

Policy Committee Meeting
Tuesday, May 23, 2023
7:00 PM

AGENDA

Committee: Chairman, Mr. Kirkner, Ms. Burckley, and Mr. Ewald
Staff: Mr. Krack and Mr. Boelker

- I. Call to Order
- II. Public Participation
- III. Presentations
- IV. Committee Member Updates/Discussions
- V. New Business
 - A. Motion to recommend Borough Council schedule and advertise an Ordinance amending Chapter 10, Health and Safety, by adding a new Part 5 Plastics.
- VI. Current Focus Business
 - A. Discussion regarding HARB/Sign review and approval.
 - B. Enforcement of bans on reproductive health services.
- VII. Adjournment

Next Meeting Date: Tuesday, June 27, 2023 at 7:00 pm.

ORDINANCE 2023 -

AN ORDINANCE AMENDING THE CODE OF THE BOROUGH OF PHOENIXVILLE, AS AMENDED, CHAPTER 10, "HEALTH AND SAFETY," BY ADDING A NEW PART 5 "PLASTICS".

The Council of the Borough of Phoenixville, Chester County, Pennsylvania, hereby
ORDAINS that:

Section 1. Chapter 10, "Health and Safety" is hereby amended by adding a new
Part 5 "Plastics" it in its entirety:

Part 5 PLASTICS

§ 10-501 Purpose and Intent.

The purpose of this Part is to encourage consumers and commercial establishments within the Borough to help reduce the use and environmental impact of single-use plastics by promoting the use of reusable bags, utilizing alternatives to single-use plastic straws, training employees to ask consumers first before providing a single use plastic item, and substituting other biodegradable products for polystyrene containers.

§ 10-502 Definitions.

For purposes of this Part, the following definitions shall apply:

BOROUGH

The Borough of Phoenixville.

COMMERCIAL ESTABLISHMENT

Any person, corporation, partnership, business venture, vendor, or retail sales establishment located within the Borough that regularly sells, rents, or provides food, merchandise, goods, or materials, whether perishable or nonperishable, for direct use or consumption and not for resale, whether or not for profit, including, but not limited to: restaurants (eat-in and/or take-out food), food trucks, farmers' markets, bars, pharmacies, convenience and grocery stores, seasonal and temporary businesses or markets, service stations, delicatessens, retail stores, delivery services, or other similar nonresidential uses.

COMPLIANT BAG

The following:

1. Recyclable Paper Bag.
2. A Reusable Bag.

COMPLIANT STRAW

A straw or drink stirrer made from paper, bamboo, agave, or other non-plastic content.

CONSUMER

Any person, organization, or entity receiving goods or services from a commercial establishment.

POST-CONSUMER RECYCLED MATERIAL

A material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle.

PRODUCT BAG

A very thin bag without handles used as follows inside a commercial establishment:

1. A bag used to package bulk items such as fruit, vegetables, nuts, grains, or candy, such as a produce bag;
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; or
5. A bag to contain or wrap flowers, potted plants, or similar items; or to transport chemical pesticides, drain-cleaning chemicals, or other caustic chemicals sold at the retail level.

DISTRIBUTE or PROVIDE

The vending, sale, giving, deployment, or delivering for any purpose of a single-use carry-out plastic bag, a single-use plastic straw, or polystyrene container whether or not incident to the sale, vending, or production of any merchandise or beverage.

POLYSTYRENE CONTAINER

A nonrecyclable plastic disposable food or drink container made of synthetic resin of polystyrene (one example is known as Styrofoam®) which is for single use and intended for serving or transporting ready-to-eat food or beverages. This definition includes cups, plates, trays, bowls, and hinged or lidded containers, but does not apply to cup lids.

RECYCLABLE

Material that can be sorted, cleansed and reconstituted using available recycling programs for the purpose of reusing the altered or converted waste for use in new materials.

RECYCLABLE PAPER BAG

A paper bag that meets all of the following criteria:

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

REUSABLE BAG

A bag that meets all of the following criteria:

1. Is designed and manufactured to withstand repeated uses over time;
2. Is made of cloth, fabric, cornstarch, or other non-plastic material that is specifically designed and manufactured for multiple reuses;
3. Is machine washable or can be cleaned and disinfected regularly; and
4. Has the capability of carrying a minimum of 18 pounds.

