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February 13, 2019

Honorable Members of City Council,

In October 2018, the Bethlehem Environmental Advisory Council created a Waste Reduction Task Force charged with investigating how the City of Bethlehem could implement a plastic/paper bag ordinance. Attached below is the recommendation of the Task Force, which is endorsed by the EAC. The recommendation was developed based on extensive research of other cities across the country that have implemented a similar measure.

When the Task Force began its work, no cities or towns in Pennsylvania had implemented an ordinance regulating the distribution of single-use carryout plastic bags, however, we are excited to learn that the Borough of Narberth has recently passed such an ordinance. The EAC wholeheartedly believes that the City of Bethlehem should follow suit. As suggested by our City Council liaison, Councilman Reynolds, Narberth's ordinance is also attached for your reference.

We have now transitioned the task force into a standing committee and they will continue to address methods to achieve waste reduction in our City.

Should you have any questions or would like to discuss this recommendation further, please do not hesitate to contact Beth Behrend or me.

Respectfully yours,

*Lynn Rothman*

Lynn Rothman, Chair

On behalf of the Bethlehem EAC:

Elizabeth Behrend

Kathy Fox

Mike Topping

Elisabeth Cichonski

Brian Hillard

cc: Mayor Donchez

Alicia Karner, Director of Community & Economic Development

Amy Burkhart, Deputy Director of Community & Economic Development

Michael Halbfoerster, Director of Recycling

**To:** Bethlehem City Council

**From:** Bethlehem Environmental Advisory Council

**Date:** February 13, 2019

**Subject:** Plastic Bag Ordinance Proposal

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It is in the best interest of the City of Bethlehem to protect the environment, the health of its citizens and visitors, and the local economy by prohibiting the distribution and use of single-use plastic bags and encouraging the use of alternatives to disposable shopping bags.

- An estimated 100 billion plastic bags are thrown away annually in the United States.
- Research shows 20% of paper bags are recycled, whereas only 1% of plastic bags are recycled in the United States.
- Recycling plastic bags is not viable. It costs approximately \$4,000 to recycle one ton of plastic bags and the resulting products can only be sold on the market for around \$32.
- The use of disposable plastic and paper bags results in greater greenhouse gas emissions, atmospheric acidifications and water consumption. Production of these bags have significant adverse impacts on the environment and their light weight makes them particularly susceptible to air currents that land them in the streets, gutters, and storm drains.
- Studies show that banning plastic bags and placing a mandatory fee on paper bags will drastically reduce the use of both types of bags.
- Fifty-three percent of the world's population lives in an area with some type of bag ban or levy on disposable bags.

Therefore, the Bethlehem Environmental Advisory Council (EAC) recommends that the Bethlehem City Council pass an ordinance banning the use of single-use plastic bags given to consumers at the point of sale. The Bethlehem EAC has further recommendations for the ordinance. These recommendations are based on feedback from local businesses and successfully implemented plastic bag ban ordinances in other cities and states in the United States. The recommendations are as follows:

#### Plastic Bags

- a. Plastic bags less than 2.25 millimeter thick and predominately made of plastic (either derived from petroleum or bio-based sources) should be banned with the exception of:
  - i. Bags used by consumers inside stores to package produce, bulk items, frozen foods, meats, fish, flowers, potted plants, unwrapped prepared foods, bakery goods, and prescription drugs
  - ii. Laundry and dry cleaning bags
  - iii. Packages of multiple bags intended for garbage, pet waste, or yard waste

#### Paper Bags

- a. Retail establishments shall collect from customers at the time of purchase a minimum Waste Reduction Fee of \$0.10 for each disposable paper bag for the first three years after the passage of the ordinance.
- b. After three years, the Waste Reduction Fee shall be increased to \$0.25.

- c. Retail establishments may choose to set their Waste Reduction Fee higher than the enforced amount.
- d. Paper bags should be manufactured using a minimum 40% post-consumer recycled material.

#### Reusable Bags

- a. Retail establishments may make reusable bags available for sale or for no cost. These bags should be designed to withstand multiple uses and be able to hold 18 pounds.

#### Retail Establishments

- a. Any person, corporation, partnership, business venture, or vendor that sells or provides merchandise, goods, or materials directly to a customer, including but not limited to grocery stores, pharmacies, convenience stores, liquor stores, restaurants, bakeries, seasonal and temporary businesses, jewelry stores, clothing stores, and household goods stores shall comply with the ordinance.
- b. Non-profit and religious organizations shall be exempt from the ordinance, although may voluntarily opt to apply the ban and Waste Reduction Fee to its organization.

