

THE BOROUGH OF AMBLER, MONTGOMERY COUNTY, PA

ORDINANCE NUMBER 1126

AN ORDINANCE OF THE BOROUGH OF AMBLER REGULATING THE COMMERCIAL USE OF SINGLE USE PLASTICS AND EXPANDED POLYSTYRENE (STYROFOAM), TO BE CODIFIED AT CHAPTER 13 IN THE BOROUGH CODIFIED ORDINANCES AS A NEW PART 9 THEREOF; DEFINING PLASTICS AND EXPANDED POLYSTYRENE PRODUCTS THAT ARE WITHIN THE SCOPE OF THE ORDINANCE; PROHIBITING THE USE OF CERTAIN PLASTICS AND EXPANDED POLYSTYRENE PRODUCTS BY RETAIL ESTABLISHMENTS PROVIDING PACKAGING TO CUSTOMERS; PROVIDING EXEMPTIONS AND A MECHANISM FOR ALLOWING HARDSHIP CLAIMS; PROVIDING PENALTIES FOR VIOLATION; INCLUDING SAVINGS AND REPEALER CLAUSES; ORDINANCE EFFECTIVE ON THE EARLIEST APPLICABLE DATE SET FORTH IN THE PENNSYLVANIA BOROUGH CODE RELATING TO THE EFFECTIVE DATE OF ORDINANCES, WITH ENFORCEMENT DEFERRED UNTIL MARCH 1, 2023 FOR SINGLE USE PLASTICS AND MARCH 1, 2024 FOR EXPANDED POLYSTYRENE PRODUCTS AS SET FORTH IN THE ORDINANCE.

WHEREAS, Ambler Borough Council, in connection with its consideration and adoption of ordinances that are consistent with the health, safety and welfare of Borough citizens and visitors, finds that:

- a. The use of single-use plastic bags, expanded polystyrene food service products, and single-use plastic utensils have severe environmental impacts, the type and manner of which have been well documented and scientifically demonstrated;
- b. Only a tiny percentage of these products are successfully recycled;
- c. Single-use plastics are widely used throughout the Borough;
- d. Regulating the use of single-use plastics in the manner set forth in this ordinance has been demonstrated elsewhere to reduce their use by regulated businesses;
- e. The regulation of single-use plastics is consistent with the Environmental Rights Amendment to the Pennsylvania Constitution in addition to the Borough's general authority to regulate businesses within the Borough.

NOW THEREFORE, Ambler Borough Council hereby ORDAINS as follows:

There shall be added to the Ambler Codified Ordinances, at Chapter 13, a new part 9 entitled "Single-Use Plastics", and the content of which is as follows:

901. Definitions.

- A. Exempted Bag. The use of an exempted bag is not a violation of this ordinance. An

exempted bag:

- (a) is used inside a retail establishment by a customer to deliver perishable items to the point of-sale at that establishment (checkout); or
- (b) is used:
 - (i) to package bulk items such as fruit, vegetables, nuts, grains, or candy;
 - (ii) to contain or wrap meats or fish; to contain unwrapped prepared foods or bakery goods;
 - (iii) to contain live animals, such as fish or insects sold in a pet store; or
- (c) is sold in packaging containing multiple bags and packaged at the time of manufacture of the bag; or
- (d) is a paper bag offered to the customer at the point of sale; or
- (e) is a reusable carryout bag offered to the customer at the point of sale. A reusable carryout bag is a durable bag with handles made and intended for repeated use.

B. Expanded Polystyrene Food Service Product. A foam-based form of plastic packaging made from styrene including containers or plates for food, beverage cups, trays, and clamshell-style packaging, often referred to by the trademarked name Styrofoam. In the event of a dispute over a particular form of packaging and whether it is regulated by this ordinance, the definition set forth in footnote 1 of this ordinance is controlling.

Packaging that is not regulated by this ordinance is:

- (a) food or beverages that have been packaged in expanded polystyrene outside the borough before receipt by a food service establishment or store;
- (b) a product made of expanded polystyrene that is used to package raw, uncooked, or butchered meat, fish, poultry, or seafood; or
- (c) non-foam polystyrene food service products.

