

Drafted by PennEnvironment

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WHEREAS, the [Municipality type] Code and the Pennsylvania Municipalities Planning Code authorizes the [legislative body] of the [Municipality name] (“[legislative body type i.e. Borough Council]”) to make, amend, and adopt ordinances that are consistent with the constitution and laws of the Commonwealth when necessary for the proper management, care and control of the [Municipality type] and the maintenance of peace, good government, health and welfare of the [Municipality name] (“[Municipality type]”) and its citizens;

WHEREAS, Article 1, Section 27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment (the "Amendment"), provides that people have the right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As a Trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

WHEREAS, the Amendment imposes two basic duties on the Commonwealth and its political subdivisions such as the [Municipality type]- one is to prohibit the degradation, diminution, and depletion of the public natural resources and the second is to act affirmatively via legislative action to protect the environment, *Pennsylvania Environmental Defense Foundation v. Commonwealth of Pennsylvania*, 161 A.3d 911 (Pa. 2017); and

WHEREAS, this Ordinance is enacted to achieve the [Municipality type]'s duties under the Amendment by minimizing the degradation, diminution and depletion of the public natural resources and to affirmatively enact legislation designed to protect the environment; and

WHEREAS, for the reasons set forth in more detail below, [legislative body type ie: Borough Council] intends to preserve, maintain, and enhance the health of its residents and visitors, as well as the public natural resources and common property within the [Municipality type], by regulating the distribution of single-use plastic bags, expanded polystyrene food service products, and single-use plastic utensils within the [Municipality name];

WHEREAS, the [legislator type] has met the procedural requirements of 53 P.S. § 10101, et seq., the Pennsylvania Municipalities Planning Code, for the adoption of the proposed ordinance, including holding a public hearing; and

WHEREAS, [legislator type], after due consideration of the proposed ordinance at a duly advertised public hearing, has determined that the health, safety and general welfare of the residents of [Municipality name] will be served by this amendment of the [Municipality name] Ordinance to regulate the distribution of single-use plastic bags, expanded polystyrene food service products, and single-use plastic utensils within the [Municipality];

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the [legislator type] of the [Municipality name], [county name] County, Pennsylvania, it is hereby enacted and ordained by the authority of same, as follows:

CHAPTER [code to be inserted or amended]. PROHIBITION ON USE OF CERTAIN SINGLE-USE PLASTICS PRODUCTS BY RETAIL ESTABLISHMENTS.

§[section number]. Purpose and Findings.

A. Purpose

- a. The purpose of this Chapter is to reduce the use of single-use plastic bags, expanded polystyrene food service products, and single-use plastic utensils by retail establishments within the [Municipality].
- b. To curb litter on the streets, in the parks, and in the trees, protect the local streams, rivers, waterways and other aquatic environments, reduce greenhouse gas emissions, reduce solid waste generation, promote the use of reusable, compostable, and recyclable materials within the [Municipality], and to preserve the natural, scenic, historic, and esthetic values of the [Municipality].
- c. To relieve the pressure for landfills to manage the disposition of single-use products.

B. Findings.

- a. The use of single-use plastic bags, expanded polystyrene food service products, and single-use plastic utensils have severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, ground level ozone formation, atmospheric acidification, water consumption, and solid waste generation.
- b. There are several commercial establishments within the [Municipality] which provide single-use plastic bags, expanded polystyrene food service products, and single-use plastic utensils to their customers.
- c. The majority of such single-use plastic bags, expanded polystyrene food service products, and single-use plastic utensils are made from plastic or other material that does not readily decompose.
- d. Approximately one hundred billion single-use plastic bags are discarded by United States consumers each year. Given the difficulty of recycling these materials, less than 1 percent of single-use plastic bags are returned for recycling in the United State, and in the [Municipality], such bags are not curbside recyclable.
- e. Approximately five hundred million single-use plastic straws are discarded by United States consumers every day. In the [Municipality], such straws are not readily recyclable.
- f. Numerous studies have documented the prevalence of single-use plastic bags, expanded polystyrene food service products, and/or plastic straws littering the environment, blocking storm drains, entering local waterways, and becoming stuck in or upon natural resources and public property.
- g. The taxpayers of the [Municipality] pay the costs related to the cleanup of single-use plastic bags, expanded polystyrene food service products, and single-use plastic utensils from the roadways, trees, sewers, waters, and parks within the [Municipality type].
- h. From an overall environmental and economic perspective, the best alternative to single-use plastic bags is a shift to reusable, compostable, or recyclable paper bags, and the best alternative

to single-use plastic utensils are reusable utensils, recyclable paper utensils, or utensils made from other natural products, if a utensil is required.

