

**AN ORDINANCE**

**NO. \_\_\_\_\_**

**AN ORDINANCE Amending The Code of Upper Dublin Township, Part II, General Legislation, By Amending The Title Of Chapter 203 “Solid Waste” To Chapter 203 “Health And Sanitation,” And by Adding A New Chapter 203, Article V “Single Use Plastic Regulations,” Prohibiting Retail Establishments From Providing Single Use Carry-Out Plastic Bags And Single Use Carry-Out Plastic Straws to Customers, Setting Forth The Purposes Of Such Prohibition And Related Findings, Definitions And Requirements, And Providing For The Enforcement Of The Regulations, Including The Imposition Of Penalties; And, Repealing All Inconsistent Ordinances Or Parts Thereof In Conflict Therewith; And, Providing A Severability Clause And An Effective Date.**

**WHEREAS**, Upper Dublin Township, Montgomery County, Pennsylvania (hereinafter the “Township”) is a Township of the First Class, organized and existing under the laws of the Commonwealth of Pennsylvania; and

**WHEREAS**, the First Class Township Code authorizes the Board of Commissioners (“Board”) of Upper Dublin 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 the 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 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 and its political subdivisions shall conserve and maintain these resources 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 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 and single-use plastic straws within the Township; and

**WHEREAS**, the Board 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 Township will be served by this amendment of the Township Code to regulate the distribution of single-use plastic bags and single-use plastic straws within the Township.

**NOW, THEREFORE**, it is ordained and enacted by the Board of Commissioners of the Township of Upper Dublin that:

**Section 1.** The Code of Upper Dublin Township, Part II: General Legislation, Chapter 203 Solid Waste, is hereby amended by changing the title of Chapter 203 to Chapter 203 “Health and Sanitation.”

**Section 2.** The Code of Upper Dublin Township, Part II: General Legislation, Chapter 203, entitled Health and Sanitation, shall be amended by adding a new Article V entitled “Single Use Plastic Regulations” to provide as follows:

\* \* \* \* \*

Article V Single Use Plastic Regulations

**§ 203-48 Purpose and Findings.**

**A. Purpose**

- (1) The purpose of this Article is to reduce the use of single-use plastic bags and single-use plastic straws by retail establishments 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 the Township, and to preserve the natural, scenic, historic, and esthetic values of the Township.
- (3) To relieve the pressure for landfills and resource recovery facilities to manage the disposition of single-use products.

**B. Findings**

- (1) The use of single-use plastic bags and single-use plastic straws have severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife and aquatic life, ground level ozone formation, atmospheric acidification, water consumption, and solid waste generation.

- (2) There are numerous retail establishments within the Township which provide single-use plastic bags, expanded polystyrene food service products and single-use plastic straws to their customers.
- (3) The majority of such single-use plastic bags and single-use plastic straws are made from plastic or other material that does 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 the Township, such bags are not curbside recyclable.
- (5) Approximately five hundred million single-use plastic straws are discarded by United States consumers every day. In the Township, such straws are not readily recyclable.
- (6) Numerous studies have documented the prevalence of single-use plastic bags and single-use plastic straws littering the environment, blocking storm drains, entering local waterways, and becoming stuck in or upon natural resources and public property.
- (7) The taxpayers of the Township pay the costs related to the cleanup of single-use plastic bags and single-use plastic straws from the roadways, trees, sewers, waters, and parks within the Township.
- (8) From an overall environmental and economic perspective, the best alternative to single-use plastic bags is a shift to reusable bags 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, if a straw is required.
- (9) There are several alternatives to single-use plastic bags and single-use plastic straws readily available in and around the Township.
- (10) An important goal of the Township is to procure and use sustainable products and services.
- (11) An important goal of the Township is to preserve the natural, scenic, historic, and esthetic values of the Township.
- (12) It is the 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 and aquatic life, all of which increases the quality of life for the Township's residents and visitors to the Township.
- (13) As required by the Environmental Rights Amendment to the Pennsylvania Constitution, the Board seeks to preserve the natural, scenic, historic, and aesthetic values of the Township.

(14) It is the Board'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 and aquatic life, all of which increases the quality of life for the Township's residents and visitors.

**§ 203-49. Definitions.**

**CUSTOMER** - Any person purchasing goods or services from a Retail Establishment.

**EFFECTIVE DATE** - The effective date of this ordinance is ninety (90) days from adoption by the Board of Commissioners of Upper Dublin Township.

