

**BOROUGH OF EDGEWOOD
ALLEGHENY COUNTY, PENNSYLVANIA**

ORDINANCE NO. _____

**AN ORDINANCE OF THE BOROUGH OF EDGEWOOD
ESTABLISHING CHAPTER 154 OF THE BOROUGH CODE
OF ORDINANCES PROHIBITING THE USE AND
DISTRIBUTION OF SINGLE USE PLASTIC CARRY OUT
BAGS AND SINGLE USE PLASTIC STRAWS AND SINGLE
USE CARRY OUT PLASTIC OR OTHER EXPANDED
POLYSTYRENE FOAM (STYROFOAM) CONTAINERS BY
RETAIL ESTABLISHMENTS.**

WHEREAS, the Borough Code and the Pennsylvania Municipalities Planning Code authorizes the Borough Council of the Borough of Edgewood 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 Edgewood and its citizens;

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.

WHEREAS, the Amendment imposes two basic duties on the Commonwealth and its political subdivisions such as the Borough of Edgewood - 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 Borough'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, Edgewood 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 single use plastic straws and single use carry out plastic or other expanded polystyrene foam (Styrofoam) containers within the Borough of Edgewood;

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 Edgewood Borough will be served by this Ordinance to regulate the distribution of single use carry out plastic bags and single use plastic straws and single use carry out plastic or other expanded polystyrene foam (Styrofoam) containers within the Borough of Edgewood;

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

§154-1. Purpose and Findings

A. Purpose

- a. The purpose of this Chapter is to reduce the use of single use plastic carry out bags and single use plastic straws and single use carry out plastic or other expanded polystyrene foam (Styrofoam) containers.
- 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 Borough of Edgewood, and to preserve the natural, scenic, historic and esthetic values of the Borough of Edgewood.
- 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 reduce the quantity of single use plastic-type materials straining limited landfill capacity.

B. Findings

- a. The use of single use plastic carry out bags and single use plastic straws and single use carry out plastic or other polystyrene foam (Styrofoam) containers have 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 Borough of Edgewood which provide single use plastic carry out bags and single use plastic straws and single use carry out plastic or other polystyrene foam (Styrofoam) containers to their customers.

c. Most of the single use plastic carry out bags and single use plastic straws and single use carry out plastic or other polystyrene foam (Styrofoam) containers 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 Borough of Edgewood, such bags are not curbside recyclable.

e. Numerous studies have documented the prevalence of single use plastic carry out bags and single use plastic straws and single use carry out plastic or other polystyrene foam (Styrofoam) containers 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 Borough of Edgewood pay the costs related to the cleanup of single use plastic carry out bags and single use plastic straws and single use carry out plastic or other polystyrene foam (Styrofoam) containers from the roadways, trees, sewers, waters, and parks within the Borough.

g. Recyclers cite single use plastics including bags, straws and polystyrene (Styrofoam) containers as a major source of contamination within the recycling stream, leading to increased costs.

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, and the best alternative to single use plastic straws are reusable straws or straws made from other natural products, if a straw is required. The best alternative to single use carry out plastic or other polystyrene foam (Styrofoam) containers is a switch to PLA-lined paper, molded fiber, bagasse, or poly-coated paper.

- i. As required by the Environmental Rights Amendment to the Pennsylvania Constitution, the Borough seeks to preserve the natural, scenic, historic, and esthetic values of the Borough.

§154-2. Definitions

Borough: The Borough of Edgewood

Commercial Establishment: any store or retail establishment 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 the Borough of Edgewood. Commercial establishments include: a business establishment that generates sales or use tax; a drugstore, pharmacy, supermarket, grocery store, farmers market, convenience food store, food mart, or other commercial entity engaged in the retail sale of a limited line of goods that include 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 good.

