



ORDINANCE NO. P2-2022

AN ORDINANCE OF THE TOWNSHIP OF HAVERFORD, COUNTY OF DELAWARE, COMMONWEALTH OF PENNSYLVANIA, TO ADD A NEW CHAPTER IN THE GENERAL LAWS OF THE TOWNSHIP OF HAVERFORD TITLED, "SINGLE-USE PLASTIC REGULATIONS," TO REGULATE THE DISTRIBUTION AND USE OF SINGLE-USE PLASTIC CARRY-OUT BAGS, SINGLE-USE PLASTIC STRAWS AND STIRRERS; TO PROMOTE AND FACILITATE REUSABLE BAG USE; AND TO ADD FINDINGS, DEFINITIONS, FEES, REQUIREMENTS, ENFORCEMENT, PENALTIES, AND EXEMPTIONS RELATING TO THE DISTRIBUTION AND USE OF SINGLE-USE PLASTIC CARRY-OUT BAGS, REUSABLE BAGS, AND SINGLE-USE PLASTIC STRAWS AND STIRRERS.

WHEREAS, as a Home Rule Municipality, the Township of Haverford may exercise any power and function not denied it by the Constitution of the United States of America, by the Constitution of the Commonwealth of Pennsylvania, by the General Assembly of the Commonwealth, or by this Charter; and

WHEREAS, the powers and functions of the Township under the Township's Home Rule Charter are broadly construed in favor of the Township; and

WHEREAS, pursuant to the Township's Home Rule Charter, the Township Commissioners may adopt such ordinances and such other codes as may be required from time to time to protect the health, safety, and welfare of the citizens; 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 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 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 Environmental Defense Foundation v. Commonwealth of Pennsylvania, 161 A.3d 911 (Pa. 2017); and

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

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

WHEREAS, the Board of Commissioners, after due consideration of the proposed ordinance at a duly advertised public meetings and hearing, has determined that the health, safety and general welfare of the residents of the Township will be served by this Ordinance which regulates the distribution of single-use, carry-out plastic bags and single-use, plastic straws and stirrers within the Township;

BE IT ENACTED AND ORDAINED by the Board of Commissioners of the Township of Haverford, County of Delaware, Commonwealth of Pennsylvania:

SECTION 1. The Township of Haverford Code shall be amended by adding a new Chapter entitled "Single-Use Plastic Regulations", to provide as follows:

SINGLE-USE PLASTIC REGULATIONS

§1. Purpose and Findings.

A. Purpose. The purpose of this Chapter is to reduce the use of single-use, plastic carryout bags and single-use, plastic straws and stirrers by commercial establishments within the Township of Haverford, 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 and facilitate the use of reusable, compostable, and recyclable materials within the Township of Haverford, and to preserve the natural, scenic, historic, and esthetic values of the Township of Haverford.

B. Findings.

1. The use of single-use, plastic carry-out bags and single use, plastic straws and stirrers have severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, water consumption and solid waste generation to Haverford Township and the greater environment.
2. There are numerous commercial establishments within the Township of Haverford which provide single-use, plastic carry-out bags and single-use, plastic straws and stirrers to their customers.
3. Most single-use, plastic carry-out bags and single-use, plastic straws and stirrers 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 of Haverford most such bags are not recycled and are often improperly discarded and litter the Township's highways, trees, and drains.
5. Hundreds of millions of single-use, plastic straws and stirrers are discarded by United States consumers every day. In the Township of Haverford, such straws and stirrers are not readily recyclable.
6. Numerous studies have documented the prevalence of single-use, plastic carry-out bags and/or single-use plastic straws and stirrers littering the environment, blocking storm drains, entering local waterways, and becoming stuck in or upon natural resources and public property.
7. The taxpayers of the Township of Haverford pay the costs related to the cleanup of single-use, plastic carry-out bags and single-use plastic straws and stirrers from the roadways, trees, bushes, sewers, drains, waters, and parks within the Township.

8. From an overall environmental and economic perspective, the best alternative to single-use, plastic carry-out bags is a shift to reusable bags and the best alternative to single-use, plastic straws are not using straws or using reusable straws.
9. There are several reasonable alternatives to single-use, plastic carry-out bags and single use plastic straws and stirrers readily available in and around the Township of Haverford.
10. It is recognized that single use paper bag manufacturing, transportation and resource consumption also affect the environment, but they are biodegradable, 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.
11. As required by the Environmental Rights Amendment to the Pennsylvania Constitution, the Township of Haverford seeks to preserve the natural, scenic, historic, and esthetic values of the Township.
12. It is the desire of the Board of Commissioners to conserve resources, reduce the amount of greenhouse gas emissions, waste, litter, water pollution, and to protect the public health and welfare of people and wildlife in the Township, all of which increases the quality of life for the Township's residents and visitors.
13. 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, single-use, plastic straws, and single use, plastic stirrers will significantly reduce the use and waste of such items.

