

BOROUGH OF NEW BRITAIN
BUCKS COUNTY, PENNSYLVANIA

ORDINANCE NO. 427

AN ORDINANCE OF THE BOROUGH OF NEW BRITAIN, BUCKS COUNTY, COMMONWEALTH OF PENNSYLVANIA, AMENDING CHAPTER 369 *SOLID WASTE AND RECYCLING* OF THE BOROUGH'S CODE OF ORDINANCES BY ADDING A NEW PART 3 *REGULATION OF CERTAIN SINGLE-USE PLASTICS* CONTAINING REGULATIONS REGARDING THE USE OF SINGLE-USE PLASTIC BAGS, STRAWS, AND UTENSILS IN THE BOROUGH; REPEALING PRIOR INCONSISTENT ORDINANCES AND PARTS OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND CONTAINING AN EFFECTIVE DATE.

WHEREAS, the Borough Code, 8 Pa.C.S. § 101, *et seq.* authorizes the Borough Council of the Borough of New Britain ("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, safety and welfare of the Borough of New Britain ("Borough") and its citizens;

WHEREAS, Article I, Section 27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment (the "ERA"), 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 ERA imposes two basic duties on the Commonwealth and its political subdivisions such as the Borough: 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 under the Borough Code and the ERA to minimize 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, the 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 certain single-use plastics within the Borough;

WHEREAS, the Borough Council has met all procedural requirements of adopting this ordinance and has held a public hearing on the ordinance;

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 the Borough will be served by this amendment of the New Britain Borough Code to regulate the distribution of single-use plastics within the Borough;

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

SECTION 1.

Chapter 369 *Solid Waste and Recycling* of the Borough's Code of Ordinances is hereby amended by adding a new Part 3 *Regulation of Single-Use Plastics* with the following provisions:

Part 3 Regulation of Single-Use Plastics

§ 369-40 Purpose and findings.

A. Purpose. The purposes of this Part 3 include:

- i. To reduce the use of single-use plastic bags, straws, and utensils by retail establishments within the Borough.

- ii. To curb litter on the streets, in the parks, and in the trees; to protect the local streams, rivers, waterways and other aquatic environments; to reduce solid waste generation; to reduce greenhouse gas emissions; to promote the use of reusable, compostable, and recyclable materials within the Borough; and to preserve the natural, scenic, historic, and esthetic character of the Borough.

B. Findings. Borough Council finds as follows:

- i. Numerous commercial establishments within the Borough provide single-use plastic bags, straws, and/or utensils to their customers.
- ii. The use of single-use plastics has severe environmental impacts, including litter, harm to wildlife, greenhouse gas emissions, ground level ozone formation, atmospheric acidification, water consumption, and solid waste generation.
- iii. Single-use plastics do not readily decompose. This includes plastic bags made of biologically based polylactic acid (PLA) polymer.
- iv. Given the difficulty of recycling these materials, such single-use plastics are not curbside recyclable and only a small percentage of plastic bags are returned for recycling.

- v. Numerous studies have documented the prevalence of single-use plastics littering the environment, blocking storm drains, entering local waterways, and becoming stuck in or upon natural resources and public property nationwide, and single-use plastics are often improperly discarded within the Borough.
- vi. An important goal of the Borough is to preserve the natural, scenic, historic, and esthetic values of the Borough consistent with the rights preserved in Article I, Section 27 of the Pennsylvania Constitution.
- vii. To enhance the quality of life for the Borough's residents and visitors, the Borough seeks to reduce waste, litter, and water pollution; protect public health and welfare; and conserve and protect natural resources including wildlife.
- viii. The Borough wishes to encourage the use of sustainable products and services.
- ix. The taxpayers of the Borough pay the costs related to the cleanup of single-use plastics from the roadways, trees, sewers, waterways, and parks within the Borough.
- x. Recyclers cite single-use plastic bags as a major source of contamination within the recycling stream; these bags damage recycling machines and thus increase costs and decrease efficiency.
- xi. There are several alternatives to single-use plastics that are readily available to the Borough's businesses and their customers.

- xii. From an environmental and economic perspective, the best alternative to single-use plastic bags is shifting to reusable bags followed by compostable or recyclable paper bags.
- xiii. Studies have documented that placing a prohibition on the distribution of single-use plastics at the point of sale encourages the use of reusable bags and reduces plastic litter and the use of single-use plastics.

