

ORDINANCE NO. _____
BOROUGH OF DOYLESTOWN
BUCKS COUNTY, PENNSYLVANIA

**AN ORDINANCE AMENDING CHAPTER 13 OF THE DOYLESTOWN BOROUGH
ORDINANCE, TO ADD A PART 14 REGULATING THE DISTRIBUTION OF SINGLE-
USE PLASTIC BAGS; AND PROVIDING FOR RELATED PURPOSES AND
FINDINGS, DEFINITIONS, REQUIREMENTS, ENFORCEMENT, PENALTIES, AND
EXEMPTIONS**

WHEREAS, the Borough Code authorizes the Borough Council of the Borough of Doylestown ("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 Borough and the maintenance of peace, good government, health, safety and welfare of the Borough of Doylestown ("Borough") 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 Borough: 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 under the Amendment to minimize 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, the 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 Borough, by regulating the distribution of single-use plastic bags within the Borough;

WHEREAS, the Borough Council has met the procedural requirements of 53 P.S. § 1010 1, *et seq.*, the Pennsylvania Municipalities Planning Code, for the adoption of the proposed ordinance, including holding a public hearing; and

WHEREAS, Borough Council, 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 Borough will be served by this amendment of the Doylestown Borough Code to regulate the distribution of single-use plastic bags within the Borough;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of Doylestown, Bucks County, Pennsylvania, it is hereby enacted and ordained by the authority of same, as follows:

I. In Chapter 13, Licenses, Permits, and General Business Regulations **ADD** a new Part 14, Regulation of Single-Use Carry-Out Bags, as follows

PART 14. REGULATION OF SINGLE-USE CARRY OUT BAGS

§ 101 Purpose and Findings

1. Purpose

The purposes of this Ordinance include:

- a. To reduce the use of single-use plastic bags by retail establishments within the Borough.
- b. To curb litter on the streets, in the parks, and in the trees; to protect the local streams, rivers, waterways and other aquatic environments; to reduce solid waste generation; to reduce greenhouse gas emissions; to promote the use of reusable, compostable, and recyclable materials within the Borough; and to preserve the natural, scenic, historic, and esthetic character of the Borough.

2. Findings

- a. Numerous commercial establishments within the Borough provide single-use plastic bags to their customers.
- b. The use of single-use plastic bags has severe environmental impacts, including litter, harm to wildlife, greenhouse gas emissions, ground level ozone formation, atmospheric acidification, water consumption, and solid waste generation.
- c. Single-use plastic bags do not readily decompose. This includes plastic bags made of biologically based polylactic acid (PLA) polymer plastic bags.
- d. Given the difficulty of recycling these materials, such bags are not curbside recyclable and only a small percentage of plastic bags are returned for recycling.
- e. Numerous studies have documented the prevalence of single-use plastic bags littering the environment, blocking storm drains, entering local waterways, and becoming stuck in or upon natural resources and public property nationwide, and single-use plastic bags are often improperly discarded within the Borough.

- f. An important goal of the Borough is to preserve the natural, scenic, historic, and esthetic values of the Borough consistent with the rights preserved in Article I, Section 27 of the Pennsylvania Constitution.
- g. To enhance the quality of life for the Borough's residents and visitors, the Borough seeks to reduce waste, litter, and water pollution; protect public health and welfare; and conserve and protect natural resources including wildlife.
- h. The Borough wishes to encourage the use of sustainable products and services.
- i. The taxpayers of the Borough pay the costs related to the cleanup of single-use plastic bags from the roadways, trees, sewers, waterways, and parks within the Borough.
- j. Recyclers cite single-use plastic bags as a major source of contamination within the recycling stream; these bags damage recycling machines and thus increase costs and decrease efficiency.
- k. There are several alternatives to single-use plastic bags that are readily available to the Borough's businesses and their customers.
- l. From an environmental and economic perspective, the best alternative to single-use plastic bags is shifting to reusable bags followed by compostable or recyclable paper bags.
- m. Studies have documented that placing a prohibition on the distribution of single-use plastic bags at the point of sale encourages the use of reusable bags and reduces plastic litter and the use of single-use bags.

§ 102. Definitions

- 1. For the purposes of this Part, the following definitions shall apply unless the context clearly requires otherwise:
 - a. "Borough" means the Borough of Doylestown.
 - b. "Customer" means any person purchasing goods or services from a Retail Establishment.
 - c. "Retail Establishment" means any person, corporation, partnership, business venture, or vendor that sells or provides food, merchandise, goods, or materials for direct sale or delivery to a customer, whether or not for profit, including, but not limited to: restaurants (eat-in and/or take-out food), food trucks, farmers' markets, bars, pharmacies, convenience and grocery stores, seasonal and temporary businesses or markets, service stations, delicatessens, retail stores, delivery services, or other similar nonresidential uses (not including drycleaners). For purposes of this Part, retail establishments shall also include public and private events on public property as defined in the Borough of Doylestown Code of Ordinances Chapter 13, Licenses, Permits, and General Business Regulations, Part 2, Public Events and Gatherings.

- d. "Exempted Bag" 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.
 - v. laundry or dry-cleaning bags;
 - vi. newspaper bags; and
 - vii. non-handled bags used to protect a purchased item from damaging or contaminating other purchased items when placed in a reusable bag or recycled paper bag.