i. There are several alternatives to single-use plastic bags, expanded polystyrene food service products, and single-use plastic utensils readily available in and around the [Municipality].

j. An important goal of the [Municipality] is to procure and use sustainable products and services.

k. An important goal of the [Municipality] is to preserve the natural, scenic, historic, and esthetic values of the [Municipality].

l. It is the [Municipality]'s desire to conserve resources, reduce the amount of greenhouse gas emissions, waste, litter, water pollution, and to protect the public health and welfare, including wildlife, all of which increases the quality of life for the [Municipality type]'s residents and visitors.

m. Studies have documented that placing a mandatory charge on single-use plastic bags, banning expanded polystyrene food service products, and not providing single-use plastic utensils will dramatically reduce the use of such items.

n. As required by the Environmental Rights Amendment to the Pennsylvania Constitution, the [Municipality type] seeks to preserve the natural, scenic, historic, and esthetic values of the [Municipality type].

o. It is the [legislative body]'s desire to conserve resources, reduce the amount of greenhouse gas emissions, waste, litter, water pollution, and to protect the public health and welfare, including wildlife, all of which increases the quality of life for the [Municipality type]'s residents and visitors.

§[section number]. Definitions.

(1) "Customer" means any person purchasing goods or services from a Retail Establishment.

(2) "Effective Date" means the effective date of the ordinance that added this Chapter to [insert Municipality name/code].

(3) "Exempted Bag":

(a) means a bag used inside a retail establishment by a customer to deliver perishable items to the point of-sale at that establishment

(b) shall include:

(i) a bag used to package bulk items such as fruit, vegetables, nuts, grains, or candy;

(ii) a bag used to contain or wrap meats or fish; to contain unwrapped prepared foods or bakery goods;

(iii) a bag used solely to contain live animals, such as fish or insects sold in a pet store;

(iv) a bag sold in packaging containing multiple bags and packaged at the time of manufacture of the bag.

(4) "Expanded Polystyrene" means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by a number of techniques, including: fusion of polymer spheres, known as expandable bead 20 polystyrene; injection molding; foam molding; and extrusion-blow molding, also known as extruded foam polystyrene.

(5) "Expanded Polystyrene Food Service Product":

(a) means a product made of expanded polystyrene that is used for selling, providing, or transporting food or beverages

(b) shall include:

- (i) food containers;
- (ii) plates;
- (iii) hot and cold beverage cups;
- (iv) trays; and
- (v) clamshells.

(c) shall not include:

- (i) food or beverages that have been packaged in expanded polystyrene outside the [type of Municipality] before receipt by a food service establishment or store;
- (ii) a product made of expanded polystyrene that is used to package raw, uncooked, or butchered meat, fish, poultry, or seafood; or
- (iii) non-foam polystyrene food service products.

(6) "Plastic" means a synthetic material made from linking monomers through a chemical reaction to create a polymer chain that can be molded or extruded at high heat into various solid forms that retain their defined shapes during their life cycle and after disposal, including material derived from either petrochemicals or a biologically based polymer, such as corn or other plant sources.

(7) "Recycled Paper Bag" means a paper bag that meets the following, but not including an Exempted Bag:

- (a) contains no old growth fiber;
- (b) contains a minimum of 40% post-consumer recycled content; and
- (c) is labeled in a highly visible manner with the name of the manufacturer and the percentage of post-consumer recycled content of the bag in an easy-to-read font size.

(8) "Retail Establishment" means a location where food or other products are offered to the public for direct sale or delivery to a customer, including but not limited to the following: supermarket, convenience store, service station, delicatessen, department store, dollar store, clothing store, restaurant, pharmacy, food truck, farmers' market or delivery service, but not including drycleaners.

