hearing.

I commit to continuing these meetings and to bringing the legislation back to the Senate Health Committee if the committee so desires.

Senate Bill 144 updates the food safety code and will be known as CalCode. CalCode represents a comprehensive, visionary and important step forward in 1) ensuring the foods and beverages that Californians purchase or consume at retail food establishments are safe, sanitary and wholesome, 2) ensuring that the manner in which California regulates the retail food service industry is appropriately uniform with what other states and the federal government are doing, and 3) providing the optimal efficiency, uniformity and consistency in the enforcement of the state's retail food service safety and sanitation standards.

I have attached a more detailed document outlining current law and the improvements that are made in this legislation.

Sincerely,


George C. Runner, Jr.
Senator, 17th District

LIS - 4a



The California Retail Food Code SB 144 Analysis

I. Introduction

SB 144 represents nearly ten years of work by the California Retail Food Safety Coalition in developing an enhanced food safety law for California that is based on the best available food safety science. The following is intended to serve as an analysis of the benefits in implementing SB 144 as a new body of food safety law for California.

II. What is the problem that is being fixed?

Ensuring safe food is an important public health priority for our nation and California. Each year in the United States, foodborne illness causes an estimated:

- 76,000,000 illnesses,
- 324,000 hospitalizations, and
- 5,000 deaths

The estimated cost of foodborne illness is a staggering \$10 - \$83 billion annually. Many of these illnesses are preventable by adhering to food sanitation and safety standards.

The primary law that regulates the safety of California's retail food service industry, the California Uniform Retail Food Facilities Law (CURFFL), was enacted in 1985 to merge the various overlapping and confusing laws that existed at that time and to provide a body of law that would be applied uniformly throughout all 62 local environmental health jurisdictions in the state. However, in comparison to the best available food safety science found in the United States Food and Drug Administration's (FDA) Model Food Code, CURFFL is lacking critical interventions that scientific studies have shown are more effective in protecting the public's health.

Additionally, CURFFL has become fragmented over time and does not accommodate evolving science and new technologies geared to ensuring a primary public health goal, the safety and security of our food supply.

III. What does current law, the California Uniform Retail Food Facilities Law do?

California took a major step forward in 1985 when it consolidated the various overlapping laws that existed at that time into a comprehensive "California Uniform Retail Food Facilities Law" (CURFFL). CURFFL was enacted to provide a comprehensive, uniformly enforced set of retail food sanitation and safety standards throughout California and enhance the level of protection of the public's health at the retail level. However, since then, food science and innovation in food service methods have evolved. Additionally, CURFFL has become fragmented over time and has become inconsistent in food safety and sanitation standards applied to the food service industry. Further, in 1993, an evaluation of CURFFL found that it was only 54% equivalent to the current available food safety science found in the Model Food Code.



Below is a list of the most noteworthy elements of the CURFFL. The items in the list are not necessarily presented in any order of priority.

General Provisions

- Establishes authority of local environmental health jurisdictions to adopt a food safety inspection program with oversight by the State of California Department of Health Services Food and Drug Branch.
- Establishes uniform food safety and sanitation requirements for local jurisdictions to follow. Provisions are also provided to allow a local jurisdiction to adopt a grading system for food facilities, to prohibit any type of food facility, and to regulate the provision of toilet and hand washing facilities.
- Requires one certified food manager to pass an approved examination for each food facility handling unpackaged potentially hazardous foods with the exception of temporary food facilities and mobile food facilities.
- Grandfathers local jurisdictions that had a food handler-training program in effect since 1998.

Plan Review and Permits

- Requires plans for new and remodeled food facilities to be submitted and approved by the local environmental health jurisdiction prior to operation.
- Requires that a permit be issued for each food facility and has provisions for suspension, revocation and modification of that permit. Permit fees are established by each local jurisdiction.
- Provides provisions for penalties for operating without a permit.

Enforcement and Inspection

- Provides authority for the local jurisdiction to inspect, immediately suspend a permit, conduct hearings, take samples or other evidence, impound food or equipment, and issue reports.
- Provides provisions for misdemeanor penalties for violations.
- Makes the owner, manager, or operator of the food facility responsible for violations.
- Establishes criteria for food facility inspection format, standardization of inspections, and Internet reporting.

Temperature Control

- Establishes standards for temperature control of potentially hazardous foods.
- Establishes provisions for using time as a public health control for potentially hazardous foods.
- Contains exemptions from temperature holding requirements for Korean Rice Cakes and Chinese-style Roast Duck.
- Establishes cooking standards for certain potentially hazardous foods.
- Establishes standards for thawing, reheating and cooling of potentially hazardous foods.