§ 369-41 **Definitions.** For the purposes of this Part, the following definitions shall apply unless the context clearly requires otherwise:

- A. **"Borough"** means the Borough of New Britain.
- B. **"Customer"** means any person purchasing goods or services from a Retail Establishment.
- C. **"Effective Date"** shall mean the effective date of the ordinance that added this Part to the New Britain Borough Code of Ordinances.
- D. **"Exempted Bag"** shall include:
 - i. a bag used to package bulk items such as fill it, vegetables, nuts, grains, or candy;
 - ii. a bag used to contain or wrap meats or fish; to contain unwrapped prepared foods or bakery goods;
 - iii. a bag used solely to contain live animals, such as fish or insects sold in a pet store;
 - iv. a bag sold in packaging containing multiple bags and packaged at the time of manufacture of the bag;
 - v. laundry or dry-cleaning bags;

- vi. newspaper bags; and
 - vii. non-handled bags used to protect a purchased item from damaging or contaminating other purchased items when placed in a reusable bag or recycled paper bag.
- E. **"Implementation Date"** shall mean one-hundred and eighty (180) calendar days after the Effective Date.
- F. **"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.
- G. **"Recycled Paper Bag"** shall mean a paper bag that meets the following, but not including an Exempted Bag:
- i. Contains no old-growth fiber;
 - ii. contains a minimum of forty percent (40%) postconsumer recycled content; and
 - iii. is labeled or can be identified as such in a form satisfactory to the Code Enforcement Officer with the name of the manufacturer and the percentage of postconsumer recycled content.

- H. **"Retail Establishment"** means any person, corporation, partnership, business venture, or vendor that sells or provides food, merchandise, goods, or materials for direct sale or delivery to a customer, whether or not for profit, including, but not limited to: restaurants (eat-in and/or take-out food), food trucks, farmers' markets, bars, pharmacies, convenience and grocery stores, seasonal and temporary businesses or markets, service stations, delicatessens, retail stores, delivery services, or other similar nonresidential uses (not including drycleaners). For purposes of this Part, retail establishments shall also include public and private events on public property as defined in Chapter 315 *Public Events and Gatherings* of the Borough's Code of Ordinances.
- I. **"Reusable Bag"** means a bag with handles that is specifically designed and manufactured for multiple uses and is:
- i. made of cloth or other machine-washable fabric that has stitched handles; or
 - ii. a polypropylene bag that has stitched handles.
- J. **"Single-Use Plastic Bag"** means a bag that is manufactured from plastic using a blown film extrusion process, but not including an Exempted Bag.
- K. **"Single-Use Plastic Straw"** means a straw that is manufactured from plastic, and not including straws composed of non-plastic materials such as bamboo, sugar cane, agave, corn, wood, hay, or paper.

- L. **“Single-Use Plastic Utensil”** means a utensil provided by a commercial establishment that is made predominantly of plastic, and not including utensils composed of non-plastic materials such as bamboo, sugar cane, agave, cornstarch, plant matter, or wood.
- M. **“Straw”** means 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 beverages. A straw shall include drink stirrers, devices used to mix beverages, and splash sticks, even if such items are not in the form of a tube.
- N. **“Utensil”** shall mean a device designed or intended for transferring food from its container to the mouth of the consumer. A utensil shall include forks, spoons, knives, sporks, and chopsticks.

§ 369-42 Requirements.

- A. **Single-Use Plastic Bags.** Beginning on the Implementation Date, Retail Establishments are prohibited from providing a Single-Use Plastic Bag to a customer at the Retail Establishment or through delivery.
- B. **Single-Use Paper Bags.** Beginning on the Implementation Date, Retail Establishments are prohibited from providing a non-Recycled Paper Bag to a customer at the Retail Establishment or through a delivery.
- C. **Reusable Bags.** A retail establishment may provide a consumer a Reusable Bag at the point of sale.

- D. Single-Use Plastic Straws. Beginning on the Implementation Date, Retail Establishments are prohibited from providing a Single-Use Plastic Straw to a customer at the Retail Establishment or through a delivery service, except upon the request of the customer.
- E. Single-Use Plastic Utensils. Beginning on the Implementation Date, Retail Establishments are prohibited from providing a Single-Use Plastic Utensil to a customer at the Retail Establishment or through a delivery service, except upon the request of the customer.

§ 369-43 Signage.

- A. Beginning 120 days after the effective date of this Part, and for at least 60 days beyond the Implementation Date, Retail Establishments shall post at all points of sale conspicuous signage provided by the Borough, which signage shall:
 - i. inform customers that Single-Use Plastic Bags and non-Recycled Paper Bags will no longer be provided by the Retail Establishment as of the date the prohibition begins;
 - ii. explains what types of bags and purchases are impacted; and
 - iii. provides other information the Borough may require by regulation, if applicable.

§ 369-44 Enforcement.

- A. The Borough Code Enforcement Officer, and any other persons appointed by the Borough Manager (collectively referred to in this Part as the “Code Enforcement Officer”), shall have the authority to take necessary actions to enforce the provisions of this

Part, including conducting any inspections, issuing citations, and pursuing prosecutions.

