

EASTTOWN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

ORDINANCE NO. 450-22

AN ORDINANCE OF EASTTOWN TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA, TO CREATE A NEW CHAPTER 320, ENTITLED “PLASTIC BAG REGULATIONS,” IN THE EASTTOWN TOWNSHIP CODE (PART II, GENERAL LEGISLATION), TO REGULATE THE DISTRIBUTION AND USE OF SINGLE-USE, PLASTIC CARRY-OUT BAGS; TO ADD FINDINGS, DEFINITIONS, REQUIREMENTS, ENFORCEMENT, PENALTIES, AND EXEMPTIONS REGARDING THE DISTRIBUTION AND USE OF SINGLE-USE, PLASTIC CARRY-OUT BAGS; AND TO PROVIDE FOR OTHER MISCELLANEOUS PROVISIONS.

WHEREAS, under the Second Class Township Code, 53 P.S. § 65607(1), the Board of Supervisors of Easttown Township (the “Board”) is charged with the responsibility to ensure the health, safety, and welfare of its citizens; and

WHEREAS, pursuant to the Second Class Township Code, 53 P.S. § 66506, the Board may adopt such ordinances and other codes not inconsistent with the Pennsylvania Constitution and as may be required from time to time to protect the safety and welfare of the citizens; and

WHEREAS, pursuant to the Second Class Township Code, 53 P.S. § 1529, the Board may by ordinance prohibit nuisances, including the carrying on of any offensive manufacture or business; and

WHEREAS, Section 304 of the Municipal Waste Planning, Recycling and Waste Reduction Act (the “Act”) gives Easttown Township (the “Township”) the “power and . . . duty . . . to assure the proper and adequate transportation, collection and storage of municipal waste which is generated or present within its boundaries, . . . and to adopt and implement programs for the collection and recycling of municipal waste” and authorizes adoption of ordinances concerning recycling of solid waste; and

WHEREAS, the General Assembly, in passing the Act, declared that “[i]mproper municipal waste practices create public health hazards, environmental pollution and economic loss, and cause irreparable harm to the public health, safety and welfare” and that “[w]aste reduction and recycling are preferable to the processing or disposal of municipal waste”; and

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 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 trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people; and

WHEREAS, the Amendment imposes two basic duties on the Commonwealth and its political subdivisions, such as the Township: 1) to prohibit the degradation, diminution, and depletion of the public natural resources; and 2) to act affirmatively via legislative action to protect the environment, *Pennsylvania Envl Defense Found. v. Commonwealth of Pennsylvania*, 161 A.3d 911 (Pa. 2017); and

WHEREAS, Pennsylvania courts have previously relied upon the Amendment in finding that executive actions consistent with the Amendment have sufficient statutory authorization, *Eagle Envtl. II, L.P. v. Commonwealth, Dep't of Envtl. Prot.*, 584 Pa. 494 (2005), and such reasoning is equally applicable to municipal legislation; and

WHEREAS, this Ordinance is enacted to carry out the Township'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, single-use, plastic carry-out bags degrade at a slower rate than recyclable, paper carry-out bags and release toxic materials during degradation that pollute waterways and soil; and

WHEREAS, plastic nano-particles from discarded single-use, plastic carry-out bags and other discarded plastic materials pose a hazard to human and environmental health; and

WHEREAS, single-use, plastic carry-out bags are not recyclable; and

WHEREAS, single-use, plastic carry-out bags have frequently been discarded along roads and onto public and private properties in the Township, creating a public nuisance; and

WHEREAS, for the reasons set forth in more detail below, the Board 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 Township, by prohibiting the distribution of single-use, plastic carry-out bags and promoting and facilitating reusable bag use within the Township; and

WHEREAS, the Board, 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 the Township will be served by this Ordinance that regulates the distribution of single-use, plastic carry-out bags within the Township.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors of Easttown Township, Chester County, Pennsylvania, it is hereby enacted and ordained by the authority of same, as follows:

SECTION 1. The Township of Easttown Code shall be amended by adding a new Chapter 320 “Plastic Bag Regulations” under Part II, General Legislation, as follows:

Chapter 320. Plastic Bag Regulations

§ 320-1. Purpose and Findings.

A. Purpose.

The purpose of this Chapter is to reduce the use of single-use, plastic carry-out bags by commercial establishments within Easttown Township (the “Township”); 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 and solid waste generation; promote the use of reusable, compostable, and recyclable materials within the Township; and preserve the natural, scenic, historic, and esthetic values of the Township.