Protection from Contamination/Adulteration

- Requires that food be protected from contamination, obtained from approved food sources and inspected upon receipt.
- Contains provisions for use of a Hazard Analysis Critical Control Point Plan under certain conditions.
- Requires that food facilities be constructed and operated to exclude vermin.
- Excludes live animals, birds or fowl. Exceptions are provided for service animals, dogs under the control of a uniformed law enforcement officer, and aquariums and enclosed aviaries that do not create a public health problem.



- Establishes standards for sanitization of food contact surfaces.
- Prohibits sulfites on potentially hazardous foods.
- Establishes standards for food storage and display.
- Establishes standards for water potability and temperature.

Employee Health and Hygiene

- Establishes requirements for food handler health and hygiene.
- Requires that signs be posted for hand washing, no smoking, review of the last inspection report availability, and if no toilet facilities are available to the public if the facility provides table service.

Sanitation

- Restricts sleeping accommodations and sale or service of foods prepared in a private home.
- Contains sanitary provisions for equipment, utensils, linens, facilities, and proper disposal of waste material.

Facilities and Equipment

- Establishes standards for food service equipment.
- Contains provisions for installation and maintenance of plumbing, employee changing rooms, hand washing sinks, janitorial sinks, utensil washing sinks, and employee and customer toilet facilities.
- Contains provisions for ventilation of cooking equipment, comfort, and toilet rooms.
- Requires enclosure of food establishments with exceptions for produce stands, swap meet prepackaged food stands, dining areas, open-air barbecues and wood burning ovens, beverage bars, The Mercado La Paloma, and certain outdoor displays and beverage dispensing operations.
- Contains provisions for construction of floors, walls and ceilings of food facilities.
- Contains a separate article with separate requirements for open-air barbecue facilities, vending machines, mobile food facilities, mobile food preparation and stationary mobile food preparation units, commissaries, temporary food facilities, nonprofit charitable temporary food facilities, produce stands, certified farmers markets, swap meet prepackaged food stands, satellite food distribution facilities, restricted food service transient occupancy establishments and agricultural home stays, and food facility donations.
- A specific exemption from CURFFL is provided for child day care facilities, community care facilities, and residential care facilities for the elderly.

IV. How does SB 144: The California Retail Food Code change existing law?

A major step in advancing a science-based food safety system in California has been achieved by the active participation of federal, state, and local regulators and the retail food industry. Representatives from each of these groups have come together in a forum known as the California Retail Food Safety Coalition (CRFSC) with a common goal of protecting and improving public health. Using the best available science and elements of the 2001 FDA model Food Code, the CRFSC has drafted a proposal for a new retail food safety law for California known as the California Retail Food Code (CalCode).

The CalCode represents a comprehensive, visionary, and important step forward in:

- Making sure that the foods and beverages purchased or consumed from California retail food establishments are as safe, sanitary, and as wholesome as possible;

LEGISLATIVE INTENT SERVICE (800) 666-1917

- Making sure that the manner in which California regulates the retail food service industry is appropriately uniform vis-à-vis the regulatory programs in other states; and,
- Providing the optimal efficiency, uniformity, and consistency in the enforcement of California's retail food service safety and sanitation standards.

Below is a list of the most noteworthy enhancements found in the CalCode. The items in the list are not necessarily presented in any order of priority.

Documentation

- Introduces the concept of identifying a "person in charge" at a retail food facility and specifies the food safety duties and qualifications of said person.
- Requires operators of temporary food facilities and mobile food facilities to demonstrate knowledge of food safety practices.
- A public health reasons annex will be prepared for the CalCode to provide the public health significance of the sections of the CalCode. The annex will be modeled after the public health reasons annex of the model FDA model Food Code.

Uniformity and Consistency

- Consolidates food safety requirements found in CURFFL articles 9-20 in order to ensure uniformity in interpretation and application of law.
- Clarifies the enforcement actions that local health officials should take relative to temporary food facilities and activities.
- Provides clear, uniform requirements for outdoor food service.
- Requires food labeling that is in conformance with California's Sherman Food, Drug, and Cosmetic Law.
- Contains provisions that will clarify and expand the requirements pertaining to equipment, utensils, and linens used in retail food service operations.

Best Available Science

- Includes requirements applicable to the transportation of food.
- Expands the requirements related to the minimum cooking temperatures applicable to different types of foods.
- Expands the type of food preparation activities that can take place on a "mobile food facility," consistent with good public health principles.
- Expands and clarifies the restrictions and requirements related to utilization of Hazard Analysis Critical Control Plans.

