

WHITPAIN TOWNSHIP

ORDINANCE NO. 416

AN ORDINANCE OF THE TOWNSHIP OF WHITPAIN, MONTGOMERY COUNTY, PENNSYLVANIA, AMENDING THE WHITPAIN TOWNSHIP CODE OF ORDINANCES AT CHAPTER 115 TO PROVIDE FOR THE REGULATION AND MINIMIZATION OF SINGLE-USE PLASTIC BAGS, UTENSILS AND EXPANDED POLYSTYRENE (AKA STYROFOAM™)

CERTIFICATION

I, ERIC TRAUB, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT I AM THE TOWNSHIP MANAGER IN WHITPAIN TOWNSHIP, MONTGOMERY COUNTY, PA AND THAT ATTACHED HERETO IS A TRUE AND COMPLETE CORRECT COPY OF ORDINANCE NO. 416.



Eric Traub, Township Manager
Oct. 16, 2024

ENACTED: 10/15/2024

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WHEREAS, The Board of Supervisors of Whitpain Township is duly empowered by the Second Class Township Code, 53 P.S. § 65101, *et seq.*, to enact certain regulations relating to the public health, safety welfare of the residents of Whitpain Township;

WHEREAS, the Second Class Township Code authorizes the Board of Supervisors to make, amend and adopt amendments to the Whitpain Code of Ordinances, as amended, that are consistent with the Constitution and laws of the Commonwealth that it deems necessary for the proper management and control of the Township and the best interests of its residents;

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 aesthetic 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 Whitpain 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);

WHEREAS, this Ordinance is enacted to achieve Whitpain 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;

WHEREAS, for the reasons set forth in more detail below, Whitpain Township intends to preserve, maintain, and enhance the health of its residents and visitors, as well as the public natural resources and common property within Whitpain Township, by regulating the distribution of single-use plastic bags, expanded polystyrene food service products and single-use plastic utensils within the Township;

WHEREAS, the Board of Supervisors, 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 Whitpain Township will be served by this amendment of the Whitpain Code of Ordinances to regulate the distribution of single-use plastic bags, expanded polystyrene food service products and single-use plastic utensils within Whitpain Township;

WHEREAS, the Board of Supervisors of Whitpain Township has determined that certain amendments to the Whitpain Township Code of Ordinances, as amended, are required for the orderly administration of the laws of Whitpain Township; and

WHEREAS, the Board of Supervisors has determined that the Code of Ordinances of the Township of Whitpain should be amended to create and enact Chapter 115 [Single-Use Plastics] for the proper management, care and control of the Township and its finances and the maintenance of peace, good government, health and welfare of the Township and its residents.

NOW, THEREFORE, BE IT HEREBY ORDAINED AND ENACTED by the Board of Supervisors of Whitpain Township, as follows:

SECTION 1. Creation of Chapter 115 [Single-Use Plastics].

Article I. [Regulation of Certain Single-Use Plastics Products by Retail Establishments]

§ 115-1 Purpose.

- A. The purpose of this Chapter is to reduce the use of single-use plastic bags, expanded polystyrene food service products and single-use plastic utensils by retail establishments within the Township.
- 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 Township; and to preserve the natural, scenic, historic, and aesthetic values of the Township.
- C. To relieve the pressure for landfills to manage the disposition of single-use products.

§ 115-2 Definitions.

CUSTOMER

Any person purchasing goods or services from a Retail Establishment.

EFFECTIVE DATE

The effective date of the ordinance that added this Chapter to the Township's Code of Ordinances.

ENFORCEMENT DATE

The date on which the provisions of the ordinance become enforceable.

EXEMPTED BAG

A. A bag used inside a retail establishment by a customer to deliver perishable items to the point-of-sale at that establishment.

B. Shall include:

- (1) A bag used to package bulk items such as fruit, vegetables, nuts, grains, or candy.
- (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.
- (5) A bag used for newspaper delivery.
- (6) A garment bag used for the transportation of specialty clothing or dry cleaning.

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 but not limited to: fusion of polymer spheres, known as expandable bead 20 polystyrene; injection molding; foam molding; and extrusion-blow molding, also including Styrofoam™, also known as extruded foam polystyrene.

EXPANDED POLYSTYRENE FOOD SERVICE PRODUCT

A. A product made of Expanded Polystyrene that is used for selling, providing, or transporting food or beverages.

B. Shall include:

- (1) Food containers.

- (2) Plates.
- (3) Hot and cold beverage cups.
- (4) Trays.
- (5) Clamshells.

C. 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.
- (3) Non-foam polystyrene food service products.

NON-RECYCLABLE PAPER BAG

A paper bag that does not qualify as a Recyclable Paper Bag.

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:

- A. Contains no old growth fiber;
- B. Contains a minimum of 40% post-consumer recycled content; and
- C. Displays the word “Recyclable” in a highly- visible area on the outside of the bag, and is labeled in a highly- visible manner with the name of the manufacturer and the percentage of post-consumer recycled content of the bag in an easy-to-read font size.

RETAIL ESTABLISHMENT

A location 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 or delivery service, but not including drycleaners.

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 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.