- B. If it is determined that a violation has occurred, the designated Code Enforcement Official shall issue notice to the establishment. Notice shall include the applicable ordinance sections and a description of what must be remedied and must specify a reasonable timeframe for compliance, which shall be no less than seven days from the date of the notice. Notice shall be hand delivered to the establishment and sent via certified mail.
- C. Any establishment who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine in accordance with the schedule specified in subsection
- D. Every day that a violation of this Part continues shall constitute a separate offense.
- E. The penalty for each violation that occurs after the notice shall be a fine of no more than:
 - i. \$50.00 for the first violation;
 - ii. \$100.00 for the second violation in the same year dating from the first violation;
 - iii. \$200.00 for the third and each subsequent violation in the same year dating from the first violation.
- F. In addition to the penalties set forth in this Part, the Borough may seek legal, injunctive, or other equitable relief to enforce this Part.

- G. Failure to Enforce Not a Waiver. The failure of the Borough of New Britain to enforce any provision of this Part shall not constitute a waiver by the Borough of its rights of future enforcement hereunder.

§ 369-45 Extension for Existing Inventory.

- A. The Borough Manager or designee may extend the Implementation Date for Retail Establishments who can reasonably demonstrate that existing inventory of Single-Use Plastic Bags or Single-Use Paper Bags has not been depleted. Extensions and extension renewals shall be subject to the following conditions and procedures:
- i. Only Retail Establishments existing within New Britain Borough as of the Effective Date of this Ordinance may be granted an extension.
 - ii. Extensions shall not exceed a period of one-hundred and eighty (180) days and may be renewed no more than one additional period.
 - iii. Extension renewal requests shall be subject to the conditions and procedures set forth for extensions.
 - iv. Requests shall be made in writing no later than thirty (30) days prior to the Implementation Date or extension thereof.
 - v. Requests shall be accompanied by or include the following:
 - (a) order date and quantity of each type and size of bag for which extension is requested;

- (b) approximate quantity remaining of each type and size of bag for which extension is requested;
- (c) one bag of each type and size for which extension is requested; and
- (d) anticipated amount of time necessary to deplete remaining inventory at the time of the request.

SECTION 2.

Any and all other ordinances or parts of ordinances in violation or in conflict with the terms, conditions and provisions of this ordinance are hereby repealed to the extent of such irreconcilable conflict.

SECTION 3.

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, non-enforceable or unconstitutional, the Borough Council hereby declares its intent that the ordinance shall have been enacted without regard to the invalid, non-enforceable, or unconstitutional portion, part or provision of this ordinance.

SECTION 4.

This ordinance shall become effective five days after approval and enactment by Borough Council, specifically _____.


ORDAINED and **ENACTED** an ordinance of the Borough of New Britain this
13th day of NOVEMBER, 2024.

BOROUGH OF NEW BRITAIN



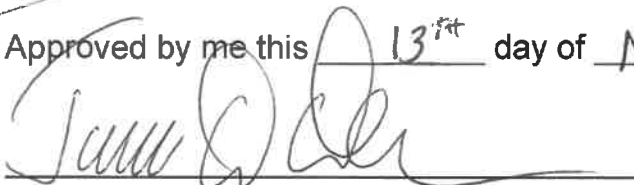
THOMAS PRICE
COUNCIL PRESIDENT

ATTEST:



JOHN WOLFF
BOROUGH SECRETARY

Approved by me this 13th day of NOVEMBER, 2024.



JAMES DONOVAN
MAYOR

I, Michael E. Peters, Esquire, a shareholder with the law firm of Eastburn and Gray, P.C., Solicitor for the Borough of New Britain, Bucks County, PA, hereby attest that the attached is a true and correct copy of the following ordinance, and that I am authorized to make this attestation on behalf of the Borough:

AN ORDINANCE OF THE BOROUGH OF NEW BRITAIN, BUCKS COUNTY, COMMONWEALTH OF PENNSYLVANIA, AMENDING CHAPTER 369 SOLID WASTE AND RECYCLING OF THE BOROUGH'S CODE OF ORDINANCES BY ADDING A NEW PART 3 REGULATION OF CERTAIN SINGLE-USE PLASTICS CONTAINING REGULATIONS REGARDING THE USE OF SINGLE-USE PLASTIC BAGS, STRAWS, AND UTENSILS IN THE BOROUGH; REPEALING PRIOR INCONSISTENT ORDINANCES AND PARTS OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND CONTAINING AN EFFECTIVE DATE.

[SEAL]

Dated: 10.23.2024



Michael E. Peters, Esquire