§2. Definitions.

For the purposes of this Chapter, the following definitions shall apply unless the context clearly requires 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 of Haverford. 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% postconsumer

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.

B. A reusable bag is a bag made of cloth, fabric or other material that is specifically designed and manufactured for multiple reuse. If the contains plastic, it must be a woven or non-woven and fused fabric with a minimum 80 gram/square meter density.

COMPLIANT STIRRER – a device primarily intended to be used by a person for the purpose of stirring beverages that is made entirely of wood, grass or certified as compostable by the Biodegradable Products Institute.

COMPLIANT STRAW – a straw that is certified as compostable by the Biodegradable Products Institute.

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

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

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. “Post-consumer recycled material” does not include materials and by-products generated from and commonly reused within an original manufacturing and fabrication process.

PRODUCT BAG – a very thin bag without handles used exclusively to carry meats, vegetables, fruits, or other similar raw or uncooked food items to the point of sale inside a Commercial Establishment or, for reasons of public health and safety, to prevent such food items from coming into direct contact with other purchased items.

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 made predominantly of plastic derived from either petroleum or a biologically based source, such as corn or other plant sources, that is provided by an Operator of a Commercial Establishment to a Customer at the point-of-sale. The term does not include bags intentionally designed for reuse or product packaging. This definition specifically exempts the following from the category of single-use plastic carry-out bags:

A. Product Bags;

B. Newspaper bags;

C. Bags sold in packages containing multiple bags intended for use as food storage bags, garbage bags, or pet waste bags; or

D. Laundry or dry-cleaner bags.

SINGLE-USE PLASTIC STIRRER - a single-use beverage stirrer or single-use beverage splash stick provided by a Commercial Establishment that is primarily made of plastic.

SINGLE-USE PLASTIC STRAW - a Straw provided by a Commercial Establishment that is primarily made of plastic. A "Single-Use Plastic Straw" shall not include Straws packaged with beverages prepared and packaged outside of the Township, provided such beverages are not altered, packaged or repackaged within the Township.

STRAW-a tube designed or intended for transferring a beverage from its container to the mouth of the drinker by suction or for the stirring of a beverage.

TOWNSHIP - the Township of Haverford.

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

Effective *January 2, 2023*, no Commercial Establishment shall provide to any Customer a Single-Use Plastic Carry-Out Bag. 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 of Haverford. The point-of-sale in such transactions is deemed to be at the Commercial Establishment, regardless of where payment for the transaction physically occurs.

§4. Use of Compliant Straws and Stirrers.

Effective **January 2, 2023**, any Commercial Establishment shall only provide Compliant Straws or Compliant Stirrers unless a Single-Use Plastic Straw is requested as set forth under §5.

§5. Single-Use Plastic Straws Must be Provided Only Upon Request.

Effective **January 2, 2023**, no Commercial Establishment shall provide to any Customer a Single-Use Plastic Straw unless the Customer first requests it. All food service establishments shall maintain a sufficient supply of Single-Use Plastic Straws to accommodate any such request. If a person specifically requests a Single-Use Plastic Straw, such food service establishment shall provide a Single-Use Plastic Straw free of charge and shall make no inquiry into the reason for such request.

§6. Compliant bags.

A. If the Commercial Establishment provides a Compliant Bag for the purpose of carrying goods or other materials away from the point-of-sale, they shall charge a minimum fee in the amount of \$0.10 per Compliant Bag. This charge shall be reflected in the sales receipt. A restaurant establishment may opt out of the compliant bag fee for food takeout and deliveries.

B. Customers may use bags of any type that 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.

§7. Exemptions.

The Township Manager or their designee may, upon written request of a Commercial Establishment, exempt a Commercial Establishment from the requirements of this Chapter for a period of one (1) year from the effective date of this Ordinance upon a finding by the Township Manager or their designee 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, Single-Use Plastic Straws or Single-Use Plastic Stirrers.

§8. Enforcement.

A. The Township Manager or their designee 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 §7 above.

D. If a Commercial Establishment has subsequent violations of this Chapter after the issuance of an initial written warning notice of violation, the following penalties shall be imposed and 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;

(3) A fine not exceeding \$500.00 for the third and each subsequent violation in the same year dating from the first violation.

E. 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 of Commissioners of the Township of Haverford that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

SECTION 3. REPEALER. All Ordinances or parts of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 4. EFFECTIVE DATE. This Ordinance shall become effective upon enactment as provided by law.

ADOPTED this 11th day of April, 2022.

TOWNSHIP OF HAVERFORD



BY: C. Lawrence Holmes
President
Board of Commissioners



Attest: David R. Burman
Township Manager/Secretary