

ORDINANCE NO. 2022-06

AN ORDINANCE OF UWCHLAN TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA TO PROMOTE THE USE OF REUSABLE BAGS, PROHIBIT THE USE OF SINGLE-USE CARRY-OUT PLASTIC BAGS, POLYSTYRENE FOOD CONTAINERS, AND SINGLE-USE PLASTIC STRAWS BY COMMERCIAL ESTABLISHMENTS, AND ESTABLISHING A CHARGE FOR THE PROVISION OF CERTAIN TYPES OF BAGS AT THE POINT OF SALE

WHEREAS, pursuant to the Second Class Township Code, the Board of Supervisors (“Board”) of Uwchlan Township (“Township”) has the power to adopt ordinances in which general or specific powers of the Township may be exercised. 53 P.S. § 66601;

WHEREAS, Article 1, Section 27 of the Pennsylvania Constitution 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.”

WHEREAS, the constitutional obligation found in Article 1, Section 27 of the Pennsylvania Constitution binds not only the Commonwealth, but “all government, state or local, concurrently.” *Robinson Twp., Washington Cty. v. Com.*, 83 A.3d 901, 952 (Pa. 2013); *Pennsylvania Env't Def. Found. v. Commonwealth*, 161 A.3d 911 (Pa. 2017);

WHEREAS, when 53 waterways were recently tested across Pennsylvania, microplastic contamination was found in every place, including Valley Creek, according to a new report titled “Microplastics in Pennsylvania: a Survey of Waterways” conducted by PennEnvironment Research and Policy Center using methodology developed by NOAA;

WHEREAS, the Board intends to preserve, maintain, and enhance the health of residents of and visitors to the Township, as well as the public natural resources and common property within the Township, by regulating the distribution of single-use carry-out plastic bags, single-use plastic straws, and polystyrene food containers within the Township;

WHEREAS, use and distribution of single-use carry-out plastic bags, single-use plastic straws, and polystyrene food containers are preventable and have a negative impact on the natural environment and the community of the Township;

WHEREAS, single-use carry-out plastic bags, single-use plastic straws, and polystyrene food containers pollute the environment, harm wildlife and natural landscapes, clog storm drains and drainage systems, and enter into the waters of the Commonwealth creating further damage to aquatic life and ecosystems;

WHEREAS, reducing single-use carry-out plastic bags and plastic straw use can mitigate harmful impacts to oceans, rivers, lakes, forests and the wildlife that inhabit them. It can also relieve pressure on landfills and waste management.

WHEREAS, the taxpayers of the Township pay the costs related to the cleanup of single-use carry-out plastic bags, single-use plastic straws, and polystyrene food containers from the roadways, trees, sewers, waters, and parks within the Township.

WHEREAS, plastic film from single-use carry-out plastic bags bind and clog sorting equipment and become an operational and financial burden on recycling facilities and polystyrene containers do not biodegrade;

WHEREAS, reusable bags are a readily available alternative to single-use carry-out plastic bags and are both cost effective and help to preserve the natural environment;

WHEREAS, alternatives to single-use plastic straws exist in the forms of reusable straws, recyclable paper straws and compostable straws and are cost effective;

WHEREAS, alternatives to polystyrene food containers exist in the form of biodegradable products;

WHEREAS, the Uwchlan Township Board of Supervisors and the Environmental Advisory Committee support efforts to reduce the amount of waste that must be disposed of by supporting the waste management hierarchy (reduce, reuse, recycle, compost, waste-to-energy, landfill); and

WHEREAS, it is in the public interest of the residents of the Township to reduce the use of single-use carry-out plastic bags, single-use plastic straws, and polystyrene food containers to protect the public health and natural environment of the surrounding area;

WHEREAS, the residents of Uwchlan Township have requested the Board of Supervisors act on regulating the use of single-use carry-out plastic bags, single-use plastic straws, polystyrene food containers in the Township;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors for Uwchlan Township, and it is hereby ordained and enacted, by the authority of the same, to wit:

I. The Ordinances of Uwchlan Township, County of Chester, Commonwealth of Pennsylvania are amended to create a new Chapter 188:

§ 188-1. Purpose and Intent.

The purpose of the Ordinance is to encourage consumers and Commercial Establishments within the Township to help reduce the use and environmental impact of single-use plastics by promoting the use of reusable bags, utilizing alternatives to single-use plastic straws, training

employees to ask customers first before providing a single use plastic item, and substituting other biodegradable products for polystyrene food containers.

§ 188-2. Definitions.

For purposes of this Ordinance, the following definitions shall apply:

A. Single-Use Carry-Out Plastic Bag means a bag that is made predominantly of plastic and is made using a blown-film extrusion process, other than a Reusable Bag, as defined below, provided at the check-out stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment. A Single-Use Plastic Carry-Out Bag shall not include any of the following:

1. Produce Bags or Product Bags;
2. Laundry or dry-cleaner bags;
3. Bags used to contain a newspaper for home delivery; or
4. Any bags provided for use by a Commercial Establishment operated by the Commonwealth of Pennsylvania, or otherwise provided by a federal, Commonwealth, or local government agency.

