

**ORDINANCE NO. 1009
BOROUGH OF NARBERTH
MONTGOMERY COUNTY, PENNSYLVANIA**

**AN ORDINANCE AMENDING THE NARBERTH BOROUGH ORDINANCE
REGULATING THE DISTRIBUTION OF SINGLE-USE CARRY-OUT PLASTIC BAGS
AND SINGLE-USE PLASTIC STRAWS; AND PROVIDING FOR RELATED
PURPOSES AND FINDINGS, DEFINITIONS, REQUIREMENTS, ENFORCEMENT,
PENALTIES, AND EXEMPTIONS**

WHEREAS, the Borough Code and the Pennsylvania Municipalities Planning Code authorizes the Borough Council of the Borough of Narberth (“Borough Council”) 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 of Narberth (“Borough”) and its citizens;

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, for the reasons set forth in more detail below, Borough 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 Borough, by regulating the distribution of single-use, carry-out plastic bags and straws within the Borough of Narberth;

WHEREAS, the Narberth Borough 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, 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 Narberth Borough will be served by this amendment of the Narberth Borough Ordinance to regulate the distribution of single-use, carry-out plastic bags and straws within the Borough of Narberth;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of Narberth, Montgomery County, Pennsylvania, it is hereby enacted and ordained by the authority of same, as follows:

Section I. Code Amendment. The Narberth Borough Ordinance shall be amended by providing a new Chapter under Part II, *General Legislation*, entitled “Plastics Regulations”, to provide as follows:

1. Purpose and Findings.

A. The purpose of this Chapter is to reduce the use of single-use, carry-out plastic bags and single-use, plastic straws by commercial establishments within the Borough of Narberth, 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 of Narberth, and to preserve the natural, scenic, historic, and esthetic values of the Borough of Narberth.

B. Findings.

- a. The use of single-use bags and plastic straws have severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, ground level ozone formation, atmospheric acidification, water consumption and solid waster generation.
- b. There are numerous commercial establishments within the Borough of Narberth which provide single-use, plastic carry-out bags and single-use, plastic straws to their customers.
- c. The majority of such single-use, plastic carry-out bags and single-use, plastic straws are made from plastic or other material that does not readily decompose.
- d. Approximately one hundred billion single-use, plastic carry-out bags are discarded by United States consumers each year. In the Borough or Narberth, such bags are not readily recyclable.
- e. Approximately five hundred million single-use, plastic straws are discarded by United States consumers every day. In the Borough or Narberth, such straws are not readily recyclable.
- f. Numerous studies have documented the prevalence of single-use, plastic carry-out bags and/or plastic straws littering the environment, blocking storm drains, entering local waterways, and becoming stuck in or upon natural resources and public property.
- g. The taxpayers of the Borough of Narberth pay the costs related to the cleanup of single-use, plastic carry-out bags and plastic straws from the roadways, trees, sewers, waters, and parks within the Borough.

- h. 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, recyclable paper straws, or straws made from other natural products.
- i. There are several alternatives to single-use, plastic carry-out bags and single use plastic straws readily available in and around the Borough of Narberth.
- j. An important goal of the Borough of Narberth is to procure and use sustainable products and services.
- k. An important goal of the Borough of Narberth is to preserve the natural, scenic, historic, and esthetic values of the Borough of Narberth.
- l. It is the Borough of Narberth'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 Borough's residents and visitors.
- m. Studies have documented that placing a mandatory charge on single-use, plastic carry-out bags and banning single-use, plastic straws will dramatically reduce the use of such items.

