

# **NEWTOWN BOROUGH**

## **BUCKS COUNTY, PENNSYLVANIA**

### **ORDINANCE NO. 799**

#### **AN ORDINANCE OF THE BOROUGH OF NEWTOWN, BUCKS COUNTY, PENNSYLVANIA, AMENDING THE CODE OF THE BOROUGH OF NEWTOWN TO ESTABLISH CHAPTER 440 TO REGULATE AND MINIMIZE SINGLE-USE PLASTIC BAGS, STRAWS, UTENSILS AND EXPANDED POLYSTYRENE (AKA STYROFOAM™)**

**WHEREAS**, the Pennsylvania Borough Code authorizes the Borough of Newtown (“Borough”) 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 Borough and the maintenance of peace, good government, health and welfare of the Borough 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 aesthetic 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 Borough; 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 Borough'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 Borough 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 Borough, by regulating the distribution of single-use plastic bags, expanded polystyrene food service products, single-use plastic straws and single-use plastic utensils within the Borough; and

**WHEREAS**, the Borough Council, 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 Borough will be served by this amendment of the Newtown Borough Code of Ordinances to regulate the distribution of single-use plastic bags, expanded polystyrene food service products, single-use plastic bags, single-use plastic straws and single-use plastic utensils within the Borough.

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**NOW, THEREFORE, BE IT ORDAINED AND ENACTED** by the Borough Council of the Borough of Newtown, Bucks County, Pennsylvania, as follows:

**SECTION 1. Creation of Chapter 440 – “Single Use Plastic Regulations.”**

That **Part II – “General Legislation”** of the Newtown Borough Code of Ordinances is hereby amended to add a new **Chapter 440 – “Single-Use Plastics Regulations,”** the text of which is set forth in **Exhibit “A”** hereto. Code is hereby amended to incorporate the provisions set forth in **Exhibit “A.”**

**SECTION 2. Repeal and Ratification.**

All other Ordinances or parts of Ordinances that are inconsistent herewith, are hereby repealed. Further, it is understood and intended that all other section 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 and ratified hereby.

**SECTION 3. Severability.**

The provisions of this Ordinance are severable. In the event that any section, sentence, clause, phrase, or word of the Ordinance, including any incorporated Appendices, shall be declared illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such declaration 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 to create any requirement, power, or duty in conflict with any federal law or laws of the Commonwealth of Pennsylvania.

**SECTION 4. Effective Date.**

All provisions of this Ordinance shall be in full force and effect five (5) days following its legal enactment.

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**ORDAINED AND ENACTED** this \_\_\_\_\_ day of \_\_\_\_\_ 2024, by the  
Newtown Borough Council.

**BOROUGH OF NEWTOWN  
COUNTY OF BUCKS  
COMMONWEALTH OF PENNSYLVANIA**

\_\_\_\_\_  
John Burke, *Mayor*

\_\_\_\_\_  
Emily Heinz, *President*

Attest:

\_\_\_\_\_  
Judy S. Musto  
*Borough Secretary*

# **Exhibit “A”**

## **CHAPTER 440 – Single-Use Plastics Regulations**

### **Article I. Prohibition on Use of Certain Single-Use Plastics Products by Retail Establishments**

#### **§ 440-1 Purpose.**

- A. The purpose of this Chapter is to reduce the use of single-use plastic bags, expanded polystyrene food service products, single-use plastic straws and single-use plastic utensils by retail establishments within the Borough.
- B. 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 the Borough; and to preserve the natural, scenic, historic, and aesthetic values of the Borough.
- C. To relieve the pressure for landfills to manage the disposition of single-use products.

#### **§ 440-2 Definitions.**

##### **CUSTOMER**

Any person purchasing goods or services from a Retail Establishment.

##### **EFFECTIVE DATE**

The effective date of the ordinance that added this Chapter to the Borough's Code of Ordinances.

##### **EXEMPTED BAG**

- A. 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.
- (5) A bag used for newspaper delivery.

### **EXPANDED POLYSTYRENE**

Blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by a number of techniques, including but not limited to: fusion of polymer spheres, known as expandable bead 20 polystyrene; injection molding; foam molding; and extrusion-blow molding, also including Styrofoam™, also known as extruded foam polystyrene.

### **EXPANDED POLYSTYRENE FOOD SERVICE PRODUCT**

- A. A product made of Expanded Polystyrene that is used for selling, providing, or transporting food or beverages.
- B. Shall include:
  - (1) Food containers.
  - (2) Plates.
  - (3) Hot and cold beverage cups.
  - (4) Trays.
  - (5) Clamshells.
- C. Shall not include:
  - (1) Food or beverages that have been packaged in expanded polystyrene outside the Borough before receipt by a food service establishment or store.
  - (2) A product made of Expanded Polystyrene that is used to package raw, uncooked, or butchered meat, fish, poultry, or seafood.

- (3) Non-foam polystyrene food service products.

**NON-RECYCLABLE PAPER BAG**

A paper bag that does not qualify as a Recyclable Paper Bag.