Compliant Bag: Certain paper carry-out bags and reusable bags. A paper bag must meet all of the following minimum requirements:

- A. It is considered a recyclable material based on Act 101 of 1988 as codified in the Pennsylvania Borough Code, as the same may be amended from time to time, contains a minimum of 40% postconsumer recycled content and displays the words recyclable and/or reusable in a highly visible manner on the outside of the bag, or;
- B. It can be effectively composted.
- C. See “Recycled Paper Bag.”

Customer: any person purchasing goods or services from a Retail Establishment.

Operator: the person in control of, or having responsibility for, the operation of a Commercial Establishment, which may include, but is not limited to, the owner of the 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. “Post consumer recycled material” does not include materials and by-products generated from and commonly reused within an original manufacturing and fabrication process.

Product Bag: a very thin bag used exclusively to carry meats or other uncooked food items to the point of sale inside a commercial establishment or, for reasons of public health and safety, to prevent such food items from coming into direct contact with other purchased items.

Recyclable: made from material that can be sorted, cleansed and reconstituted using available recycling collection programs for the purpose of reusing the altered, incinerated, converted or otherwise thermally destroyed solid waste generated therefrom.

Recycled Paper Bag: a paper bag that meets the following:

- A. It is considered a recyclable material based on Act 101 of 1988 as codified in the Pennsylvania Borough Code, as the same may be amended from time to time, contains a minimum of 40% postconsumer recycled content and displays the words recyclable and/or reusable in a highly visible manner on the outside of the bag;
- B. See “Compliant Bag.”

Single Use Plastic: A good made in whole or in part of polyethylene, polypropylene and polycarbonate, or other similar material, and designed to be provided or utilized at the point of sale for carrying or transporting goods or items.

Single Use Plastic Carry Out Bag: any bag made predominantly of plastic derived from either petroleum or a biologically based source, such as corn or other plant sources, that is provided by an Operator of a Commercial Establishment to a Customer at the point of sale. The term does not include bags intentionally designed for reuse or product packaging. This definition specifically exempts the following from the category of single use plastic carry out bags:

- A. Product Bags as defined in §154-2. Definitions, and
- B. Bags sold in packages containing multiple bags intended for use as food storage bags, garbage bags, or pet waste bags.

Single Use Plastic Straw: A Straw provided by a Commercial Establishment that is primarily made of plastic. A “Single Use Plastic Straw” shall not include straws provided under the following circumstances:

- A. When packaged with beverages prepared and packaged outside of the Borough, provided such beverages are not altered, packaged or repackaged within the Borough; or
- B. When provided as an assistance device to reasonably accommodate a disability.

Single Use Polystyrene Foam (Styrofoam) Containers: any container made predominantly of expanded polystyrene foam (EPF), commonly known as the trade name Styrofoam™, that is provided by an Operator of a Commercial Establishment to a Customer at the point of sale. The term does not include bags intentionally designed for reuse or product packaging.

§154-3. Single Use Plastic Carry Out Bags Prohibited

Beginning 90 days after the Effective Date, no Commercial Establishment shall provide to any Customer a Single Use Plastic Carry Out Bag as defined in §154-2 above. This prohibition applies to bags provided for the purpose of carrying goods away from the point-of-sale. This prohibition applies to Single Use Plastic Carry Out Bags used for takeout deliveries from Commercial Establishments within the Borough of Edgewood. The point-of-sale in such transactions is deemed to be at the Commercial Establishment, regardless of where payment for the transaction physically occurs.

§154-4. Single Use Plastic Straws Prohibited

Beginning 90 days after the Effective Date, no Commercial Establishment shall provide to any Customer a Single Use Plastic Straw as defined in §154-2 above.

