

ORDINANCE NO. 2023 - 01

AN ORDINANCE OF THE TOWNSHIP OF LANCASTER, LANCASTER COUNTY, PENNSYLVANIA TO PROMOTE THE USE OF REUSABLE BAGS AND PROHIBIT THE USE OF SINGLE-USE CARRY-OUT PLASTIC BAGS BY COMMERCIAL ESTABLISHMENTS

WHEREAS, pursuant to the Second Class Township Code, the Board of Supervisors ("Board") of Lancaster 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 (Pa. 2013); Pennsylvania Env't Def. Found. v. Commonwealth, 161 A.3d 911 (Pa. 2017);

WHEREAS, the Township is home to multiple beautiful, scenic, clean and vibrant streams and rivers such as the Great and Little Conestoga which bound our Township on multiple sides;

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 within the Township;

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

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

WHEREAS, the taxpayers of the Township pay the costs related to the cleanup of single use carry-out plastic bags 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;

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

NOW THEREFORE, in consideration of the foregoing, be it ENACTED and ORDAINED by the Board of Supervisors of Lancaster Township, Lancaster County, Pennsylvania, as follows:

SECTION 1. A new Chapter, Chapter 223, entitled “Plastic Regulations” is hereby added to the Lancaster Township Code to provide as follows:

PLASTIC REGULATIONS

§1. Purpose and Findings.

A. Purpose

- (1) To reduce the use of single-use bags within the Township.
- (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 Lancaster Township,; and to preserve the natural, scenic, historic, and esthetic values of Lancaster Township.
- (3) To relieve the pressure on recyclers servicing the Township, who cite single-use plastic bags as a major source of contamination and inefficiency within the recycling stream.
- (4) To relieve the pressure for Township utilized landfills to manage the disposition of single-use products.

B. Findings.

- (1) The use of single-use plastic 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 Lancaster Township which 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 State, and in Lancaster 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 Lancaster 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 to the Township 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 single-use compostable or recyclable paper bags.

(9) There are several alternatives to single-use bags readily available in and around Lancaster Township.

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

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

(13) It is Lancaster 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.

(14) Studies and past experiences have shown that prohibiting the distribution of single-use plastic bags at the point of sale and placing a mandatory charge on other single-use bags reduces plastic litter and use of single-use bags and promotes the use of reusable bags.

(15) 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.

(16) 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.

§2. Definitions.

For purposes of this Chapter, the following terms shall be defined as follows:

- 1) **"Operator"** means the person in control of, or having responsibility for, the operation of a Retail Establishment, which may include, but is not limited to, the owner of the Retail Establishment.
- 2) **"Paper Bag"** means a paper bag that is made of paper and can be disposed of in the local recycling system.
- 3) **"Recycled Paper Bag"** means a Paper Bag that displays the word "Recyclable" in a visible manner on the outside of the bag and the percentage of post-consumer recycled content in an easy-to-read size font.

- 4) **“Retail Establishment”** means any store, commercial establishment, or any other location 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 Lancaster Township. Retail establishments include, but are not limited to: a business establishment that generates a sales or use tax; a drugstore, pharmacy, supermarket, grocery store, farmers market, convenience food store, food mart, food truck, or other commercial entity engaged in the retail sale of a limited line of goods such as 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.
- 5) **“Reusable Bag”** means a carryout bag that was designed and manufactured for multiple uses and is:
 - a. Made of cloth or other machine-washable fabric;
 - b. A polypropylene bag; or
 - c. Other material that is specifically designed and manufactured for multiple reuse.
- 6) **“Single-use Plastic Bag”** means any bag made predominantly of Plastic that is provided by an Operator of a Retail Establishment to a Customer at the point-of-sale. The term does not include Reusable Bags or Recycled Paper Bags. This definition specifically exempts the following from the category of Single-use Plastic Bags:
 - a. a bag used inside a Retail Establishment by a Customer to deliver perishable items to the point of-sale at that establishment;
 - b. a bag used to package bulk items such as nuts, grains, or candy;
 - c. a 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 Retail Establishment or, for reasons of public health and safety, to prevent such food items from coming into direct contact with other purchased items.
 - d. a bag used solely to contain live animals, such as fish or insects sold at a pet store;
 - e. a bag sold in packaging containing multiple bags and packaged at the time of manufacture of the bag;
 - f. newspaper delivery bags;
 - g. bags sold in packages containing multiple bags intended for use as food storage bags, garbage bags, or pet waste bags; and
 - h. laundry or drycleaner bags.

