

ORDINANCE NO. 02 – 2022

EAST MARLBOROUGH TOWNSHIP

CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE OF EAST MARLBOROUGH TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA, TO ADD A NEW ORDINANCE TITLED, “PLASTIC BAG AND PLASTIC STRAW REGULATIONS” TO REGULATE THE DISTRIBUTION AND USE OF SINGLE-USE PLASTIC CARRY-OUT BAGS AND SINGLE-USE PLASTIC STRAWS; TO ADD FINDINGS, DEFINITIONS, REQUIREMENTS, ENFORCEMENT, PENALTIES, AND EXEMPTIONS RELATING TO THE DISTRIBUTION AND USE OF SINGLE-USE PLASTIC CARRY-OUT BAGS AND SINGLE-USE PLASTIC STRAWS.

WHEREAS, under the Second Class Township Code, 53 P.S. § 65607(1), the Board of Supervisors of East Marlborough Township 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 of Supervisors may adopt such ordinances and such 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 of Supervisors 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 give East Marlborough Township “power and its 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, in enacting the Municipal Waste Planning, Recycling and Waste Reduction Act, the General Assembly found 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 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 and its political subdivisions shall conserve and maintain them for the benefit of all the people; and

WHEREAS, the Amendment imposes two (2) basic duties on the Commonwealth and its political subdivisions such as the Township: (i) to prohibit the degradation, diminution, and depletion of the public natural resources; and (ii) 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, Pennsylvania courts have previously relied upon Article I, § 27 in finding that executive actions consistent with the Amendment have sufficient statutory authorization, *Eagle Env'tl. II, L.P. v. Commonwealth, Dept of Env'tl. Prot.*, 584 Pa. 494 (2005), and such reasoning should equally apply to municipal actions; 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 degrade at a slower rate than recyclable paper carry out bags and paper straws 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 single-use plastic straws and other discarded plastic materials have been found to pose a hazard to human and environmental health; and

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

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

WHEREAS, for the reasons set forth in more detail below, the Board of Supervisors 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 within the Township; and

WHEREAS, the Board of Supervisors, 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 which regulates the distribution of single-use, carry-out plastic bags and single-use, plastic straws within the Township;

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

SECTION I. The East Marlborough Township Code shall be amended by adding a new Ordinance entitled "Plastic Bag and Plastic Straw Regulations", to provide as follows:

PLASTIC BAG AND PLASTIC STRAW REGULATIONS

Section 1. Purpose and Findings.

- A. The purpose of this Chapter is to reduce the use of single-use, plastic carry-out bags and single-use, plastic straws by commercial establishments within East Marlborough 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 East Marlborough Township, and to preserve the natural, scenic, historic, and aesthetic values of East Marlborough Township.
- B. Findings.
 - 1. The use of single-use, plastic carry-out bags and single use, plastic straws have severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, water consumption and solid waste generation.
 - 2. There are numerous commercial establishments within East Marlborough Township which provide single-use, plastic carry-out bags and single-use, plastic straws to their customers.
 - 3. Most of the single-use, plastic carry-out bags and single-use, plastic straws 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 East Marlborough Township such bags are not readily recyclable.
 - 5. Hundreds of millions of single-use, plastic straws are discarded by United States consumers every day. In East Marlborough Township, such straws are not readily recyclable.

6. Numerous studies have documented the prevalence of single-use, plastic carry-out bags and/or single-use plastic straws littering the environment, blocking storm drains, entering local waterways, and becoming stuck in or upon natural resources and public property.

7. The taxpayers of East Marlborough Township pay the costs related to the cleanup of single-use, plastic carry-out bags and single-use plastic straws from the roadways, trees, sewers, 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, compostable or recyclable paper bags, and the best alternative to single-use, plastic straws are reusable straws or straws made from other natural products, if a straw is required.

9. There are several alternatives to single-use, plastic carry-out bags and single use plastic straws readily available in and around East Marlborough Township.