B. Produce Bag or Product Bag means any bag without handles used exclusively to carry produce, meats, fish, other foods items, merchandise, or bulk items such as nuts, grains, or candy to the point of sale inside a store; to prevent such items from coming in direct contact with other purchased items; to contain unwrapped prepared foods or bakery goods; or to contain or wrap flowers, potted plants, or similar items.

C. Reusable Bag means a bag that meets all of the following criteria:

1. Is designed and manufactured to withstand repeated uses over time;
2. Is machine washable or made from a material that can be cleaned and disinfected regularly; and
3. Has the capability of carrying a minimum of 18 pounds.

D. Recyclable Paper Bag means a paper bag that meets all of the following criteria:

1. Is 100% recyclable;
2. Contains no old growth fiber;
3. Contains a minimum of 40% post-consumer recycled content; and

4. Displays the word "Recyclable" in a highly visible manner on the outside of the bag, and is labeled with the name of the manufacturer, the location (country) where manufactured, and the percentage of post-consumer recycled content in an easy-to-read size font.

E. Polystyrene Food Container means a non-recyclable plastic disposable food or drink container made of synthetic resin of polystyrene (one example is known as Styrofoam®) which is for single use and intended for serving or transporting ready-to-eat food or beverages. This definition includes cups, plates, trays, bowls, and hinged or lidded containers, but does not apply to cup lids.

F. Single-Use Plastic Straw means a straw sold or distributed for the purpose or intent of transferring a beverage from its container to the mouth of the drinker by suction, which is made predominantly of plastic and which is primarily intended for a single use. The term shall also include a plastic stirrer, a device used to mix beverages, intended for a single use, and made predominantly from plastic. The term Single-Use Plastic Straw shall not include straws or stirrers composed of non-plastic materials, such as bamboo, sugar cane, wood, or paper. The term Single-Use Plastic Straw shall not include straws provided under the following circumstances:

1. When provided with a beverage on private property used as a residence;
2. When provided by a state, federal or local government agency;
3. When packaged with beverages prepared and packaged outside of the Township, provided such beverages are not altered, packaged or repackaged within the Township; or
4. When provided as an assistance device to reasonably accommodate a disability.

G. Distribute or Provide means the vending, sale, giving, deployment, or delivering for any purpose of a Single-Use Carry-Out Plastic Bag, a Single-Use Plastic Straw, or Polystyrene Food Container whether or not incident to the sale, vending, or production of any merchandise or beverage.

H. Commercial Establishment means any person, corporation, partnership, business venture, vendor, or retail sales establishment located within the Township that regularly sells, rents, or provides food, merchandise, goods, or materials, whether perishable or non-perishable, for direct use or consumption and not for resale, 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.

§ 188-3. Single-Use Carry-Out Plastic Bags Restricted

A. Restrictions on Single-Use Carry-Out Plastic Bags.

Except as provided in this Chapter, beginning 180 days after the effective date of this Ordinance, no Commercial Establishment shall provide a Single-Use Carry-Out Plastic Bag to a customer, patron, or user of the Commercial Establishment at the check-out, stand, cash register, point of sale, or other point of departure for the purposes of transporting food or merchandise out of the Commercial Establishment.

1. A Commercial Establishment may make available for sale to a customer, patron, or user of the Commercial Establishment Recyclable Paper Bags for a uniform charge of fifteen (\$0.15) cents per Recyclable Paper Bag.
2. A Commercial Establishment may make available for sale or otherwise to a customer, patron, or user of the Commercial Establishment Reusable Bags.
3. Any charge for a Recyclable Paper Bag or Reusable Bag shall be separately stated on a receipt provided to the customer, patron, or user of the Commercial Establishment at the time of sale and shall be identified as the “Carry-Out Bag Charge” thereon.
5. All monies collected by a Commercial Establishment for the sale of Recyclable Paper Bags or Reusable Bags under this Chapter may be retained and used by the Commercial Establishment for any lawful purpose.
5. All Commercial Establishments must post within such Commercial Establishment signage clearly indicating the per bag charge for Recyclable Paper Bags or Reusable Bags.
6. A Commercial Establishment shall not be required to charge the fee set forth in subsection (1) to a customer, patron or user, for any goods purchased with Supplemental Nutrition Assistance Program (SNAP), Pennsylvania Special Supplemental Nutrition Program for Women, Infants and Children (WIC) or Temporary Assistance for Needy Families (TANF) benefits.
7. No Commercial Establishment shall rebate or otherwise reimburse a customer, patron, or user of the Commercial Establishment any portion of the charge required in subsection (1) above. Any waiver of the charge by the Commercial Establishment or any reimbursement in any form to a customer, patron, or user of the Commercial Establishment for any portion of the charge for the provision of a Recyclable Paper Bag is a violation of this Chapter.

