

**WHITEMARSH TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

ORDINANCE NO. 1029

AN ORDINANCE OF WHITEMARSH TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA, AMENDING THE CODE OF ORDINANCES OF WHITEMARSH TOWNSHIP TO PROMOTE THE USE OF REUSABLE BAGS, PROHIBIT THE USE OF SINGLE-USE PLASTIC BAGS BY RETAIL ESTABLISHMENTS, ESTABLISHING A CHARGE FOR THE PROVISION OF CERTAIN TYPES OF BAGS AT THE POINT OF SALE, AND PROVIDING FOR ENFORCEMENT AND PENALTIES FOR VIOLATION OF THIS ORDINANCE; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Whitemarsh Township Charter and the Second-Class Township Code authorize the Board of Supervisors of Whitemarsh 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 Whitemarsh Township and its 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 a 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: 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 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, 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 regulating the distribution of single-use plastic bags within Whitemarsh Township; and

WHEREAS, the Board of Supervisors, after due consideration of the proposed ordinance at a duly advertised public meeting, has determined that the health, safety, and general welfare of the residents of Whitemarsh Township will be served by this amendment of the Whitemarsh Township Code of Ordinances to regulate the distribution of single-use plastic bags within the Township;

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Board of Supervisors of Whitemarsh Township, Montgomery County, Pennsylvania, as follows:

I. The Code of Ordinances of Whitemarsh Township is amended to add a new Chapter 51B, "Environmental Protection" as follows:

CHAPTER 51B – ENVIRONMENTAL PROTECTION

ARTICLE I – PROHIBITION ON USE OF SINGLE-USE PLASTIC BAGS.

Section 51B-1. Purpose and Findings.

A. Purpose

- (1) The purpose of this Chapter is to reduce the use of single-use plastic bags;
- (2) To 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 Whitemarsh Township, and to preserve the natural, scenic, historic, and esthetic values of Whitemarsh Township;
- (3) To relieve the pressure on recyclers, who cite single-use plastic bags as a major source of contamination and inefficiency within the recycling stream; and
- (4) To relieve the pressure for landfills to manage the disposition 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 several commercial establishments within Whitemarsh Township that provide single-use plastic bags to their customers.
- (3) Single-use plastic bags do not readily decompose.
- (4) Approximately one hundred billion single-use plastic bags are discarded by United States consumers each year. Given the difficulty of recycling these materials, less than 1 percent of single-use plastic bags are returned for recycling in the United States, and in Whitemarsh Township, such bags are not curbside 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 Whitemarsh Township pay the costs related to the cleanup of single-use plastic 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 bags is a shift to reusable bags followed by compostable or recyclable paper bags.

(9) An important goal of Whitemarsh Township is to procure and use sustainable products and services.

(10) An important goal of Whitemarsh Township is to preserve the natural, scenic, historic, and esthetic values of Whitemarsh Township.

(11) It is Whitemarsh Township's 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 increases the quality of life for the Township's residents and visitors.

(12) 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.

(13) 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.

Section 51B-2. Definitions.

As used in this Article, the following terms have the following definitions:

CUSTOMER means any person purchasing goods or services from a Retail Establishment.

EFFECTIVE DATE means the effective date of the ordinance that added this Article to the Code of Ordinance of Whitemarsh Township.

EXEMPTED BAG

A. Means a bag used inside a Retail Establishment by a customer to deliver perishable items to the point-of-sale at that establishment;

B. Shall include:

(1) a bag used to package bulk items such as fruit, vegetables, nuts, grains, or candy;

(2) a bag used to contain or wrap meats or fish; to contain unwrapped prepared foods or bakery goods;

(3) a bag used solely to contain live animals, such as fish or insects sold in a pet store;

(4) a bag sold in packaging containing multiple bags and packaged at the time of manufacture of the bag.

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.