C. Retail Establishment. A temporary or permanent location in the Borough where food or other products are offered to the public for direct sale or delivery to a customer, including but not limited to the following: supermarket, convenience store, service station, delicatessen, department store, dollar store, clothing store, restaurant, pharmacy, food truck, farmers' market, festival or delivery service, but not including drycleaners.

D. Single-use Plastic Bag. A bag made through a blown-film extrusion process, but not including an Exempted Bag.

E. Single-Use Plastic Devices

- (a) means any item provided by a Retail Establishment to serve, consume, garnish or manipulate food or beverages that is primarily made from plastic; except, however, that this ordinance shall not apply to forks, spoons, sporks, knives, and chopsticks.
- (b) includes straws, drink stirrers, beverage spill plugs, toothpicks, novelty cocktail accessories, and other drink or food accoutrements.
- (c) shall not include devices provided under the following circumstances:
 - (i.) When packaged with beverages prepared and packaged outside of the Borough, provided

such beverages are not altered, packaged or repackaged within the Borough; and
(ii.) When provided as an assistance device to reasonably accommodate a disability.

Single-Use Plastics. A form of disposable packaging made from fossil-fuel based chemicals and which is intended to be disposed of immediately after use. Examples include bags, straws and utensils. In the event of any dispute over the nature of the packaging supplied by a Borough business, the technical definition of plastic set forth in footnote 2 shall control.

902. Prohibited Uses of Single-Use Plastics and Polystyrene.

1. Beginning March 1, 2023, retail establishments are prohibited from providing any of the following to a customer either directly at the establishment or through a delivery from the establishment to a destination selected by the customer:
 - a. A single-use plastic bag that is not an exempted bag;
 - b. A non-recycled paper bag that is not an exempted bag;
 - c. A single-use plastic device unless requested by the customer.
2. Beginning March 1, 2024, retail establishments are also prohibited from providing an expanded polystyrene (Styrofoam) food service product to a customer either directly at the establishment or through a delivery from the establishment to a destination selected by the customer:
3. For purposes of this ordinance, a Retail Establishment provides regulated products to a customer when the package is handed to the customer by any owner, employee or volunteer of the establishment, or, where the prohibited packaging is made available to the customer for his or her own use or self-packaging.

903. Penalties for Violation

A retail establishment that violates the requirements of this subchapter is subject to a civil penalty, plus court costs, as follows:

- (a) \$50.00 for a first offense;
 - (b) \$100.00 for a second offense;
 - (c) \$An amount not to exceed \$600.00, as determined by the court, for all subsequent offenses.
- (2) Each day in which the retail establishment violates this ordinance constitutes a separate offense.
- (3) In addition to the penalties set forth in this Chapter, the Borough of Ambler may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- (4) The failure of the Borough of Ambler to enforce any provision of this Ordinance shall not constitute a waiver by the Borough of Ambler of its rights to future enforcement hereunder.

904. *Hardships*

Borough Council may, upon written request of a retail establishment, temporarily exempt it from the requirements of this ordinance if Borough Council finds that enforcement would cause undue hardship to the retail establishment. In granting any such temporary exemption, Council shall also state the duration of such exemption.

A finding of undue hardship may be based on one of the following:

- 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 article 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.

905. *Severance. Repealer. Effective date.*

If any portion of this ordinance is found to be invalid by a court of competent jurisdiction, then to the extent possible such invalid portion shall be severed from the remainder, which shall continue in full force and effect.

Any portion of any existing Borough ordinance which is inconsistent with any provision herein is, to the extent of such inconsistency, repealed.

This ordinance is effective on the earliest of the following:

- a. The date when the mayor approves it;
- b. The date of enactment by council over the mayor's veto;
- c. For an ordinance not returned by the mayor at the next scheduled meeting of council occurring at least ten days after the meeting at which the ordinance was enacted, the date of the succeeding scheduled meeting of council.

SO ORDAINED this 16th day of August, 2022.



Glynnis Siskind, Council President

Attest:


Mary Aversa, Council Secretary

Approved:


Jeanne Sorg, Mayor

FN 1. For purposes of this ordinance, "expanded polystyrene" means 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.

FN 2. For purposes of this ordinance, "plastic" means 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.

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