#### Retention, Remittance, and Transfer of the Waste Reduction Fee

- a. Retail establishments may retain 100% of its Waste Reduction Fees for the first 12 months of the effective date of the ordinance.
- b. The retained fees should be limited to allowable use for the retail establishments to:
  - i. Provide educational information to customers about the bag ban
  - ii. Improve or alter infrastructure to allow for the implementation of the bag ban and collection of the Waste Reduction Fee
  - iii. Pay employees for any addition work time spent keeping mandatory records pertaining to the bag ban.
- c. After 12 months of the effective date of the ordinance, retail establishments should either continue to retain all of its Waste Reduction Fees OR a portion of the fees\* could be collected by the City of Bethlehem to be used to:
  - i. Provide reusable carryout bags to residents and visitors
  - ii. Educate residents, businesses, and visitors about the impact of plastic trash
  - iii. Fund a project that recycles or reduces waste in the City of Bethlehem
  - iv. Fund a sustainability project in the City of Bethlehem

*\*Generally, other cities collect 75% and the businesses retain 25%*

- d. The Waste Reduction Fee shall be separately stated on a receipt provided to the customer at the time of sale.

#### Customer Exemptions

- a. Customers purchasing food or beverages may be provided a paper bag at no charge if the customer provides evidence that he or she is a participant in a food assistance program.

#### Audits and Violations

- a. Retail establishments should keep records of all Waste Reduction Fees collected and the number of disposable paper bags provided to customers.

- b. If it is determined that a violation of the ordinance has occurred, the Recycling Manager OR Department of Community and Economic Development OR another appropriate department of the City shall issue a warning notice to the retail establishment.
- c. Penalties for each violation that occurs after the issuance of the warning notice shall be:
  - i. \$50 for the first offense
  - ii. \$100 for all subsequent offenses

Effective Date

- a. All of the requirements set forth in the ordinance shall take effect within three to six months of passage. During that time, businesses are expected to use up their remaining plastic bags.

**ORDINANCE NO. \_\_\_\_\_**  
**BOROUGH OF NARBERTH**  
**MONTGOMERY COUNTY, PENNSYLVANIA**

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**AN ORDINANCE AMENDING THE NARBERTH BOROUGH ORDINANCE  
REGULATING THE DISTRIBUTION OF SINGLE-USE CARRY-OUT PLASTIC BAGS  
AND SINGLE-USE PLASTIC STRAWS; AND PROVIDING FOR RELATED  
PURPOSES AND FINDINGS, DEFINITIONS, REQUIREMENTS, ENFORCEMENT,  
PENALTIES, AND EXEMPTIONS**

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**WHEREAS**, the Borough Code and the Pennsylvania Municipalities Planning Code authorizes the Borough Council of the Borough of Narberth (“Borough Council”) 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 Narberth (“Borough”) and its citizens;

**WHEREAS**, Article 1, Section 27 of the Pennsylvania Constitution 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 trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

**WHEREAS**, for the reasons set forth in more detail below, 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 straws within the Borough of Narberth;

**WHEREAS**, the Narberth Borough Council has met the procedural requirements of 53 P.S. § 10101, *et seq.*, the Pennsylvania Municipalities Planning Code, for the adoption of the proposed ordinance, including holding a public hearing; and

**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 Narberth Borough will be served by this amendment of the Narberth Borough Ordinance to regulate the distribution of single-use, carry-out plastic bags and straws within the Borough of Narberth;

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

**Section I. Code Amendment.** The Narberth Borough Ordinance shall be amended by providing a new Chapter under Part II, *General Legislation*, entitled “Plastics Regulations”, to provide as follows:

**1. Purpose and Findings.**

A. The purpose of this Chapter is to reduce the use of single-use, carry-out plastic bags and single-use, plastic straws by commercial establishments within the Borough of Narberth, 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 Narberth, and to preserve the natural, scenic, historic, and esthetic values of the Borough of Narberth.