B. Findings.

- (1) The use of single-use, plastic carry-out bags has severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, water consumption, and solid waste generation.
- (2) There are numerous commercial establishments within the Township, which provide single-use, plastic carry-out bags to their customers.
- (3) Most single-use, plastic carry-out bags are made from plastic or other material that does not readily decompose.
- (4) Approximately one hundred billion single-use, plastic carry-out bags are discarded by United States consumers each year. In the Township, such bags are not readily recyclable.
- (5) Numerous studies have documented the prevalence of single-use, plastic carry-out bags littering the environment, blocking storm drains, entering local waterways, and becoming stuck in or upon natural resources and public property.
- (6) The taxpayers of the Township pay the costs related to the cleanup of single-use, plastic carry-out bags from the roadways, trees, sewers, waters, and parks within the Township.
- (7) From an overall environmental and economic perspective, the best alternative to single-use, plastic carry-out bags is a shift to reusable, compostable, or recyclable paper bags.

(8) There are several alternatives to single-use, plastic carry-out bags readily available in and around the Township.

(9) Single use paper bag manufacturing, transportation, and resource consumption also affects the environment, but such bags are biodegradable and single-stream recyclable, and provide a practical retail establishment alternative consistent with most local and state single-use, plastic regulations and prohibitions. Although preferable to single-use, plastic bags, the overall effects of producing, providing, and allowing single-use paper bags should also be mitigated to reduce waste, litter, and natural resource depletion by encouraging, facilitating, and promoting reusable bag use.

(10) Studies and past experiences have shown that placing a mandatory charge on paper bags will promote and encourage the use of reusable bags, and prohibiting or otherwise regulating the use of single-use, plastic carry-out bags will significantly reduce the use and waste of such items.

(11) As required by the Environmental Rights Amendment to the Pennsylvania Constitution, the Township seeks to preserve the natural, scenic, historic, and aesthetic values of the Township.

(12) The Board of Supervisors (the “Board”) desire to conserve resources; reduce the amount of greenhouse gas emissions, waste, litter, water pollution; and protect the public health and welfare, including wildlife – all of which increase the quality of life for the Township's residents and visitors.

§ 320-2. Definitions.

For the purposes of this Chapter, the following definitions shall apply unless the context clearly requires and unambiguously dictates otherwise:

COMMERCIAL ESTABLISHMENT - any store or retail establishment that sells perishable or nonperishable goods, including, but not limited to, clothing, food, and personal items, directly to the customer, and is located within or doing business within the geographical limits of the Township. Commercial Establishments include: a business establishment that generates a sales or use tax; a drugstore, pharmacy, supermarket, grocery store, farmers market, convenience food store, food mart, or other commercial entity engaged in the retail sale of a limited line of goods that include milk, bread, soda and snack foods; a public eating establishment (*i.e.*, a restaurant, take-out food establishment, or any other business that prepares and sells prepared food to be eaten on or off its premises); and a business establishment that sells clothing, hardware, or any other nonperishable goods.

COMPLIANT BAG - certain paper carry-out bags and reusable bags:

- A. A paper bag that meets all the following minimum requirements:
 - (1) It is considered a recyclable material, based on the Township Code, as the same may be amended from time to time; contains a minimum of 40% Post-Consumer Recycled Material; and displays the words “Recyclable” and/or “Reusable” in a highly visible manner on the outside of the bag; or
 - (2) It can be composted. To qualify as “compostable,” the specifications for the bag shall have been submitted to and been approved by the Township Environmental Advisory Council; or have met an applicable Federal, Commonwealth of Pennsylvania, American Society for Testing and Materials or other generally recognized and acceptable standard for being compostable.

- B. A reusable bag that is a carryout bag designed and manufactured for multiple uses and is:
 - (1) made of cloth or other machine-washable fabric;
 - (2) a polypropylene bag; or
 - (3) other material that is specifically designed and manufactured for multiple reuse.

CUSTOMER - any person purchasing goods or services from a Commercial Establishment.

EXEMPTED BAG - a bag used inside a Commercial Establishment by a Customer to deliver perishable items to the point-of-sale at that establishment. Exempted Bags shall include:

- A. a bag used to package bulk items such as fruit, vegetables, nuts, grains, or candy;
- B. a bag used to contain or wrap meats or fish, or to contain unwrapped prepared foods or bakery goods;
- C. a bag used solely to contain live animals, such as fish or insects sold in a pet store; and/or

- D. a bag sold in packaging containing multiple bags and intended for use as food storage bags, garbage bags, or pet waste bags, and packaged at the time of manufacture of the bag.

OPERATOR - the owner, person in control, or person having responsibility for, the operation of a Commercial Establishment, which may include, but is not limited to, the owner of the Commercial Establishment.

PLASTIC - 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.

POST-CONSUMER RECYCLED MATERIAL - a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. This term does not include materials and by-products generated from and commonly reused within an original manufacturing and fabrication process.

RECYCLABLE - material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of reusing the altered, incinerated, converted, or otherwise thermally destroyed solid waste generated therefrom.

