

**TOWNSHIP OF RADNOR
DELAWARE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2022-11

**AN ORDINANCE AMENDING THE RADNOR TOWNSHIP CODE
REGULATING THE DISTRIBUTION OF SINGLE-USE CARRY-OUT
PLASTIC BAGS; AND PROVIDING FOR RELATED PURPOSES AND
FINDINGS, DEFINITIONS, REQUIREMENTS, ENFORCEMENT,
PENALTIES, AND EXEMPTIONS**

WHEREAS, the Radnor Township Home Rule Charter authorizes Radnor Township (“Township”) 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 Township and the maintenance of peace, good government, health, and welfare of the Township and its citizens; and

WHEREAS, Article 1, Section 27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment (“ERA”), 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 ERA imposes two basic duties on the Commonwealth and its political subdivisions such as the Township - 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 (*see 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 ERA 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, the Township 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 regulating the distribution of single-use, carry-out plastic bags within the Township; and

WHEREAS, the Township has met the procedural requirements of the Township’s Home Rule Charter for the adoption of the proposed ordinance, including holding a public hearing; and

WHEREAS, the Township, 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 amendment of the Radnor Township Code to regulate the distribution of single-use, carry-out plastic bags within the Township.

NOW, THEREFORE, be it **ENACTED** and **ORDAINED** by the Radnor Township Board of Commissioners, as follows:

ARTICLE I - SINGLE USE BAGS

The Code of the Township of Radnor is hereby revised by establishing a new Chapter 236, Single Use Bags, to read as follows as follows:

CHAPTER 236 SINGLE USE BAGS

§236-1 Purpose and Findings.

- A. The purpose of this Chapter is to: reduce the use of single use bags by commercial establishments within 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; reduce solid waste generation; promote the use of reusable, compostable, and recyclable materials within the Township; preserve the natural, scenic, historic, and esthetic values of the Township; relieve the pressure on recyclers, who cite single-use plastic bags as a major source of contamination and inefficiency within the recycling stream; and reduce the incineration of plastic from the disposal of single-use products.
- B. Findings.
 - (1) The use of single-use bags has severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, ground level ozone formation, atmospheric acidification, water consumption, and solid waste generation.
 - (2) There are numerous commercial establishments within the Township that provide Single-Use Plastic Carry-Out Bags to their customers.
 - (3) The majority of such single-use bags are made from plastic or other material that does not readily decompose.
 - (4) Approximately one hundred billion single-use plastic 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 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) Recyclers cite single-use plastic bags as a major source of contamination within the recycling stream, leading to increased costs and decreased efficiency.
- (8) From an overall environmental and economic perspective, the best alternative to Single-Use Plastic Carry-Out Bags is a shift to bags that are reusable, compostable, or made from recyclable paper.
- (9) There are several alternatives to Single-Use Plastic Carry-Out Bags readily available in and around the Township.
- (10) An important goal of the Township is to procure and use sustainable products and services and encourage the procurement and use of sustainable products and services by others.
- (11) An important goal of the Township is to preserve the natural, scenic, historic, and esthetic values of the Township.
- (12) It is the Township's desire to conserve resources; reduce greenhouse gas emissions, waste, litter, and water pollution; and to protect the public health and welfare, including wildlife; all of which increase the quality of life for the Township's residents and visitors.
- (13) Studies have documented that prohibiting the distribution of single-use plastic bags at the point of sale and placing a mandatory fee on other bags reduces plastic litter and the use of single-use bags.
- (14) As required by the Environmental Rights Amendment to the Pennsylvania Constitution, the Township seeks to conserve and maintain the natural, scenic, historic, and esthetic environmental values of the Township.
- (15) It is the Board of Commissioners' 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 increase the quality of life for the Township of Radnor's residents and visitors.

§236-2 **Definitions.**

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

CUSTOMER

Any person purchasing goods or services from a Commercial Establishment.

COMMERCIAL ESTABLISHMENT

Any person, corporation, partnership, business venture, or vendor that sells or provides merchandise, goods, or materials directly to a customer, whether or not for profit, including, but not limited to, restaurants (eat-in and/or take-out food), bars, pharmacies, convenience and grocery stores, seasonal and temporary businesses or markets, retail stores, or other similar nonresidential uses. For purposes of this Chapter, Commercial Establishments shall not include bazaars or festivals operated by nonprofit organizations or religious institutions.

DISTRIBUTION or TO DISTRIBUTE

The vending, selling, giving, providing, or delivering of an item for any purpose, whether or not incident to the sale, vending, production, or other provision of any merchandise, product, food, or beverage.

EFFECTIVE DATE

~~_____~~, 2022, which is the date the ordinance that added this Chapter to Radnor Township's Code became effective as listed in this ordinance.

EXEMPT BAG:

A bag without handles used inside a Commercial Establishment by a customer to deliver perishable items to the point of-sale at that establishment. Such bags shall include:

- (1) Bags used to package bulk items such as fruit, vegetables, nuts, grains, or candy;
- (2) Bags used to contain or wrap meats or fish; to contain or wrap frozen foods; or to contain unwrapped prepared foods or bakery goods; and
- (3) Bags used solely to contain live animals, such as fish or insects sold in a pet store.

This definition also covers bags sold in packaging containing multiple bags and packaged at the time of manufacture of the bag.

RECYCLABLE PAPER BAG

A paper bag that is (1) one hundred percent (100%) recyclable including the handles; (2) contains at least forty percent (40%) post-consumer recycled paper content; and displays the words "recyclable" and "made from 40% post-consumer recycled amount content" (or other applicable amount), or substantially similar wording, in a visible manner on the outside of the bag.