RECYCLED PAPER BAG means a paper bag that meets the following, but not including an Exempted Bag:

- A. Contains no old growth fiber;
- B. Contains a minimum of 40% post-consumer recycled content; and
- C. Is labeled in a highly visible manner with the name of the manufacturer and the percentage of post-consumer recycled content of the bag in an easy-to-read font size.

RETAIL ESTABLISHMENT means a location where food or other products are offered to the public for direct sale or delivery to a customer, including but not limited to the following: supermarket, convenience store, service station, delicatessen, department store, dollar store, clothing store, restaurant, pharmacy, food truck, farmers' market, or delivery service, but not including drycleaners.

REUSABLE CARRYOUT BAG means a carryout bag that is designed and manufactured for multiple uses and is:

- A. Made of cloth or other machine-washable fabric that has stitched handles; or
- B. A polypropylene bag that has stitched handles.

SINGLE-USE PLASTIC BAG means a bag made through a blown-film extrusion process, but not including an Exempted Bag.

Section 51B-3. Single-use Plastic Bags.

Beginning 90 days after the Effective Date, Retail Establishments are prohibited from providing a Single-use Plastic Bag to a customer at the retail establishment or through a delivery. Plastic straws and utensils will be provided only upon request by the customer.

Section 51B-4. Single-use Paper Bags.

A. Beginning 90 days after the Effective Date, Retail Establishments are prohibited from providing a non-Recycled Paper Bag to a Customer at the retail establishment or through a delivery.

B. A Retail Establishment may provide a Customer a Recycled Paper Bag at the point of sale if the bag is provided to the Customer for a charge of not less than \$0.15 per bag.

C. All monies collected by a Retail Establishment under this Section for provision of a Recycled Paper Bag shall be retained by the Retail Establishment.

D. Any charge for a Recycled Paper Bag shall be separately stated on any receipt provided to the Customer at the time of sale and shall be identified as the "Carry-Out Bag Charge" or similar language thereon.

Section 51B-5. Reusable Bags.

A. A Retail Establishment may provide a Customer a Reusable Carryout Bag at the point of sale if the bag is provided to the Customer for a charge of not less than \$0.15 per bag.

B. All monies collected by a Retail Establishment under this Section for provision of a Reusable Carryout Bag shall be retained by the retail establishment.

C. Any charge for a Reusable Carryout Bag shall be separately stated on a receipt provided to the Customer at the time of sale and shall be identified as the "Carry-Out Bag Charge" or similar language thereon.

Section 51B-6. Signage Requirement.

Beginning 30 days after the Effective Date, and for six months thereafter, Retail Establishments are required to post at all points of sale conspicuous signage informing 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, explaining what types of bags and purchases are impacted, and providing any other information Whitemarsh Township may require by regulation.

Section 51B-7. Enforcement.

A. A person or Retail Establishment that violates the requirements of this subchapter shall:

(1) be subject to a civil penalty of \$50.00 for a first offense;

(2) be subject to a civil penalty of \$100.00 for a second offense; and

(3) be subject to a civil penalty of \$200.00 for a third or any subsequent offense.

B. For the purposes of enforcement under this Article, an offense shall be each day a person or Retail Establishment violates a requirement of this Article.

C. In addition to the penalties set forth in this Article, Whitemarsh Township may seek legal, injunctive, or other equitable relief to enforce this Article.

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

Section 51B-8. Effective Date

This ordinance shall take effect on October 11, 2023.

II. All ordinances or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency.

III. The provisions of this Ordinance are declared to be severable. If any provision of this Ordinance is declared by a court of competent jurisdiction to be invalid or unconstitutional, such determination shall have no effect on the remaining provisions of this Ordinance.

ENACTED and ORDAINED this 13th day of July, 2023.

ATTEST:



Richard L. Mellor, Jr., Secretary

BOARD OF SUPERVISORS OF WHITEMARSH TOWNSHIP



Fran McCusker, Chairman