

**UPPER MORELAND TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

ORDINANCE NO. 1744

AN ORDINANCE OF UPPER MORELAND TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA, AMENDING PART II: GENERAL LEGISLATION, TO ADD A NEW CHAPTER 180 ENTITLED "HEALTH AND SAFETY", AND A NEW CHAPTER 180, ARTICLE I "PLASTIC REGULATIONS" TO PROHIBIT THE USE OF SINGLE-USE CARRY-OUT PLASTIC BAGS, POLYSTYRENE FOOD CONTAINERS AND SINGLE-USE PLASTIC STRAWS BY COMMERCIAL ESTABLISHMENTS WITH RELATED FINDINGS, DEFINITIONS, REQUIREMENTS, ENFORCEMENT, PENALTIES, AND EXEMPTIONS; REPEALING ALL INCONSISTENT ORDINANCES, OR PARTS THEREOF IN CONFLICT THEREWITH; AND PROVIDING FOR A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, Upper Moreland 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 and the Pennsylvania Municipalities Planning Code authorizes the Board of Commissioners ("Board") of Upper Moreland 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 esthetic 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 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, expanded polystyrene food service products and single-use plastic straws within the Township; and

WHEREAS, the Board has met the procedural requirements of 53 P.S. § 10101, et seq., the Pennsylvania Municipalities Planning Code, for the adoption of the proposed ordinance; 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 Ordinance to regulate the distribution of single-use plastic bags, expanded polystyrene food service products and single-use plastic straws within the Township.

NOW, THEREFORE, be it, and it is hereby **ORDAINED** by the Upper Moreland Township Board of Commissioners, and it is hereby **ENACTED** and **ORDAINED** by authority of same as follows:

SECTION I: AMENDMENT OF THE CODE.

The Upper Moreland Township Code of Ordinances, Part II: General Legislation, is hereby amended to add a new Chapter 180, entitled “Health and Safety”.

SECTION II: AMENDMENT OF THE CODE.

The Upper Moreland Township Code of Ordinances, Part II: General Legislation, Chapter 180, “Health and Safety”, is hereby amended to add a new Article I entitled “Single Use Plastic Regulations” and shall provide as follows:

§ 180-1 Purpose and Findings.

A. Purpose

(1) The purpose of this Chapter is to reduce the use of single-use plastic bags, expanded polystyrene food service products and single-use plastic straws by commercial 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 to manage the disposition of single-use products.

B. Findings

(1) The use of single-use plastic bags, expanded polystyrene food service products and single-use plastic straws have severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, 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, expanded polystyrene food service products 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, expanded polystyrene food service products, and/or 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, expanded polystyrene food service products 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, expanded polystyrene food service products 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, all of which increases the quality of life for the Township's residents and visitors.

(13) Studies have documented that placing a mandatory charge on single-use plastic bags, banning expanded polystyrene food service products, and not providing single-use plastic straws will dramatically reduce the use of such items.

(14) As required by the Environmental Rights Amendment to the Pennsylvania Constitution, the Board seeks to preserve the natural, scenic, historic, and esthetic values of the Township.

(15) 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, all of which increases the quality of life for the Township's residents and visitors.

§ 180-2. Definitions.

Customer

Any person purchasing goods or services from a Retail Establishment.

Effective Date

The effective date of this ordinance added to Chapter 180 of the Upper Moreland Township Code of Ordinances.

Exempted Bag

A bag used inside a Commercial Establishment by a Customer to deliver perishable items to the point-of-sale at that establishment:

(1) "Exempted Bag" shall include:

- (a) a bag used to package bulk items such as fruit, vegetables, nuts, grains, or candy;
- (b) a bag used to contain or wrap meats or fish; to contain unwrapped prepared foods or bakery goods;
- (c) a bag used solely to contain live animals, such as fish or insects sold in a pet store;
- (d) a bag sold in packaging containing multiple bags and packaged at the time of manufacture of the bag.

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: fusion of polymer spheres, known as expandable bead 20 polystyrene; injection molding; foam molding; and extrusion-blow molding, also known as extruded foam polystyrene.

Expanded Polystyrene Food Service Product

A product made of Expanded Polystyrene that is used for selling, providing, or transporting food or beverages, which shall include:

- (1) food containers;
- (2) plates;
- (3) hot and cold beverage cups;
- (4) trays; and

(5) clamshells.

Expanded Polystyrene Food Service Product shall not include:

- (1) food or beverages that have been packaged in Expanded Polystyrene outside the Township 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; or
- (3) non-foam polystyrene food service products.

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 (country) 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 Moreland 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

A bag made from Plastic 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. 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.

§ 180-3. Single-use Plastic Bags and non-Reusable Bags.

Beginning after the Effective Date, On January 1, 2024, 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.

§ 180-4. Single-use Paper Bags.

- A. Beginning after the Effective Date, On January 1, 2024, 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 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.

§ 180-5. Reusable Bags.

- A. A Retail Establishment may provide a Customer a Reusable Bag at the point of sale.
- 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.

§ 180-6. Signage Requirement.

Beginning 60 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-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.

§ 180-7. Expanded Polystyrene Food Service Product.

Beginning after the Effective Date, On January 1, 2024, Retail Establishments are prohibited from providing an Expanded Polystyrene Food Service Product to a Customer at the Retail Establishment or through a delivery.

§ 180-8. Single-Use Plastic Straws.

Beginning after the Effective Date, On January 1, 2024, Retail Establishments are prohibited from providing Single-Use Plastic Straws, except upon request of the Customer.

§ 180-9. 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 Section 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 Expanded Polystyrene Food Product; or
- (2) Additional time is necessary to draw down an existing inventory held by the Retail Establishment of Single-Use Plastic Bags, non-Recyclable Paper Bags, non-Reusable Bags or Expanded Polystyrene Food Service Product.

§ 180-10. Enforcement.

- A. The Township Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Ordinance.
- B. A person, store, or food service establishment that violates the requirements of this Chapter 180, Article I shall:
 - (1) be subject to a civil penalty of \$50.00 for a first offense;
 - (2) be subject to a civil penalty of \$100.00 for a second offense; and
 - (3) be subject to a civil penalty of \$200.00 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 Ordinance, the Township may seek legal, injunctive, or other equitable relief to enforce this Ordinance.
- E. The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights to future enforcement hereunder.

SECTION III: SEVERABILITY.

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 Moreland 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 IV: REPEALER.

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 V: EFFECTIVE DATE.

This Ordinance shall be effective immediately upon enactment.

ORDAINED AND ENACTED by the Board of Commissioners of Upper Moreland Township, Montgomery County, Pennsylvania, this 10th day of July, 2023.

Attest:



Matthew H. Candland, Secretary

**UPPER MORELAND TOWNSHIP
BOARD OF COMMISSIONERS**



Clifton McFatridge, President