REUSABLE BAG

A bag with handles that is specifically designed and manufactured for multiple reuse. Reusable Bags shall be made of either polyester, polypropylene, cotton, or other durable material.

SINGLE-USE PLASTIC CARRY-OUT BAG

A bag made of plastic or other similar material that is provided by a Commercial Establishment to a customer at or around the point of sale that is not a Reusable Bag or Recyclable Paper Bag,. A single use plastic bag is made through a blown film extrusion process.

A “Single-Use Plastic Carry-Out Bag” shall **not include** the following:

- (1) Exempt Bags;
- (2) Laundry or dry-cleaner bags;
- (3) Newspaper bags;
- (4) A bag without handles used to protect a purchased item from damaging or contaminating other purchased items when placed in a Reusable Bag, or Recyclable Paper Bag;
- (5) Any bags provided for use by a Commercial Establishment operated by the federal government, Commonwealth of Pennsylvania, or local government, or department or agency thereof; and
- (6) Any bags distributed by the federal government, Commonwealth of Pennsylvania, or local government, or department or agency thereof.

TOWNSHIP

The Township of Radnor, Delaware County, Pennsylvania.

§236-3 Requirements.

A. Single-Use Plastic Carry-Out Bags.

- (1) Beginning six (6) months after the Effective Date, Commercial Establishments are prohibited from distributing Single-Use Plastic Carry-Out Bags to any customer either at the Commercial Establishment, off-site, or in conjunction with a delivery.

B. Single-Use Paper Bags.

- (1) Beginning six (6) months days after the Effective Date, Commercial Establishments are prohibited from distributing non-Recyclable Paper Bags to any customer either at the Commercial Establishment, off-site, or in conjunction with a delivery.

- (2) A Commercial Establishment may distribute to Consumers Recyclable Paper Bags at the point of sale, if such bags are provided to the Consumer for a charge of not less than \$0.10 per bag.
 - (a) All monies collected by a Commercial Establishment under this subsection for the distribution of a Recyclable Paper Bag shall be retained by the Commercial Establishment.
 - (b) Any charge for a Recyclable Paper Bag shall be separately stated on any receipt provided to the customer at the time of sale and shall be identified as a “Carry-Out Bag Charge” thereon.

C. Reusable Bags.

- (1) A Commercial Establishment may distribute to Consumers Reusable Bags at the point of sale, if such bags are provided to the Consumer for a charge of not less than \$0.10 per bag.
 - (a) All monies collected by a Commercial Establishment under this subsection for the distribution of a Reusable Bag shall be retained by the Commercial Establishment.
 - (b) 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 a “Carry-Out Bag Charge” thereon.

§236-4 Signage Requirement.

Beginning thirty (30) days after the Effective Date, and for six (6) months thereafter, Commercial Establishments are required to post at all points of sale conspicuous signage providing the following: informing customers that Single-Use Plastic Carry-Out Bags and non-Recyclable Paper Bags will no longer be provided by the establishment as of the date the prohibition begins in accordance with §236-3; explaining what types of bags and purchases are impacted; and providing any other information the Township may require by regulation.

§236-5 Enforcement.

- A. A person or Commercial Establishment that violates the requirements of this Chapter shall be guilty of a summary offense and, upon conviction thereof in any District Justice Court of the Commonwealth of Pennsylvania, shall:
- be subject to a civil penalty of not less than \$50.00 for a first offense;
 - be subject to a civil penalty of not less than \$100.00 for a second offense; and
 - be subject to a civil penalty of not less than \$200.00 for a third or any subsequent offense.

Under no circumstances shall a violator be liable to a fine or penalty exceeding \$600 for each offense. In addition, a violator shall be responsible for the costs of prosecution thereof, including, but not limited to including attorney's fees.

- B. Each day a violation continues shall constitute a separate and distinct offense under this Chapter. In addition, each violation of any of the provisions of this Chapter shall be deemed to be a separate and distinct offense.
- C. In addition to the penalties set forth in this Chapter, the Township may seek legal, injunctive, or other equitable relief to enforce this Chapter or to restrain, prevent, or abate a violation of this Chapter **in the Court of Common Pleas of Delaware County**. ~~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.
- D. The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the of its rights to future enforcement of such provision hereunder.

§236-6 Exemptions.

The Board of Commissioners may, upon written request of a Commercial Establishment, exempt such Commercial Establishment from the requirements of this Chapter for a period up to one (1) year from the Effective Date, upon a finding by the Township that the requirements of this Chapter would cause undue hardship to that Commercial Establishment. An "undue hardship" shall be found only in the following circumstances or situations, and the Township may attach conditions to the provision of any exemption:

- A. The Commercial Establishment has a unique circumstance or situation such that there are no reasonable alternatives to the distribution of Single-Use Plastic Carry-Out Bags and/or non-Recyclable Paper Bags;
- B. Compliance with the requirements of this Chapter would deprive the Commercial Establishment of a legally protected right; or

- C. Additional time is necessary to draw down the Commercial Establishment's existing inventory of Single-Use Plastic Carry-Out Bags and/or non-Recyclable Paper Bags.

ARTICLE II - REPEALER.

All 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.

ARTICLE III - SEVERABILITY.

If any section, paragraph, subsection, sentence, clause, phrase, or provision of this Ordinance shall be declared illegal, invalid, or unconstitutional by any court of competent jurisdiction, such declaration and 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.

ARTICLE IV - EFFECTIVE DATE.

This Ordinance shall take effect thirty (30) days after its legal enactment **by the Radnor Township Board of Commissioners.**

ENACTED AND ORDAINED this _____ day of _____, 2022.

ATTEST:

**RADNOR TOWNSHIP
BOARD OF COMMISSIONERS:**

Name:
Title:

Name: Moira Mulrone
Title: President