SINGLE-USE CARRY-OUT PLASTIC BAG

A bag that is made predominantly of plastic and is made using a blown-film extrusion process, other than a reusable bag, as defined below, provided at the check-out stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment. A single-use plastic carry-out bag shall not include any of the following:

1. Product bags;
2. Laundry or dry-cleaner bags, including bags provided by hotels to guests to contain wet or dirty clothing;
3. Bags used to contain a newspaper for home delivery;
4. Bags sold in packages containing multiple bags intended for use as food storage bags, garbage bags or pet waste bags; or
5. Any bags provided for use by a commercial establishment operated by the Commonwealth of Pennsylvania, or otherwise provided by a federal, Commonwealth, or local government agency.

SINGLE-USE PLASTIC STRAW OR STIRRER

A straw which is made predominantly of plastic and which is primarily intended for a single use. The term shall also include a plastic stirrer, a device used to mix beverages, intended for a single use, and made predominantly from plastic. The term single-use plastic straw or stirrer shall not include straws or stirrers composed of non-plastic materials, such as bamboo, sugar cane, agave, wood, or paper. The term single-use plastic straw or stirrer 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.

STRAW

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.

§ 10-503 **Single-Use Carry-Out Plastic Bags Restricted.**

1. Restrictions on Single-Use Carry-Out Plastic Bags.

Except as provided in this section, beginning January 1, 2024, no commercial establishment or operator shall provide a single-use carry-out plastic bag to a consumer at the check-out, stand, cash register, point of sale, or other point of departure for the purposes of transporting food or merchandise out of the commercial establishment.

2. Permitted Bags.

A. A commercial establishment may make available for sale to a consumer, a recyclable paper bag for a mandatory, uniform charge of \$0.10 per recyclable paper bag.

- (1) Any charge for a recyclable paper bag shall be separately stated on a receipt provided to the consumer at the time of sale and shall be identified as the "paper carry-out bag charge" thereon.
- (2) All monies collected by a commercial establishment for the sale of recyclable paper bags under this section may be retained and used by the commercial establishment for any lawful purpose.
- (3) All commercial establishments must post within such commercial establishment signage clearly indicating the per bag charge for recyclable paper bags.
- (4) No commercial establishment shall rebate or otherwise reimburse a consumer any portion of the charge required in this Subsection 10-503.2.A, except as provided in Subsection 10-503.2.A(5) below. Any waiver of the charge by the commercial establishment or any reimbursement in any form to a consumer for any portion of the charge for the provision of a recyclable paper bag is a violation of this section.
- (5) A commercial establishment which collects a charge for a recyclable paper bag shall exempt a consumer from the fee when that consumer uses an electronic benefits transfer (EBT) card or is using a payment card or voucher issued by the Supplemental Nutrition Assistance Program (SNAP) or Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

- B. A commercial establishment may make available for sale a reusable bag to a consumer, for a fee not less than ten cents (\$0.10) per bag. The requirements of Section 10-503.2 applicable to recyclable paper bags shall further apply to any supplied reusable bags.

3. Signage Requirement.

- A. From the effective date of this Part through December 31, 2023, commercial establishments shall be required to post at all check-out stands, cash registers, points of sale, or other points of departure from the commercial establishment, conspicuous signage which shall:
 - (1) Inform consumers, patrons, or users of the commercial establishment that single-use carry-out plastic bags will no longer be provided by the commercial establishment as of the date the prohibition begins;
 - (2) State the mandatory, uniform charge per bag for any compliant bag that will be provided by the commercial establishment;
 - (3) Provide the date such charges for compliant bags will begin to be collected;
 - (4) Explain what types of bags and uses are impacted; and
 - (5) Provide any other information the Borough may require by regulation.

4. Permitted Bags and Carry-Outs.

- A. Nothing in this section shall be construed to prohibit consumers, patrons, or users of the commercial establishment from:
 - (1) Using bags of any type that the consumers, patrons, or users of the commercial establishment bring to the commercial establishment for their own use or
 - (2) Carrying away from the commercial establishment by other means any items that are not placed in a bag provided by the commercial establishment.
- B. Nothing in this section shall be construed to prohibit the retail sale of compliant bags to consumers, patrons and users of the commercial establishment.