**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 life cycle and after disposal, including material derived from either petrochemicals or a biologically based polymer, such as corn or other plant sources.

**RECYCLABLE PAPER BAG**

A paper bag that meets the following, but not including an Exempted Bag:

- A. Is 100% recyclable;
- B. Contains no old growth fiber;
- C. Contains a minimum of 40% post-consumer recycled content; and
- D. Displays the word “Recyclable” in a highly- visible area on the outside of the bag, and 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**

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 BAG**

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**

A bag made through a blown-film extrusion process, but not including an Exempted Bag.

**SINGLE-USE PLASTIC STRAW**

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 of Plastic and which is primarily intended for a single use. The term shall also include a stirrer, a device used to mix beverages, intended for a single use, and made from Plastic.

- A. The term Single-Use Plastic Straw shall not include straws provided under any of 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 Borough, provided such beverages are not altered, packaged, or repackaged within the Borough;
  - (4) When provided as an assistance device to reasonably accommodate a disability.

**SINGLE-USE PLASTIC UTENSIL**

- A. Any item used or provided by a Retail Establishment to serve, consume, or manipulate food or beverages that is primarily made from Plastic, other than a Single-Use Plastic Straw.
- B. Includes, but is not limited to forks, spoons, sporks, knives, chopsticks, drink stirrers, beverage spill plugs, toothpicks, novelty cocktail accessories, and other drink or food accoutrements.
- C. Shall not include Utensils provided under the following circumstances:
  - (1) When packaged with beverages prepared and packaged outside of the Borough, provided such beverages are not altered, packaged or repackaged within the Borough.
  - (2) When provided as an assistive device to reasonably accommodate a disability.

**§ 440-3 Single-Use Plastic Bags and Non-Reusable Bags Prohibited.**

Beginning 180 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.

**§ 440-4 Single-Use Paper Bags.**

- A. Beginning 180 days after the Effective Date, Retail Establishments are prohibited from providing a Non-Recyclable Paper Bag to a Customer at the Retail Establishment or through a delivery.
- B. A Retail Establishment may provide a consumer a Recyclable 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” thereon.

**§ 440-5 Reusable Bags.**

- A. A Retail Establishment may provide a Customer a Reusable 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 Bag shall be retained by the Retail Establishment.
- C. 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 “Carry-Out Bag Charge” thereon.

**§ 440-6 Signage Requirements.**

Beginning 90 days after the Effective Date, 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



and Non-Recyclable Paper 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 the Borough may require by regulation.

**§ 440-7 Expanded Polystyrene Food Service Product.**

Beginning 180 days after the Effective Date, Retail Establishments are prohibited from providing any Expanded Polystyrene Food Service Product to a Customer at the Retail Establishment or through a delivery.

**§ 440-8 Single-Use Plastic Straws.**

Beginning 180 days after the Effective Date, Retail Establishments are prohibited from providing Single-Use Plastic Straws, except upon request of a Customer.

**§ 440-9 Single-Use Plastic Utensils.**

Beginning 180 days after the Effective Date, Retail Establishments are prohibited from providing Single-Use Plastic Utensils, except upon request of a Customer.

**§ 440-10 Temporary Exemptions.**

Borough Council or its designee, may, in its sole discretion, upon written request of a Retail Establishment, exempt a Retail Establishment from the requirements of this Ordinance for a period of not more than one (1) year from the Effective Date upon a finding by the Council or its designee that the requirements of this Section would cause undue hardship to the Retail Establishment. The Council or its designee may make a finding of undue hardship only in the following circumstances or situations, and any exemptions that may be provided by the Council pursuant hereto may, in the Council's discretion, contain conditions:

- A. The Retail Establishment has a unique circumstance or situation such that there are no reasonable alternatives to Single-Use Plastic Bags, Single-Use Plastic Straws, Single-Use Plastic Utensils, Non-Recyclable Paper Bags or Expanded Polystyrene Food Product; or

- B. Additional time is necessary to draw down an existing inventory held by the Retail Establishment of Single-Use Plastic Bags, Non-Recyclable Paper Bags, or Expanded Polystyrene Food Service Product.

**§ 440-11 Enforcement.**

- A. The Borough Council or its designee shall have the primary responsibility for enforcement of this Ordinance.
- B. A person or Retail Establishment that violates the requirements of this Chapter shall:
  - (1) Be given a written warning for a first offense with a 30-day grace period before issuing a second offense;
  - (2) Be subject to a civil penalty of \$50.00 for a second offense;
  - (3) Be subject to a civil penalty of \$100.00 for a third offense; and
  - (4) Be subject to a civil penalty of \$200 for a fourth or any subsequent offense.
- C. Any Retail Establishment that receives an initial written warning notice may file a request for an exemption to the extent permitted pursuant to Section 440-10 above.
- D. In addition to the penalties set forth in this Ordinance, the Borough shall be entitled to its attorneys' fees and the costs of enforcing this Ordinance, and may seek legal, injunctive, or other equitable relief to enforce this Ordinance.
- E. The failure of the Borough to enforce any provision of this Ordinance shall not constitute a waiver by the Borough of its rights to future enforcement hereunder.