- e. "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.

- f. "Single-Use Plastic Bag" means a bag that is manufactured from plastic using a blown-film extrusion process, but not including an Exempted Bag.

- g. "Recycled Paper Bag" shall mean a paper bag that meets the following, but not including an Exempted Bag:
 - i. Contains no old-growth fiber;
 - ii. Contains a minimum of forty percent (40%) post-consumer recycled content; and
 - iii. Is labeled or can be identified as such in a form satisfactory to the Code Enforcement Officer with the name of the manufacturer and the percentage of post-consumer recycled content.

- h. "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple uses and is:
 - i. made of cloth or other machine-washable fabric that has stitched handles; or
 - ii. a polypropylene bag that has stitched handles.

- i. "Effective Date" shall mean the effective date of the ordinance that added this Chapter to the Doylestown Borough Code.

- j. "Implementation Date" shall mean one-hundred and eighty (180) calendar days after the Effective Date.

§ 103. Requirements

1. Single-Use Plastic Bags

- a. Beginning on the Implementation Date, Retail Establishments are prohibited from

providing a Single-Use Plastic Bag to a customer at the Retail Establishment or through a delivery.

2. Single-Use Paper Bags

- a. Beginning on the Implementation Date, Retail Establishments are prohibited from providing a non-Recycled Paper Bag to a customer at the Retail Establishment or through a delivery.

3. Reusable Bags

- a. A retail establishment may provide a consumer a Reusable Bag at the point of sale.

§ 104 Signage

1. Beginning 120 days after the effective date of this ordinance, and for at least 60 days beyond the Implementation Date, Retail Establishments are required to post at all points of sale conspicuous signage that:
 - a. informs 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;
 - b. explains what types of bags and purchases are impacted; and
 - c. provides other information the Borough may require by regulation, if applicable.

§ 105. Enforcement

1. The Borough Code Enforcement Officer, and any other persons appointed by the Borough Manager, shall have the authority to take necessary actions to enforce the provisions of this Part, including conducting any inspections, issuing citations, and pursuing prosecutions
2. If it is determined that a violation has occurred, the designated Code Enforcement Official shall issue notice to the commercial establishment. Notice shall include the applicable ordinance sections and a description of what must be remedied and must specify a reasonable timeframe for compliance, which shall be no less than seven days from the date of the notice. Notice shall be hand delivered to the establishment and sent via certified mail.
3. Any establishment who shall violate any provision of this Part 14 shall, upon conviction thereof, be sentenced to pay a fine in accordance with the schedule specified in subsection 4. Every day that a violation of this Part 14 continues shall constitute a separate offense.
4. The penalty for each violation that occurs after the notice shall be a fine of no more than:
 - a. \$50.00 for the first violation;
 - b. \$100.00 for the second violation in the same year dating from the first violation;
 - c. \$200.00 for the third and each subsequent violation in the same year dating from the first violation.

5. In addition to the penalties set forth in this Chapter, the Borough may seek legal, injunctive, or other equitable relief to enforce this Chapter.

§ 106. Extension for Existing Inventory

1. The Borough Manager or designee may extend the Implementation Date for Retail Establishments who can reasonably demonstrate that existing inventory of Single-Use Plastic Bags or Single-Use Paper Bags has not been depleted. Extensions and extension renewals shall be subject to the following conditions and procedures:
 - a. Only Retail Establishments existing within Doylestown Borough as of the Effective Date of this Ordinance may be granted an extension.
 - b. Extensions shall not exceed a period of one-hundred and eighty (180) days and may be renewed no more than one additional period.
 - c. Extension renewal requests shall be subject to the conditions and procedures set forth for extensions.
 - d. Requests shall be made in writing no later than thirty (30) days prior to the Implementation Date or extension thereof.
 - e. Requests shall be accompanied by or include the following:
 - i. Order date and quantity of each type and size of bag for which extension is requested, and
 - ii. Approximate quantity remaining of each type and size of bag for which extension is requested, and
 - iii. One bag of each type and size for which extension is requested, and
 - iv. Anticipated amount of time necessary to deplete remaining inventory at the time of the request.

Section II. Repealer. In addition to the above, all other ordinances or parts of ordinances that are inconsistent herewith, are hereby repealed. Further, it is understood and intended that all other sections, parts, provisions, and ordinances that are not otherwise specifically in conflict or inconsistent with this Ordinance, shall remain in full force and effect, the same being reaffirmed hereby.

Section III. Severability. The provisions of this Ordinance are severable. In the event that any section, sentence, clause, phrase, or word of this Ordinance, including any incorporated Appendices, shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose enforcement of any of the remaining portions of this Ordinance. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal law or laws of the Commonwealth of Pennsylvania.

Section IV. Effective Date. All provisions of this Ordinance shall be in full force and effect five (5) days after the approval and adoption.

Section V. Failure to Enforce Not a Waiver. The failure of the Borough of Doylestown to enforce any provision of this Ordinance shall not constitute a waiver by the Borough of its rights of future enforcement hereunder.

ORDAINED ENACTED this ____ day of _____, 2022.

DOYLESTOWN BOROUGH COUNCIL

By:

John J. O'Brien, Council President

Approved:

Elnora "Noni" West, Mayor

Attest:

Borough Secretary