B. Findings.

- a. The use of single-use bags and plastic straws have severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, ground level ozone formation, atmospheric acidification, water consumption and solid waster generation.
- b. There are numerous commercial establishments within the Borough of Narberth which provide single-use, plastic carry-out bags and single-use, plastic straws to their customers.
- c. The majority of such single-use, plastic carry-out bags and single-use, plastic straws are made from plastic or other material that does not readily decompose.
- d. Approximately one hundred billion single-use, plastic carry-out bags are discarded by United States consumers each year. In the Borough or Narberth, such bags are not readily recyclable.
- e. Approximately five hundred million single-use, plastic straws are discarded by United States consumers every day. In the Borough or Narberth, such straws are not readily recyclable.
- f. Numerous studies have documented the prevalence of single-use, plastic carry-out bags and/or plastic straws littering the environment, blocking storm drains, entering local waterways, and becoming stuck in or upon natural resources and public property.
- g. The taxpayers of the Borough of Narberth pay the costs related to the cleanup of single-use, plastic carry-out bags and plastic straws from the roadways, trees, sewers, waters, and parks within the Borough.
- h. From an overall environmental and economic perspective, the best alternative to single-use, plastic carry-out bags is a shift to reusable, compostable 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.

- i. There are several alternatives to single-use, plastic carry-out bags and single use plastic straws readily available in and around the Borough of Narberth.
- j. An important goal of the Borough of Narberth is to procure and use sustainable products and services.
- k. An important goal of the Borough of Narberth is to preserve the natural, scenic, historic, and esthetic values of the Borough of Narberth.
- l. It is the Borough of Narberth'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 Borough's residents and visitors.
- m. Studies have documented that placing a mandatory charge on single-use, plastic carry-out bags and banning single-use, plastic straws will dramatically reduce the use of such items.

## **2. Definitions.**

For the purposes of this Chapter, the following definitions shall apply unless the context clearly requires otherwise:

- a. "Borough" shall mean the Borough of Narberth.
- b. "Commercial Establishment" shall mean any person, corporation, partnership, business venture, or vendor that sells or provides merchandise, goods, or materials directly to a customer, whether or not for profit, including, but not limited to, restaurants (eat-in and/or take-out food), bars, pharmacies, convenience and grocery stores, seasonal and temporary businesses or markets, retail stores, or other similar nonresidential uses. For purposes of this Chapter, Commercial Establishments shall not include bazaars or festivals operated by nonprofit organizations or religious institutions.
- c. "Compostable Plastic Bag" and "Compostable Plastic Straw" shall mean, respectively, a plastic bag or plastic Straw that (1) conforms to the current ASTM D6400; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) must be capable of undergoing biological decomposition in a compost site such that the material breaks down into carbon dioxide, water, inorganic compounds and biomass at a rate consistent with known compostable materials.
- d. "Distribution" or to "distribute" means the vending, sale, giving, deployment or delivering for any purpose of a Single-Use Plastic Carry-Out Bag or Single-Use Plastic Straw, whether or not incident to the sale, vending, or production of any merchandise or beverage.

- e. “Recyclable Paper Bag” shall mean a paper bag that is (1) one hundred percent (100%) recyclable including the handles; (2) contains at least forty percent (40%) post-consumer recycled paper content; and displays the words “recyclable” and “made from 40% post-consumer recycled amount content (or other applicable amount), or substantially similar wording, in a visible manner on the outside of the bag.
- f. “Recyclable Paper Straw” shall mean a paper Straw that is one hundred percent (100%) recyclable.
- g. “Reusable Bag” shall mean a bag with handles that is specifically designed and manufactured for multiple reuse. Reusable Bags shall be made of either polyester, polypropylene, cotton, or other durable material, or durable plastic that is at least 3.0 mils in thickness.
- h. “Reusable Straw” shall mean a Straw that is specifically designed and manufactured for multiple reuse. Reusable Straws shall be made of either glass, stainless steel, silicone, durable and reusable plastic, or other similar durable material.
- i. “Single-Use Plastic Carry-Out Bag” shall mean a bag made of plastic or other similar material that is provided by a Commercial Establishment to a customer at or around the point of sale that is not a Reusable Bag, Recyclable Paper Bag or Compostable Plastic Bag. A “Single-Use Plastic Carry-Out Bag” shall not include the following:
  - i. Bags in which loose produce or products are placed by a consumer to deliver such items to the point of sale or check-out area of a Commercial Establishment;
  - ii. Laundry or dry-cleaner bags;
  - iii. Newspaper bags;
  - iv. Bags used to contain or wrap frozen foods, meat or fish, whether prepackaged or not, to prevent moisture;
  - v. A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a Reusable Bag, Recyclable Paper Bag or Compostable Plastic Bag; and
  - vi. Any bags provided for use by a Commercial Establishment operated by the Commonwealth of Pennsylvania, or otherwise distributed by a federal, Commonwealth, or local government agency.
- j. “Single-Use Plastic Straw” shall mean a Straw provided by a Commercial Establishment that is not a Reusable Straw, Recyclable Paper Straw, or

Compostable Straw. A “Single-Use Plastic Straw” shall not include Straws provided under the following circumstances:

- i. When provided with a beverage on private property used as a residence;
  - ii. When provided by a state, federal or local government agency;
  - iii. When packaged with beverages prepared and packaged outside of the Borough, provided such beverages are not altered, packaged or repackaged within the Borough;
  - iv. When provided as an assistance device to reasonably accommodate a disability.
- k. “Straw” shall mean 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.