(9) "Reusable Bag" means a carryout bag that is designed and manufactured for multiple uses and is:

- (a) made of cloth or other machine-washable fabric that has stitched handles; or
- (b) a polypropylene bag that has stitched handles.

(10) "Single-use Plastic Bag" means a bag made through a blown-film extrusion process, but not including an Exempted Bag.

(11) "Single-Use Plastic Utensil":

- (a) means any item used or provided by a Retail Establishment to serve, consume, or manipulate food or beverages that is primarily made from Plastic.
- (b) includes but is not limited to straws, forks, spoons, sporks, knives, chopsticks, drink stirrers, beverage spill plugs, toothpicks, novelty cocktail accessories, and other drink or food accoutrements.
- (c) shall not include Utensils provided under the following circumstances:

- (i.) When packaged with beverages prepared and packaged outside of the [Municipality type], provided such beverages are not altered, packaged or repackaged within the [Municipality type]; and

(ii.) When provided as an assistance device to reasonably accommodate a disability.

§[*section number*]. Single-use Plastic Bags.

(1) Beginning 90 days after the Effective Date, Retail Establishments are prohibited from providing a Single-use Plastic Bag to a customer at the retail establishment or through a delivery.

§[*section number*]. Single-use Paper Bags.

(1) Beginning 90 days after the Effective Date, Retail Establishments are prohibited from providing a non-Recycled Paper Bag to a customer at the retail establishment or through a delivery.

(2) A retail establishment may provide a consumer a Recycled Paper Bag at the point of sale if the bag is provided to the consumer for a charge of not less than \$0.15 per bag.

(3) All monies collected by a retail establishment under this section for provision of a Recycled Paper Bag shall be retained by the retail establishment.

(4) Any charge for a Recycled Paper Bag shall be separately stated on any receipt provided to the customer at the time of sale and shall be identified as the "Carry-Out Bag Charge" thereon.

§[*section number*]. Reusable Bags.

(1) A retail establishment may provide a consumer a Reusable Bag at the point of sale if the bag is provided to the consumer for a charge of not less than \$0.15 per bag.

(2) All monies collected by a retail establishment under this section for provision of a Reusable Bag shall be retained by the retail establishment.

(3) Any charge for a Reusable Bag shall be separately stated on a receipt provided to the customer at the time of sale and shall be identified as the "Carry-Out Bag Charge" thereon.

§[*section number*]. Signage Requirement.

(1) Beginning 30 days after the effective date, and for six months thereafter, Retail Establishments are required to post at all points of sale conspicuous signage: informing customers that Single-use Plastic Bags and non-Recycled Paper Bags will no longer be provided by the establishment as of the date the prohibition begins; explaining what types of bags and purchases are impacted; and providing any other information the [*Municipality*] may require by regulation.

§[*section number*]. Expanded Polystyrene Food Service Product.

(1) Beginning 90 days after the Effective Date, Retail Establishments are prohibited from providing an Expanded Polystyrene Food Service Product to a customer at the retail establishment or through a delivery.

§[*section number*]. Single-Use Plastic Utensils

(1) Beginning 90 days after the Effective Date, Retail Establishments are prohibited from providing Single-Use Plastic Utensils, except upon request of the Customer.

§[*section number*]. Enforcement.

(1) A person, store, or food service establishment that violates the requirements of this subchapter shall:

(a) be subject to a civil penalty of \$50.00 for a first offense;

(b) be subject to a civil penalty of \$100.00 for a second offense; and

(c) be subject to a civil penalty of \$200.00 for a third or any subsequent offense.

(2) For the purposes of enforcement under this subchapter, an offense shall be each day a person, store, or food service establishment is violating a requirement of this subchapter

(3) In addition to the penalties set forth in this Chapter, the [Municipality] may seek legal, injunctive, or other equitable relief to enforce this Chapter.

(4) The failure of the [Municipality] to enforce any provision of this Ordinance shall not constitute a waiver by the [Municipality] of its rights to future enforcement hereunder.

§[section number]. Effective Date

(1) This ordinance shall take effect [effective date or timeline]