§154-5. Single Use Plastic or Polystyrene Foam (Styrofoam) Carry Out Containers

Beginning 90 days after the Effective Date, no Commercial Establishment shall provide to any Customer a Single Use Plastic or Polystyrene Foam (Styrofoam) Carry Out Container as defined in §154-2 above. This prohibition applies to containers provided for the purpose of carrying goods away from the point-of-sale. This prohibition applies to Single Use Plastic and Polystyrene Foam Carry Out Containers used for takeout deliveries from Commercial Establishments within the Borough of Edgewood. The point-of-sale in such transactions is deemed to be at the Commercial Establishment, regardless of where payment for the transaction physically occurs.

§154-6. Single Use Paper Bags

A. Beginning 90 days after the Effective Date, Commercial Establishments are prohibited from providing any container except a Recycled Paper Bag to a customer at the retail establishment or through a delivery.

B. A Commercial Establishment must provide the Customer with a Recycled Paper Bag at the point of sale.

C. A consumer is not required to accept or use any bag of any type provided by a Commercial Establishment so long as the consumer's refusal does not create a unsafe or unsanitary condition or pose a threat to the public health and welfare of others.

§154-7. Reusable Bags and Containers

Customers may use bags of any type and containers of any type that they bring to the Commercial Establishment themselves, so long as the Customer's Reusable Bag or Container does not create a unsafe or unsanitary condition or pose a threat to the public health and welfare of others.

§154-8. Signage

Beginning 30 days after the effective date, and for six months thereafter, Commercial Establishments are strongly encouraged but not required to post at all points of sale conspicuous signage: informing customers that single use carry out plastic bags and single use plastic straws and single use carry out plastic or other expanded polystyrene foam (Styrofoam) containers 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 Borough may require by regulation.

§154-9. 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 time mutually acceptable to the Commercial Establishment and Borough Council from the requirements of this Ordinance 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 if the Commercial Establishment demonstrates that it has a unique circumstance or situation such that there are no reasonable alternatives to the use of single use carry out plastic bags, single use plastic straws, or single use carry out plastic or other expanded polystyrene foam (Styrofoam) containers.

§154-10. Enforcement

- A. The Borough Manager or their designee, has the responsibility for enforcement of this Chapter and may promulgate reasonable rules and regulations in order to enforce the provisions thereof, including, but not limited to, investigating violations and issuing fines.

- B. Any Commercial Establishment that violates or fails to comply with any of the requirements of this Chapter, after an initial written warning notice has been issued for that violation, shall be liable for the violation.

- C. Any Commercial Establishment that receives an initial written warning notice may file a request for an exemption pursuant to the criteria in §154-9 above.

D. If a Commercial Establishment has subsequent violations of this Chapter after the issuance of an initial written warning notice of violation, the following penalties shall be imposed and shall be payable by the Operator of the Commercial Establishment:

- (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.

G. For the purposes of enforcement under this subchapter, an offense shall be each day a person, store, or food service establishment violates a requirement of this subchapter.

H. In addition to the penalties set forth in this Chapter, the Borough of Edgewood may seek legal, injunctive, or other equitable relief to enforce this Chapter.

I. The failure of the Borough of Edgewood to enforce any provision of this Ordinance shall not constitute a waiver by the Borough of Edgewood of its rights to future enforcement hereunder.

§154-11. Severability

A. If any one or more of the provisions or terms of this Chapter shall be held invalid for any reason whatsoever, then, such provision or terms shall be deemed severable from the remaining provisions or terms of this Chapter to the maximum extent possible and shall in no way affect the validity or enforceability of any other provisions hereof.

B. All ordinances or portions of ordinances which conflict with any of the provisions of this Ordinance are repealed to the extent of such inconsistency.

C. The provisions of this Ordinance shall take effect immediately upon being recorded in the Borough Ordinance Book.

ORDAINED AND ENACTED this _____ day of _____, 2023.

ATTEST:

BOROUGH OF EDGEWOOD

Rob Zahorchak
Borough Manager

Justin Petrolla
Council President

EXAMINED AND APPROVED by me this _____ of _____, 2023.

Ryan O'Donnell, Mayor

Approved as to form by:

Thomas P. McDermott, Solicitor