### **3. Requirements.**

#### **A. Distribution of Single-Use Plastic Carry-Out Bags.**

- a. Any Commercial Establishment that distributes a Single-Use Plastic Carry-Out Bag shall sell the bag for no less than ten cents (\$0.10) per bag. All monies collected pursuant to this Chapter shall be retained by the Commercial Establishment.
- b. Any charge for a Single-Use Plastic Carry-Out Bag shall be separately stated on a receipt provided to the customer at the time of sale and shall be identified as the “Plastic Carry-Out Bag Charge” thereon.
- c. Nothing in this Chapter shall be read to preclude Commercial Establishments from making Reusable Bags, Recyclable Paper Bags or Compostable Plastic Bags available for sale to customers.

#### **B. Distribution of Single-Use Plastic Straws.**

- a. The Distribution of Single-Use Plastic Straws by Commercial Establishments within the Borough is prohibited.
- b. Nothing in this Chapter shall be read to preclude Commercial Establishments from making Reusable Straws, Recyclable Paper Straws, or Compostable Straws available for sale to customers.
- c. Nothing in this Chapter shall be read to alter the obligations of any Commercial Establishment under the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*

### **4. Enforcement.**

- a. The Borough Code Enforcement Officer, and any other persons appointed by Borough Council, shall have the authority to do inspections, issue citations, pursue prosecutions, and enforce the provisions of this Chapter.
- b. If it is determined that a violation has occurred, the designated Code Enforcement Official shall issue a warning notice to the Commercial Establishment.
- c. If an additional violation of this Chapter occurs after a warning notice has been issued for an initial violation, the Code Enforcement Official shall issue a notice of violation to the Commercial Establishment and, upon conviction thereof, the Commercial Establishment shall be sentenced to pay a fine, as set forth below, together with the costs of prosecution, including court costs and attorneys' fees for services in connection with enforcement, such fee amounts being the solicitor's contracted then-current hourly rate(s) with the Borough. Commercial Establishments shall be strictly liable for the violations of their employees.
- d. The penalty for each violation that occurs after the issuance of the warning notice shall be a fine of no more than:
  - i. \$100.00 for the first violation;
  - ii. \$200.00 for the second violation in the same year dating from the first violation;
  - iii. \$500.00 for the third and each subsequent violation in the same year dating from the first violation.
- e. In addition to the penalties set forth in this Chapter, the Borough may seek legal, injunctive, or other equitable relief to enforce this Chapter.

**5. 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 one (1) year from the effective date 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 in the following circumstances or situations, and any exemptions may be provided by Borough Council with conditions:

- 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 Chapter 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.

**Section II. Repealer.** In addition to the above, all other ordinances or parts of ordinances that are inconsistent herewith, are hereby repealed. Further, it is understood and intended that all other sections, parts, provisions, and ordinances that are not otherwise specifically in conflict or inconsistent with this Ordinance, shall remain in full force and effect, the same being reaffirmed hereby.

**Section III. Severability.** In the event that any section, sentence, clause, phrase or word of this Ordinance, including the incorporated Appendices, shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose enforcement of any of the remaining portions of this Ordinance. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal law or laws of the Commonwealth of Pennsylvania. Additionally, nothing in this shall be read to alter the obligations of any Commercial Establishment under the Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990)

**Section IV. Effective Date.** This Ordinance shall take effect six (6) months after its legal enactment.

**Section V. Failure to Enforce Not a Waiver.** The failure of the Borough of Narberth to enforce any provision of this Ordinance shall not constitute a waiver by the Borough of its rights of future enforcement hereunder.

**ORDAINED AND ENACTED** by the Borough Council of the Borough of Narberth, Montgomery County, Pennsylvania, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**Attest:**

**BOROUGH OF NARBERTH:**

\_\_\_\_\_  
**Sean Metrick**, Borough Secretary

By: \_\_\_\_\_  
**Aaron Muderick**, Council President

Examined and approved as an Ordinance, this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
**Andrea Deutsch**, Mayor