§ 10-504 **Prohibition Against Single-Use Plastic Straws and Polystyrene Food Containers.**

1. Beginning January 1, 2024, commercial establishments are prohibited from providing single-use plastic straws or polystyrene containers to a consumer, customer, patron, or user of the commercial establishment under any circumstance, unless subject to an exemption. The prohibition set forth in this section shall not apply to single-use plastic straws or polystyrene containers as follows:
 - A. Where multiple single-use plastic straws or polystyrene containers are grouped and sold in a single package, which package was prepared and sealed by the manufacturer of such items at the time of their manufacture;
 - B. Where an individual single-use plastic straw or polystyrene container is included as a part of a pre-packaged product where such single-use plastic straw or polystyrene containers is ancillary to the primary products, and such package was prepared and sealed by the manufacturer of such items at the time of their manufacture; or
 - C. Are ultimately sold to consumers for business use.

§ 10-505 **Exemptions.**

1. Borough Council may, in its sole discretion, upon written request of a commercial establishment, exempt a commercial establishment from the requirements of this Part for a period of not more than one year from the effective date upon a finding by the Council that the requirements of this section would cause undue hardship to the commercial establishment. Borough Council 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 commercial establishment has a unique circumstance or situation such that there are no reasonable alternatives to single-use carry-out plastic bags, single-use plastic straws, or polystyrene containers;
 - B. Compliance with the requirements of this section would deprive a commercial establishment of a legally protected right;
 - C. Additional time is necessary in order to draw down an existing inventory held by the commercial establishment of single-use carry-out plastic

bags, single-use plastic straws, or polystyrene containers and a request for relief pursuant to this Subsection 10-505.1.C is submitted to the Borough within 180 days from the effective date of this Ordinance.

§ 10-506 Enforcement and Penalties.

1. The Borough Manager or their designee(s) shall have the primary responsibility for enforcement of this Part.
2. Failure of any commercial establishment, to comply with the provisions of this Part or any section thereof, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay fines as set forth in this section, plus costs.
3. If the Borough Manager or their designee(s) determines that a violation under this section has occurred, and such violation is the first such violation of the commercial establishment noted hereunder, the Borough Manager or their designee(s) shall issue a written warning ("written warning") to the commercial establishment which shall notify the commercial establishment that the violation has occurred. No other written warning of any kind shall be required at any time under this Part.
4. If the Borough Manager or their designee(s) determines that a violation under this section has occurred, and such violation occurs after the commercial establishment has been previously warned pursuant to the preceding paragraph, then the first such violation subsequent to the written warning ("first violation") shall be punishable by a fine not to exceed \$250.
5. Each violation of the commercial establishment subsequent to the first violation and occurring within 12 months of the first violation ("initial twelve-month period") shall be punishable by a fine not to exceed \$500.
6. For the purposes of this section, a new twelve-month period will begin on the one-year anniversary of the most recent violation ("subsequent twelve-month period"). The first violation to occur after each subsequent twelve-month period shall be punishable by a fine not to exceed \$250 with each subsequent violation punishable by a fine not to exceed \$500.
7. The Borough may institute suits, in equity or at law, to restrain, prevent, or abate a violation of this section. Such proceedings may be initiated before any court of competent jurisdiction. The expense of such proceedings shall be recoverable from the violator in any manner as may now or hereafter be provided by law.

Section 2. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

Section 3. All ordinances or parts of ordinances conflicting or inconsistent herewith are hereby repealed.

Section 4. This Ordinance shall become effective upon enactment as provided by law.

PASSED by Borough Council this 11th day of July, 2023.

By: _____
Jonathan M. Ewald
President, Borough Council

APPROVED by the Mayor, this 11th day of July, 2023.

By: _____
Peter J. Urscheler
Mayor

ENACTED this 11th day of July, 2023.

By: _____
E. Jean Krack
Borough Manager/Secretary

I HEREBY CERTIFY that the foregoing is a true and correct copy of the said Ordinance duly adopted at a regular meeting of Borough Council held on the 11th day of July, 2023.

By: _____
E. Jean Krack
Borough Manager/Secretary