10. As required by the Environmental Rights Amendment to the Pennsylvania Constitution, the Township seeks to preserve the natural, scenic, historic, and esthetic values of the Township.

11. It is the desire of the Board of Supervisors 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 increases the quality of life for the Township's residents and visitors.

Section 2. Definitions.

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

TOWNSHIP – East Marlborough Township.

COMMERCIAL / RETAIL 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 East Marlborough 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 – The following 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. 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 (ASTM) or other, generally recognized and acceptable standard for being compostable.
- B. A reusable bag made of cloth, fabric or other material that is specifically designed and manufactured for multiple reuse.
- C. Other compostable bags that will not degrade into plastic nanoparticles.

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.

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 lifecycle 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. “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 or other 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 that is made through a blown film extrusion process 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; and
- D. Compliant 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 provided under the following circumstances:

- A. When packaged with beverages prepared and packaged outside of the Township, provided such

beverages are not altered, packaged, or repackaged within the Township; and

- B. When provided as an assistance device to reasonably accommodate a disability.

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.

Section 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 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 and deliveries from Commercial Establishments within East Marlborough Township. The point-of-sale in such transactions is deemed to be at the Commercial Establishment, regardless of where payment for the transaction physically or electronically occurs.

Section 4. 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 delivery transactions.

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.

Section 5. Use of Compliant Straws and Stirrers.

Effective January 1, 2023, no Commercial Establishment shall provide to any Customer a Single-Use Plastic Straw or Single-Use Plastic Stirrer unless requested, as set forth under Section 5.

Section 6. Single-Use Plastic Straws and Single-Use Plastic Stirrers Provided by Request Only.

Effectively January 1, 2023, no Commercial Establishment shall provide to any Customer a Single-Use Plastic Straw or Single-Use Plastic Stirrer unless the Customer first requests it. All food service establishments should maintain a sufficient supply of Single-Use Plastic Straws and Stirrers to accommodate any such request. If a person specifically requests a Single-Use Plastic Straw or Single-Use Plastic Stirrer, such food

service establishment should provide such free of charge, and should make no inquiry into the reason for such request.

Section 7. Exemptions.

The East Marlborough Township Environmental Advisory Committee may, upon written request of a Commercial Establishment, exempt a Commercial Establishment from the requirements of this Chapter for a period of no more than one (1) year from the effective date of this Ordinance upon a finding by the Environmental Advisory Committee 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 circumstances or situations such that there are no reasonable alternatives to the use of Single-Use Plastic Carry-Out Bags and/or Single-Use Plastic Straws.

Section 8. 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 in order 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 5 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 a summary criminal citation and seek a minimum fine of \$500 and a maximum fine of \$1,000 upon conviction thereof in a summary proceeding brought before a District Justice under the Pennsylvania Rules of Criminal Procedure. In default of payment thereof, the defendant may be sentenced to imprisonment in the county prison for a term of not more than thirty (30) days. Each section of this chapter violated shall constitute a separate offense, and each day or portion thereof in which a violation of this chapter is found to exist shall constitute a separate offense, each of which violations shall be punishable by a separate fine imposed by the District Justice. All fines and penalties collected for the violation of this chapter shall be paid to the Township Treasurer.
- 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 II. 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 Board of Supervisors of East Marlborough Township that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part hereof not been included therein.

SECTION III. 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 IV. EFFECTIVE DATE. This Ordinance shall become effective on January 1, 2023.

ENACTED AND ORDAINED THIS 6th DAY OF June, 2022.

ATTEST:

**BOARD OF SUPERVISORS
EAST MARLBOROUGH TOWNSHIP**

Neil Lovekin, Secretary

By:

Robert B. McKinstry, Jr. Chairman

Burling Vannote, Vice Chairman

John Sarro, Member

Eric Matuszak, Member

Kathryn Monahan, Member

UNOFFICIAL (NOT ADOPTED)