B. Signage Requirement.

For 180 days after the effective date of this Ordinance, Commercial Establishments shall be required to post at all check-out stands, cash registers, points of sale, or other points of departure from the Commercial Establishment, conspicuous signage which shall:

1. Inform customers, patrons, or users of the Commercial Establishment that Single-Use Carry-out Plastic Bags will no longer be provided by the Commercial Establishment as of the date the prohibition begins;
2. State the mandatory, uniform charge of fifteen (\$0.15) cents per bag for any Recyclable Paper Bag that will be provided by the Commercial Establishment;
3. Provide the date such charges for Recyclable Paper Bags will begin to be collected;
4. Explain what types of bags and uses are impacted; and
5. Provide any other information the Township may require by regulation.

Signage may also state that Reusable Bags are available to a customer, patron, or user of the Commercial Establishment for sale or otherwise.

C. Permitted Bags and Carry-Outs.

Nothing in this Chapter shall be construed to prohibit customers, patrons, or users of the Commercial Establishment from (1) using bags of any type that the customers, patrons, or users of the Commercial Establishment bring to the Commercial Establishment for their own use or (2) carrying away from the Commercial Establishment by other means any items that are not placed in a bag provided by the Commercial Establishment.

§ 188-4. Prohibition Against Single-Use Plastic Straws and Polystyrene Food Containers.

Except as provided in this Chapter, beginning 180 days after the effective date of this Ordinance, Commercial Establishments are prohibited from providing Single-Use Plastic Straws or Polystyrene Food Containers to a customer, patron, or user of the Commercial Establishment under any circumstance, unless subject to an exemption. The prohibition set forth in this section shall not apply to Single-Use Plastic Straws or Polystyrene Food Containers such as plates, cups, and bowls, which (A) contain multiple Single-Use Plastic Straws or Polystyrene Food Containers, (B) are packaged by the manufacturers of such items at the time of their manufacture, and (C) are ultimately sold to consumers for home use.

§ 188-5. Exemptions.

The Township may, in its sole discretion, upon written request of a Commercial Establishment, exempt a Commercial Establishment from the requirements of this Chapter for a period of not more than one year from the Effective Date upon a finding by the Board that the requirements of this Chapter would cause undue hardship to the Commercial Establishment. The Board may make a finding of undue hardship only in the following circumstances or situations, and any exemptions that may be provided by the Board pursuant hereto may, in the Board's discretion, contain conditions:

- A. The Commercial Establishment has a unique circumstance or situation such that there are no reasonable alternatives to Single-Use Carry-Out Plastic Bags, Single-Use Plastic Straws, or Polystyrene Food Containers;
- B. Compliance with the requirements of this Chapter would deprive a Commercial Establishment of a legally protected right;
- C. Additional time is necessary in order to draw down an existing inventory held by the Commercial Establishment of Single-Use Carry-Out Plastic Bags, Single-Use Plastic Straws, or Polystyrene Food Containers.

§ 188-6. Enforcement and Penalties.

- A. The Township Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Ordinance.
- B. Failure of any Commercial Establishment to comply with the provisions of this part or any section thereof, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay fines as set forth in this section, plus costs.
- C. If the Township Manager or his/her designee(s) determines that a violation under this Chapter has occurred, and such violation is the first such violation of the Commercial Establishment noted hereunder, the Township Manager or his/her designee(s) shall issue a written warning ("Written Warning") to the Commercial Establishment which shall notify the Commercial Establishment that the violation has occurred. No other Written Warning of any kind shall be required at any time under this Chapter.
- D. If the Township Manager or his/her designee(s) determines that a violation under this Chapter has occurred, and such violation occurs after the Commercial Establishment has been previously warned pursuant to the preceding paragraph, then the first such violation subsequent to the Written Warning ("First Violation") shall be punishable by a fine not to exceed \$250.00.
- E. Each violation of the Commercial Establishment subsequent to the First Violation shall be punishable by a fine not to exceed \$500.00.

F. The Township may institute suits, in equity or at law, to restrain, prevent, or abate a violation of this Chapter. Such proceedings may be initiated before any court of competent jurisdiction. The expense of such proceedings shall be recoverable from the violator in any manner as may now or hereafter be provided by law.

II. PARTIAL REPEALER

All other provisions of the Ordinances of Uwchlan Township, as amended, shall remain in full force and effect. All other Ordinances or provisions of Ordinances inconsistent herewith or in conflict with any of the terms hereof are, to the extent of said inconsistencies or conflicts, hereby specifically repealed.

III. SEVERABILITY

The provisions of this Ordinance are severable. If any section, clause, sentence, part or provision thereof shall be held illegal, invalid, or unconstitutional by a court of competent jurisdiction, such decision of the court shall not affect or impair any of the remaining sections, clauses, sentences, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Township Board of Supervisors that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence or part of a provision had not been included herein.

IV. EFFECTIVE DATE

This Ordinance shall become effective 5 days after the date of its adoption.

V. FAILURE TO ENFORCE NOT A WAIVER

The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

**BOARD OF SUPERVISORS
UWCHLAN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

ATTEST:

By: Katie Churchill
Township Secretary

By: Mayme Baumann
Mayme Baumann, Chairperson

By: Laura Obenski
Laura Obenski, Vice-Chairperson

By: Bill Miller
Bill Miller, Supervisor