§3. Single-use Plastic Bags.

Effective January 1st, 2024, Retail Establishments are prohibited from providing a Single-use Plastic Bag to a Customer. This prohibition applies to Single-use Plastic Bags provided for the purpose of carrying goods away from the point-of-sale of a Retail Establishment and to takeout deliveries from a Retail Establishment located within Lancaster Township. The point-of-sale in such transactions is deemed to be at the Retail Establishment, regardless of where payment for the transaction physically occurs.

§4. Paper Bags.

- 1) A Retail Establishment may provide a Customer a Paper Bag at the point of sale. A Retail Establishment may opt to have a charge for paper bags or make them freely available.
- 2) All monies collected by a Retail Establishment under this Chapter for provision of a Paper Bag shall be retained by the Retail Establishment.
- 3) Any charge for a Paper Bag shall be separately stated on any receipt provided to the customer at the time of sale and shall be identified as the "Paper Bag Charge" thereon.

§5. Reusable Bags.

- 1) 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 the "Reusable Bag Charge" thereon.
- 2) Customers may use bags of any type that they bring to the Retail Establishment themselves for the purpose of carrying goods or other materials away from the point-of sale, without incurring any charges for such bag.
- 3) No Operator may set a policy requiring the use of a Reusable Bag that is branded with the name of the retail establishment, but the Retail Establishment may sell self-branded bags.

§6. Temporary Signage Requirement.

Beginning thirty (30) days before the effective date set forth in §3, and for six (6) months thereafter, Retail Establishments are required to post at all points of sale conspicuous signage informing Customers that Single-use Plastic Bags will no longer be provided by the Retail Establishment as of the date the prohibition begins; explaining what types of bags and purchases are impacted; and providing any other information Lancaster Township may require by regulation.

§7. Exemptions.

The Township Manager or the Manager's designee may, upon written request of a Retail Establishment, exempt a Retail Establishment from the requirements of this Chapter for a period of one (1) year from the effective date set forth in §3 upon a finding by the Township Manager or the Manager's designee that the requirements of this Chapter would cause undue hardship to the Retail Establishment.

An "undue hardship" shall be found only if the Retail Establishment demonstrates that it has a unique circumstance or situation such that there are no reasonable alternatives to the use of Single-Use Plastic Bags.

§8. Enforcement.

- 1) The Township Manager or the Manager's 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.
- 2) Any Retail 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.
 - i) The Operator of any Retail Establishment that violates the requirements of this Chapter shall be subject to a civil penalty of up to \$500 per offense

- ii) For the purposes of enforcement under this Chapter, an offense shall be each day an Operator or Retail Establishment is violating a requirement of this Chapter
- iii) In addition to the penalties set forth in this Chapter, Lancaster Township may seek legal, injunctive, or other equitable relief to enforce this Chapter.

SECTION II. Severability.

The terms, conditions and provisions of this Ordinance are hereby declared to be severable, and, should any portion, part or provision of this Ordinance be found by a court of competent jurisdiction to be invalid, unenforceable or unconstitutional, the Lancaster Township Board of Supervisors hereby declares its intent that the Ordinance shall have been enacted without regard to the invalid, unenforceable, or unconstitutional portion, part or provision of this Ordinance.

SECTION III. Repealer.

Any and all other Ordinances or parts of Ordinances in conflict with the terms, conditions and provisions of this Ordinance are hereby repealed to the extent of such irreconcilable conflict.

SECTION IV. Effective Date.

This Ordinance shall become effective upon enactment as provided by law, with enforcement of this Ordinance to occur on the date set forth in Section I, §3 above.

SECTION V. Failure to Enforce Not a Waiver.

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

ORDAINED AND ENACTED by the Board of Supervisors of Lancaster Township, Lancaster County, Pennsylvania, this _____ day of _____, 2023.

ATTEST:

**BOARD OF SUPERVISORS OF
LANCASTER TOWNSHIP**

By: _____
William Laudien, Secretary

By: _____
Steven P. Elliott, Chair

By: _____
Benjamin H. Bamford, Vice Chair

By: _____
Iber Guererro Lopez, Treasurer