

Single-Use Plastic Bags Ordinance Proposal (September 2, 2021)

WHEREAS, the City Code and the Pennsylvania Municipalities Planning Code authorizes the City Council of Bethlehem 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 city and the maintenance of peace, good government, health and welfare of the City of Bethlehem 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; and

WHEREAS, the Amendment imposes two basic duties on the Commonwealth and its political subdivisions such as the city- 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 City'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, City Council 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 city, by regulating the distribution of single-use plastic bags within Bethlehem; and

WHEREAS, City Council has met the procedural requirements of 53 P.S. § 10101, et seq., the Pennsylvania Municipalities Planning Code, for the adoption of the proposed ordinance, including holding a public hearing; and

WHEREAS, City 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 Bethlehem will be served by this amendment of the Bethlehem Ordinance to regulate the distribution of single-use plastic bags within the City of Bethlehem; and

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the City Council of the City of Bethlehem, Lehigh and Northampton Counties, Pennsylvania, it is hereby enacted and ordained by the authority of same, as follows:

CHAPTER [code to be inserted or amended], PROHIBITION ON USE OF SINGLE-USE PLASTIC BAGS BY RETAIL ESTABLISHMENTS.

§[section number]. Purpose and Findings.

A. Purpose

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- a. The purpose of this Chapter is to reduce the use of single-use bags.
- 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 City of Bethlehem and to preserve the natural, scenic, historic, and esthetic values of the City of Bethlehem.
- c. To relieve the pressure on recyclers, who cite single-use plastic bags as a major source of contamination and inefficiency within the recycling stream.
- d. To relieve the pressure for landfills to manage the disposition of single-use products.

B. Findings.

- a. 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.
- b. There are several commercial establishments within the City of Bethlehem, which provide single-use plastic bags to their customers.
- c. Single-use plastic bags do not readily decompose.
- d. 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 the City of Bethlehem, such bags are not curbside recyclable.
- e. 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.
- f. The taxpayers of the City of Bethlehem pay the costs related to the cleanup of single-use plastic bags from the roadways, trees, sewers, waters, and parks within the City.
- g. Recyclers cite single-use plastic bags as a major source of contamination within the recycling stream, leading to increased costs and decreased efficiency.
- h. 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.
- i. There are several alternatives to single-use plastic bags readily available in and around the City of Bethlehem.
- j. An important goal of the City of Bethlehem is to procure and use sustainable products and services, as stated in Bethlehem's Climate Action Plan.
- k. An important goal of the City of Bethlehem is to preserve its natural, scenic, historic, and esthetic values.
- l. It is the City of Bethlehem'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 City of Bethlehem's residents and visitors.
- m. Studies have documented that placing a prohibition on 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.

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§[section number]. Definitions.

- (1) "Customer" means any person purchasing goods or services from a Retail Establishment.
- (2) "Effective Date" means the effective date of the ordinance that added this Chapter to [insert Bethlehem name/code].
- (3) "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:
 - (i) a bag used to package bulk items such as fruit, vegetables, nuts, grains, or candy;
 - (ii) a bag used to contain or wrap meats or fish; to contain unwrapped prepared foods or bakery goods;
 - (iii) a bag used solely to contain live animals, such as fish or insects sold in a pet store;
 - (iv) a bag sold in packaging containing multiple bags and packaged at the time of manufacture of the bag.
- (4) "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.
- (5) "Recycled Paper Bag" means a paper bag that meets the following criteria, 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.
- (6) "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, department store, dollar store, clothing store, or pharmacy, but not including restaurants or drycleaners. Non-profit and religious organizations shall be exempt from the ordinance, although may voluntarily comply with the ordinance.
- (7) "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.
- (8) "Single-use Plastic Bag" means a bag made through a blown-film extrusion process, but not including an Exempted Bag.

§[section number]. Single-use Plastic Bags.

- (1) 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.

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§[section number] . Single-use Paper Bags.

- (1) 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.
- (2) A retail establishment may provide a consumer a Recycled Paper Bag at the point of sale if the bag is provided to the consumer for a charge of not less than \$0.10 per bag.
- (3) 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.

§[section number] . Reusable Bags.

- (1) A retail establishment may provide a consumer a reusable bag at the point of sale if the bag is provided to the consumer for a charge of not less than \$0.10 per bag.
- (2) All monies collected by a retail establishment under this section for provision of a Reusable Bag shall be retained by the retail establishment.

§[section number] . Signage Requirement.

- (1) 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 the City of Bethlehem may require by regulation.

§[section number] . Retention, Remittance, and Transfer of the "Carry-Out Bag Charge" fees.

- (1) Retail establishments may retain 100% of its "Carry-Out Bag Charge" fees for the first 12 months after the effective date of the ordinance.
- (2) After 12 months of the effective date of the ordinance, retail establishments should either continue to retain all of its "Carry-Out Bag Charge" fees OR a portion of the fees* could be collected by the City of Bethlehem to be used to:
 - (a) Provide reusable carryout bags to residents and visitors
 - (b) Educate residents, businesses, and visitors about the impact of plastic trash
 - (c) Fund a project that recycles or reduces waste in the City of Bethlehem
 - (d) Fund a sustainability project in the City of Bethlehem

**Generally, other cities collect 75% and the businesses retain 25%*

§[section number] . Enforcement.

- (1) A person, store, or food service establishment that violates the requirements of this subchapter shall:
 - (a) be subject to a civil penalty of \$50.00 for a first offense;
 - (b) be subject to a civil penalty of \$100.00 for a second offense; and
 - (c) be subject to a civil penalty of \$200.00 for a third or any subsequent offense.

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- (2) For the purposes of enforcement under this subchapter, an offense shall be each day a person, store, or food service establishment is violating a requirement of this subchapter
- (3) In addition to the penalties set forth in this Chapter, the City of Bethlehem may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- (4) The failure of the City of Bethlehem to enforce any provision of this Ordinance shall not constitute a waiver by the City of Bethlehem of its rights to future enforcement hereunder.

§ section number . Effective Date

(1) This ordinance shall take effect December 8, 2021.