**EXEMPTED BAG** - A bag used inside a retail establishment by a customer to deliver perishable items to the point-of-sale at that establishment. "Exempted bag" 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; or
- (4) a bag sold in packaging containing multiple bags and packaged at the time of manufacture of the bag.

**NON-RECYCLABLE PAPER BAG** – A non-recyclable paper bag means a paper bag that is not 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:

- (1) Is 100% recyclable;
- (2) contains no old growth fiber;
- (3) contains a minimum of 40% post-consumer recycled content; and
- (4) Displays the word "Recyclable" in a highly visible manner on the outside of the bag and is labeled in a highly visible manner on the outside of the bag with the name of the manufacturer, the location where manufactured, and the percentage of post-consumer recycled content of the bag in an easy-to-read font size.

**RETAIL ESTABLISHMENT** - 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 Upper Dublin 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.

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/NON-REUSABLE PLASTIC BAG - A bag made from plastic through a blown-film extrusion process, but not including a reusable bag or 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. 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 Township, provided such beverages are not altered, packaged, or repackaged within the Township;
- (4) When provided as an assistance device to reasonably accommodate a disability.

**§ 203-50. Single-use plastic bags and non-reusable plastic bags prohibited.**

Beginning after the effective date, retail establishments are prohibited from providing a single-use plastic bag or a bag that does not qualify as a reusable bag to a customer at the retail establishment or through a delivery.

**§ 203-51. Single-use paper bags prohibited.**

- A. Beginning after the effective date, retail establishments are prohibited from providing a non-recyclable paper bag to a customer at a retail establishment or through a delivery.
- B. A retail establishment may provide a customer a recyclable paper bag at the point of sale if the bag is provided to the customer for a mandatory, uniform charge of \$0.10 per recyclable paper bag.
- C. All monies collected by a retail establishment under this section for provision of a recyclable paper bag shall be retained by the retail establishment.

- D. Any charge for a recyclable paper bag shall be separately stated on any receipt provided to the customer at the time of sale and shall be identified thereon as the “carry-out bag charge” or through use of equivalent language as deemed acceptable by the Township.

**§ 203-52. Reusable Bags.**

- A. A retail establishment may provide a customer a reusable bag at the point of sale. If the retail establishment provides a reusable bag, it may charge the customer a fee of \$0.10 per reusable 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 thereon.

**§ 203-53. Signage Requirement.**

Beginning 30 days after the effective date, and for six months thereafter, retail establishments shall 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 establishment as of the date the prohibition begins; explaining what types of bags and purchases are impacted; and providing any other information the Township may require by regulation or written policy.

**§ 203-54. Single-Use Plastic Straws prohibited.**

Beginning after the effective date, retail establishments are prohibited from providing single-use plastic straws, except upon request of the customer.

**§ 203-55. Temporary Exemptions.**

The Board of Commissioners 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 year from the effective date upon a finding by the Board or its designee that the requirements of this Article would cause undue hardship to the retail establishment. The Board 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 Board pursuant hereto may, in the Board's discretion, contain conditions:

- (1) The retail establishment has a unique circumstance or situation such that there are no reasonable alternatives to single-use plastic bags, non-recyclable paper bags; or
- (2) Additional time is necessary to draw down an existing inventory held by the retail establishment of single-use plastic bags, non-reusable bags or non-recyclable paper bags.

**§ 203-56. Enforcement.**

- A. The Township Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Article.
- B. A person, store, or food service establishment that violates the requirements of this Chapter 203, Article V shall:
  - (1) be subject to a civil penalty of \$100.00 for a first offense;
  - (2) be subject to a civil penalty of \$200.00 for a second offense; and
  - (3) be subject to a civil penalty of \$500.00 for a third or any subsequent offense.
- C. 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 Ordinance.
- D. In addition to the penalties set forth in this Article, the Township may seek legal, injunctive, or other equitable relief to enforce the requirements of this Article.
- E. The failure of the Township to enforce any provision of this Article shall not constitute a waiver by the Township of its rights to future enforcement hereunder.

**Section 3.** 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 Upper Dublin Township Board of Commissioners 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 4.** 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 5.** This Ordinance shall be effective ninety (90) days from enactment.

**ORDAINED AND ENACTED** by the Board of Commissioners of Upper Dublin Township on this \_\_\_\_ day of \_\_\_\_\_, 2023.

BOARD OF COMMISSIONERS OF THE  
UPPER DUBLIN TOWNSHIP

By: \_\_\_\_\_  
Ira S. Tackel, President

ATTEST:

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Jonathan Bleemer, Secretary/Township Manager