SINGLE-USE, PLASTIC CARRY-OUT BAG - any bag that is made predominantly of plastic that is made through a blown-film extrusion process, which is provided by an Operator of a Commercial Establishment to a Customer at the point-of-sale, but not including an Exempted Bag.

TOWNSHIP - Easttown Township.

§ 320-3. Single-Use, Plastic Carry-Out Bags Prohibited.

Effective January 1, 2023, no Commercial Establishment shall provide to any Customer a Single-Use, Plastic Carry-Out Bag, as defined in Section 320-2 above. This prohibition applies to bags provided for the purpose of carrying goods away from the point-of-sale. This prohibition applies to Single-Use, Plastic Carry-Out Bags used for takeout deliveries from Commercial Establishments within the Township. The point-of-sale in such transactions shall be the Commercial Establishment, regardless of where payment for the transaction physically or electronically occurs.

§ 320-4. Compliant Bags.

- A. Beginning January 1, 2023, Commercial Establishments are prohibited from providing a non-compliant bag to a customer at the Commercial Establishment or through a delivery.
- B. A Commercial Establishment may provide a Customer a Compliant Bag at the point-of-sale if the bag is provided to the Customer for a charge of not less than \$0.15 per bag.
- C. All monies collected by a Commercial Establishment under this Section for provision of a recycled paper bag shall be retained by the Commercial Establishment.
- D. Any charge for a compliant 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.
- E. Customers may use bags of any type, which they bring to the Commercial Establishment themselves, for the purpose of carrying goods or other materials away from the point-of-sale without incurring a fee for a Compliant Bag.

§ 320-5. Signage Requirement.

Beginning January 1, 2023, and for a minimum of six (6) months thereafter, Commercial Establishments shall post at all points-of-sale conspicuous signage informing customers that Single-Use, Plastic Carry-Out 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 Township may require by regulation.

§ 320-6. Exemptions.

The Township may, upon written request of a Commercial Establishment, exempt a Commercial Establishment from the requirements of this Chapter until July 1, 2023 upon a finding by the Board that the requirements of this Chapter would cause undue hardship to the Commercial Establishment. An "undue hardship" shall be found only if the Commercial Establishment demonstrates that it has a unique circumstance or situation such that there are no reasonable alternatives to the use of Single-Use, Plastic Carry-Out Bags.

§ 320-7. Enforcement.

- A. The Township Manager, or his/her designee(s), has the responsibility for enforcement of this Chapter and may promulgate reasonable rules and

regulations to enforce the provisions thereof, including, but not limited to, investigating violations and issuing fines.

- B. Any Commercial Establishment that violates or fails to comply with any of the requirements of this Chapter, after an initial written warning notice has been issued for that violation, shall be liable for a violation.
- C. Any Commercial Establishment that receives an initial written warning notice may file a request for an exemption pursuant to the procedure in Section 320-6 above.
- D. If a Commercial Establishment has subsequent violations of this Chapter after the issuance of an initial written warning notice of violation, the Township may issue the following penalties that shall be payable by the Operator of the Commercial Establishment:
 - (1) A fine not exceeding \$100.00 for the first violation;
 - (2) A fine not exceeding \$200.00 for the second violation in the same year dating from the first violation; and
 - (3) A fine not exceeding \$500.00 for the third and each subsequent violation in the same year dating from the first violation.
- E. For the purposes of enforcement under this Section, an offense shall be each occurrence of a person, Customer, Operator, and/or Commercial Establishment violating a requirement of this Ordinance.
- F. In addition to the penalties set forth in this Chapter, the Township may seek legal, injunctive, or other equitable relief to enforce this Chapter.

SECTION 2. Severability. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts hereof. It is hereby declared as the intent of the Board that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

SECTION 3. Repealer. All ordinances or parts of ordinances conflicting with any provisions of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 4. Codification. General Code is hereby authorized to make non-substantive formatting and numbering changes necessary to clarify references to other sections of the Township Ordinances and/or codification and to bring the Ordinance into conformity with the Township Ordinances/Code.

SECTION 5. Effective Date. This Ordinance shall be effective five days following enactment as by law provided, subject to Section 320-3's implementation date of January 1, 2023, as of which date no Commercial Establishment shall provide to any Customer a Single-Use, Plastic Carry-Out Bag, as defined in Section 320-2 above; and further subject to the limited hardship exemption process set forth in Section 320-6 above.

ENACTED AND ORDAINED this 20th day of June, 2022.

ATTEST

TOWNSHIP OF EASTTOWN

Eugene C. Briggs, Jr., Secretary

BY: _____
Beth D'Antonio, Chair

BY: _____
Michael Wacey, Vice Chair

BY: _____
Alex Bosco, Member

BY: _____
Erik Unger, Member

BY: _____
Betsy Fadem, Member

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