Flexibility

- Contains detailed "variance" provisions, thereby providing for alternate food safety practices that provide equivalent consumer protection.

Other significant provisions within the CalCode include the following (those that are different than CURFFL are highlighted):

General Provisions

- Establishes authority of local environmental health jurisdictions to adopt a food safety inspection program with oversight by the State of California Department of Health Services Food and Drug Branch.
- Establishes uniform food safety and sanitation requirements for local jurisdictions to follow. Provisions are also provided to allow a local jurisdiction to adopt a grading system for food facilities, to prohibit any type of food facility, and to regulate the provision of toilet and hand washing facilities.



- Requires one certified food manager to pass an approved examination for each food facility handling unpackaged potentially hazardous foods.
- Grandfathers local jurisdictions that had a food handler-training program in effect since 1998.

Plan Review and Permits

- Requires plans for new and remodeled food facilities to be submitted and approved by the local environmental health jurisdiction prior to operation.
- Requires that a permit be issued for each food facility and has provisions for suspension, revocation and modification of that permit. Permit fee are established by each local jurisdiction.
- Requires registration of supervised care facilities where food service is provided for less than 15 persons.
- Provides provision for penalties for operating without a permit.

Enforcement and Inspection

- Provides authority for the local jurisdiction to inspect, immediately suspend a permit, conduct hearings, take samples or other evidence, impound food or equipment, and issue reports.
- Provides provisions for misdemeanor penalties for violations.
- Makes the owner, manager, or operator of the food facility responsible for violations.
- Establishes criteria for food facility inspection format, standardization of inspections, and Internet reporting.

Temperature Control

- Establishes standards for thawing and hot and cold holding of potentially hazardous foods.
- Establishes provisions for using time as a public health control for potentially hazardous foods.
- Contains exemptions from temperature holding requirements for Korean Rice Cakes and Chinese-style Roast Duck.
- Establishes and expands cooking standards for certain potentially hazardous foods.
- Establishes standards for reheating and cooling potentially hazardous foods.

Protection from Contamination/Adulteration

- Requires that food be protected from contamination, obtained from approved food sources and inspected upon receipt.
- Establishes food transportation requirements.
- Requires whole uncut produce to be washed in potable water before use.
- Prohibits use of unapproved additives in food.
- Requires use of pasteurized eggs when using raw eggs to make foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, eggnog, ice cream, and egg fortified beverages.
- Contains provisions for use of molluscan shellfish and game animals for food service.
- Contains criteria for use of reduced oxygen packaging.
- Contains provisions for use of a Hazard Analysis Critical Control Point Plan under certain conditions.
- Contains provisions for issuance of a variance for alternate food safety practices that provide equivalent consumer protection.
- Requires that food facilities be constructed and operated to exclude vermin.



- Excludes live animals, birds or fowl. Exceptions are provided for service animals, dogs under the control of a uniformed law enforcement officer, and aquariums and enclosed aviaries that do not create a public health problem.
- Establishes standards for sanitization and alternate methods of sanitization of food contact surfaces.
- Establishes criteria for dry cleaning methods, use of wiping cloths, clean in place equipment, and use of drying agents.
- Prohibits sulfites on potentially hazardous foods.
- Establishes standards for food storage and display.
- Establishes standards for water potability and temperature.
- Establishes uniform standards for outdoor food service for food facilities that conduct limited food preparation.

Employee Health and Hygiene

- Introduces the concept of identifying a "person in charge" at a retail food facility and specifies the food safety duties and qualifications of said person.
- Establishes requirements for food handler health and hygiene.
- Establishes provisions for use of hand sanitizers.
- Requires that signs be posted for hand washing, no smoking, review of the last inspection report availability, and if no toilet facilities are available to the public if the facility provides table service.

Sanitation

- Restricts sleeping accommodations and sale or service of foods prepared in a private home.
- Contains sanitary provisions for equipment, utensils, linens, facilities, and proper disposal of waste material.

Facilities and Equipment

- Contains provisions for preset tableware.
- Establishes standards for food service equipment.
- Contains provisions for installation and maintenance of plumbing, potable water and waste water tanks, employee changing rooms, hand washing sinks, janitorial sinks, utensil washing sinks, molluscan shellfish tanks, food preparation sinks, and employee and customer toilet facilities.
- Contains provisions for ventilation of cooking equipment, comfort, and toilet rooms.
- Requires enclosure of food facilities that conducted extensive food preparation.
- Contains provisions for construction of floors, walls and ceilings of food facilities.
- Establishes uniform requirements for temporary food facilities and mobile food facilities based on type of food preparation and environmental conditions.