2. Definitions.

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

- a. "Borough" shall mean the Borough of Narberth.
- b. "Commercial Establishment" shall mean any person, corporation, partnership, business venture, or vendor that sells or provides merchandise, goods, or materials directly to a customer, whether or not for profit, including, but not limited to, restaurants (eat-in and/or take-out food), bars, pharmacies, convenience and grocery stores, seasonal and temporary businesses or markets, retail stores, or other similar nonresidential uses. For purposes of this Chapter, Commercial Establishments shall not include bazaars or festivals operated by nonprofit organizations or religious institutions.
- c. "Compostable Plastic Bag" and "Compostable Plastic Straw" shall mean, respectively, a plastic bag or plastic Straw that (1) conforms to the current ASTM D6400; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) must be capable of undergoing biological decomposition in a compost site such that the

material breaks down into carbon dioxide, water, inorganic compounds and biomass at a rate consistent with known compostable materials.

- d. "Distribution" or to "distribute" means the vending, sale, giving, deployment or delivering for any purpose of a Single-Use Plastic Carry-Out Bag or Single-Use Plastic Straw, whether or not incident to the sale, vending, or production of any merchandise or beverage.
- e. "Recyclable Paper Bag" shall mean a paper bag that is (1) one hundred percent (100%) recyclable including the handles; (2) contains at least forty percent (40%) post-consumer recycled paper content; and displays the words "recyclable" and "made from 40% post-consumer recycled amount content (or other applicable amount), or substantially similar wording, in a visible manner on the outside of the bag.
- f. "Recyclable Paper Straw" shall mean a paper Straw that is one hundred percent (100%) recyclable.
- g. "Reusable Bag" shall mean a bag with handles that is specifically designed and manufactured for multiple reuse. Reusable Bags shall be made of either polyester, polypropylene, cotton, or other durable material, or durable plastic that is at least 3.0 mils in thickness.
- h. "Reusable Straw" shall mean a Straw that is specifically designed and manufactured for multiple reuse. Reusable Straws shall be made of either glass, stainless steel, silicone, durable and reusable plastic, or other similar durable material.
- i. "Single-Use Plastic Carry-Out Bag" shall mean a bag made of plastic or other similar material that is provided by a Commercial Establishment to a customer at or around the point of sale that is not a Reusable Bag, Recyclable Paper Bag or Compostable Plastic Bag. A "Single-Use Plastic Carry-Out Bag" shall not include the following:
 - i. Bags in which loose produce or products are placed by a consumer to deliver such items to the point of sale or check-out area of a Commercial Establishment;
 - ii. Laundry or dry-cleaner bags;
 - iii. Newspaper bags;
 - iv. Bags used to contain or wrap frozen foods, meat or fish, whether prepackaged or not, to prevent moisture;

- v. A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a Reusable Bag, Recyclable Paper Bag or Compostable Plastic Bag; and
 - vi. Any bags provided for use by a Commercial Establishment operated by the Commonwealth of Pennsylvania, or otherwise distributed by a federal, Commonwealth, or local government agency.
- j. “Single-Use Plastic Straw” shall mean a Straw provided by a Commercial Establishment that is not a Reusable Straw, Recyclable Paper Straw, or Compostable Straw. A “Single-Use Plastic Straw” shall not include Straws provided under the following circumstances:
- i. When provided with a beverage on private property used as a residence;
 - ii. When provided by a state, federal or local government agency;
 - iii. When packaged with beverages prepared and packaged outside of the Borough, provided such beverages are not altered, packaged or repackaged within the Borough;
 - iv. When provided as an assistance device to reasonably accommodate a disability.
- k. “Straw” shall mean 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.

3. Requirements.

A. Distribution of Single-Use Plastic Carry-Out Bags.

- a. Any Commercial Establishment that distributes a Single-Use Plastic Carry-Out Bag shall sell the bag for no less than ten cents (\$0.10) per bag. All monies collected pursuant to this Chapter shall be retained by the Commercial Establishment.
- b. Any charge for a Single-Use Plastic Carry-Out Bag shall be separately stated on a receipt provided to the customer at the time of sale and shall be identified as the “Plastic Carry-Out Bag Charge” thereon.
- c. Nothing in this section shall be read to preclude Commercial Establishments from making Reusable Bags, Recyclable Paper Bags or Compostable Plastic Bags available for sale to customers.