SINGLE-USE PLASTIC UTENSIL

- A. Any item used or provided by a Retail Establishment to serve, consume, or manipulate food or beverages that is primarily made from Plastic, other than a Single-Use Plastic Straw.
- B. Includes, but is not limited to forks, spoons, sporks, knives, chopsticks, beverage spill plugs, toothpicks, novelty cocktail accessories, and other drink or food accoutrements.
- C. Shall not include Utensils provided under the following circumstances:
 - (1) When packaged with beverages prepared and packaged outside of the Township, provided such beverages are not altered, packaged or repackaged within the Township.
 - (2) When provided as an assistive device to reasonably accommodate a disability.
 - (3) When made available as part of a self-service food offering in a retail establishment not operating as a restaurant, delicatessen or other operation primarily for the sale of prepared foods.

Beginning one (1) year after the Effective Date, Retail Establishments shall not provide a Single-Use Plastic Bag to a Customer at the Retail Establishment or through a delivery.

§ 115-4 Single-Use Paper Bags.

- A. Beginning one (1) year after the Effective Date, Retail Establishments shall not provide a Non-Recyclable Paper Bag to a Customer at the Retail Establishment or through a delivery.
- B. A Retail Establishment may provide a consumer a Recyclable Paper Bag at the point of sale if the bag is provided to the Customer for a charge of not less than \$0.15 per bag.
- C. All monies collected by a Retail Establishment under this section for provision of a Recycled Paper Bag shall be retained by the Retail Establishment.
- D. Any charge for a Recycled Paper Bag shall be separately stated on any receipt provided to the Customer at the time of sale and shall be identified as the "Carry-Out Bag Charge" thereon.

§ 115-5 Reusable Bags.

- A. A Retail Establishment may provide a Customer a Reusable Bag at the point of sale if the bag is provided to the Customer for a charge of not less than \$0.15 per bag.
- 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 as the "Carry-Out Bag Charge" thereon.

§ 115-6 Signage Requirements.

Beginning 180 days after the Effective Date, and for nine (9) months thereafter (or until three (3) months after the Enforcement Date), 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 Retail Establishment as of the date the regulation begins; a minimum fee for a Recyclable Paper Bag will be charged; explaining what types of bags and purchases are impacted; and providing any other information the Township may require by regulation.

§ 115-7 Expanded Polystyrene Food Service Product.

Beginning one (1) year after the Effective Date, Retail Establishments shall not provide any Expanded Polystyrene Food Service Product to a Customer at the Retail Establishment or through a delivery.

§ 115-8 Single-Use Plastic Utensils.

Beginning one (1) year after the Effective Date, Retail Establishments shall not provide Single-Use Plastic Utensils, except upon request of a Customer.

§ 115-9 Temporary Exemptions.

A. The Board of Supervisors 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 (1) year from the Enforcement Date upon a finding by the Board of Supervisors or its designee that the requirements of this Section would cause undue hardship to the Retail Establishment. The Board of Supervisors 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 of Supervisors pursuant hereto may, in the Board's sole 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, Single-Use Plastic Utensils, 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, or Expanded Polystyrene Food Service Product.

B. The Board of Supervisors, in its sole discretion, upon written request of a Retail Establishment, exempt a Retail Establishment from the requirements of this Ordinance for additional one (1) year periods upon finding by the Board of Supervisors that the requirements of this Section would cause undue hardship to the Retail Establishment due to unique circumstance or situation that there are no reasonable alternatives to Single-Use Plastic Bags, Single-Use Plastic Utensils, Non-Recyclable Paper Bags or Expanded Polystyrene Food Product. No exemption shall be for any period longer than one (1) year, but subsequent exemptions may be granted by the Board of Supervisors should undue hardship continue to be demonstrated.

§ 115-10 Enforcement.

A. The Board of Supervisors or its designee shall have the primary responsibility for enforcement of this Ordinance.

B. A person or Retail Establishment that violates the requirements of this Chapter shall:

- (1) Be given a written warning for a first offense with a 30-day grace period before issuing a second offense;
- (2) Be subject to a civil penalty of \$50.00 for a second offense;
- (3) Be subject to a civil penalty of \$100.00 for a third offense; and
- (4) Be subject to a civil penalty of \$200 for a fourth or any subsequent offense.

C. Any Retail Establishment that receives an initial written warning notice may file a request for an exemption to the extent permitted pursuant to Section 115-9 above.

D. In addition to the penalties set forth in this Ordinance, the Township shall be entitled to its attorneys' fees and the costs of enforcing this Ordinance, and 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 2. Repeal and Ratification.

All ordinances or parts of ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed. Any other terms and provisions of the Township's Code unaffected by this Ordinance are hereby reaffirmed and ratified.

SECTION 3. Severability.

Should any section, paragraph, sentence, clause, or phrase in this Ordinance be declared unconstitutional or invalid for any reason, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and affect, and for this reason the provisions of this Ordinance shall be severable.

SECTION 4. Effective Date.

This Ordinance shall become effective on the first (1st) day of the month following enactment.

ORDAINED AND ENACTED this 15th day of October 2024, by the Whitpain Township Board of Supervisors.

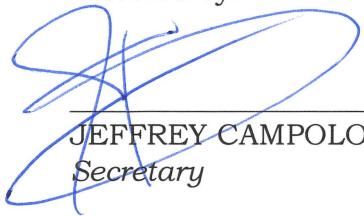
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**WHITPAIN TOWNSHIP
BOARD OF SUPERVISORS**



SCOTT M. BADAMI
Chair

Attested by:



JEFFREY CAMPOLONGO
Secretary