B. Distribution of Single-Use Plastic Straws.

- a. The Distribution of Single-Use Plastic Straws by Retail Establishments within the Borough is prohibited.
- b. Nothing in this section shall be read to preclude Commercial Establishments from making Reusable Straws, Recyclable Paper Straws, or Compostable Straws available for sale to customers.

4. Enforcement.

- a. The Borough Code Enforcement Officer, and any other persons appointed by Borough Council, shall have the authority to do inspections, issue citations, pursue prosecutions, and enforce the provisions of this Chapter.
- b. If it is determined that a violation has occurred, the designated Code Enforcement Official shall issue a warning notice to the Commercial Establishment.
- c. If an additional violation of this Chapter occurs after a warning notice has been issued for an initial violation, the Code Enforcement Official shall issue a notice of violation to the Commercial Establishment and, upon conviction thereof, the Commercial Establishment shall be sentenced to pay a fine, as set forth below, together with the costs of prosecution, including court costs and attorneys' fees for services in connection with enforcement, such fee amounts being the solicitor's contracted then-current hourly rate(s) with the Borough. Commercial Establishments shall be strictly liable for the violations of their employees.
- d. The penalty for each violation that occurs after the issuance of the warning notice shall be a fine of no more than:
 - i. \$100.00 for the first violation;
 - ii. \$200.00 for the second violation in the same year dating from the first violation;
 - iii. \$500.00 for the third and each subsequent violation in the same year dating from the first violation.
- e. In addition to the penalties set forth in this Chapter, the Borough may seek legal, injunctive, or other equitable relief to enforce this Chapter.

- 5. Exemptions.** Borough Council may, upon written request of a Commercial Establishment, exempt a Commercial Establishment from the requirements of this Chapter for a period of one (1) year from the effective date upon a finding by Borough Council that the requirements of this Chapter would cause undue hardship to the Commercial Establishment. An “undue hardship” shall be found only in the following circumstances or situations, and any exemptions may be provided by Borough Council with conditions:
- a. The Commercial Establishment has a unique circumstance or situation such that there are no reasonable alternatives to Single-Use Plastic Carry-Out Bags or Single-Use Plastic Straws;
 - b. Compliance with the requirements of this Chapter would deprive a Commercial Establishment of a legally protected right;
 - c. Additional time is necessary in order to draw down an existing inventory of Single-Use Plastic Carry-Out Bags or Single-Use Plastic Straws.

Section II. Repealer. In addition to the above, all other ordinances or parts of ordinances that are inconsistent herewith, are hereby repealed. Further, it is understood and intended that all other sections, 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 hereby.

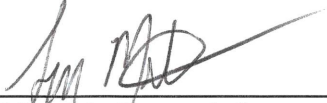
Section III. Severability. In the event that any section, sentence, clause, phrase or word of this Ordinance, including the incorporated Appendices, shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose enforcement of any of the remaining portions of this Ordinance. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal law or laws of the Commonwealth of Pennsylvania.

Section IV. Effective Date. This Ordinance shall take effect six (6) months after its legal enactment.

Section V. Failure to Enforce Not a Waiver. The failure of the Borough of Narberth to enforce any provision of this Ordinance shall not constitute a waiver by the Borough of its rights of future enforcement hereunder.

ORDAINED AND ENACTED by the Borough Council of the Borough of Narberth, Montgomery County, Pennsylvania, this 17th day of October, 2018.

Attest:

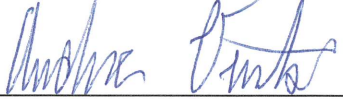


Sean Metrick, Borough Secretary

BOROUGH OF NARBERTH:


By: _____
Aaron Muderick, Council President

Examined and approved as an Ordinance, this 17 day of October, 2018.



Andrea Deutsch, Mayor