

**TOWNSHIP OF MILLBURN
ORDINANCE NO. 2547-19
ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XVIII OF THE REVISED GENERAL
ORDINANCES OF THE TOWNSHIP OF MILLBURN TO BAN USE OF SINGLE-USE PLASTIC BAGS
AND POLYSTYRENE CONTAINERS AND REDUCE THE USE OF SINGLE-USE STRAWS**

STATEMENT OF PURPOSE: *The purpose of this Ordinance is to prohibit the use of single-use plastic carryout bags and polystyrene containers at retail establishments and reduce the use of single-use straws within the Township.*

WHEREAS, the use of single-use disposable plastic bags and polystyrene containers offered by retailers to their customers can result in litter and significant negative impacts to the environment; and

WHEREAS, the Environmental Commission of the Township of Millburn has recommended the adoption of measures to implement the elimination and reduction of such uses within Millburn Township; and

WHEREAS, the Township Committee has determined that it is in the public interest to ban the use of single-use disposable plastic bags and polystyrene containers and reduce the use of single-use straws through the adoption of an Ordinance to enhance the public health, safety and welfare of the community.

NOW, THEREFORE, Be It Ordained by the Township Committee of the Township of Millburn in the County of Essex and State of New Jersey as follows:

SECTION 1 Chapter XVIII of The Revised General Ordinances of the Township of Millburn entitled “Environmental Regulations” is hereby amended, supplemented and revised by the addition of a new Section 18-2 entitled “Ordinance to Ban Use of Single-Use Plastic Bags and Polystyrene Containers and Reduce Use of Single-Use Straws” as follows:

§18-2.1 DEFINITIONS

The following definitions apply to this Ordinance:

Compliant Bag shall mean Recyclable paper carryout bags and Reusable bags.

A Recyclable Paper Carryout Bag shall mean a paper bag that is 100% Recyclable and displays the words “Recyclable” in a visible manner on the outside of the bag.

A Reusable Bag shall mean a bag with handles that is designed and manufactured to withstand repeated uses over a period of time, is machine washable, or made from a material that can be cleaned and disinfected regularly.

Customer shall mean any Person purchasing goods or services from a Retail Establishment.

Food Service Business means a business that sells or provides food for consumption on or off the premises, and includes, but is not limited to, any restaurant, café, delicatessen, coffee shop, supermarket

or grocery store, vending truck or cart, food truck, movie theater, or business of institutional cafeteria, including those operated by or on behalf of any governmental entity.

Operator shall mean the Person in control of, or having the responsibility for, the operation of a Retail Establishment, which may include, but is not limited to, the owner of the Retail Establishment.

Person shall mean any natural Person, firm, corporation, partnership, or other organization or group however organized.

Plastic means a synthetic material made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms retaining their defined shapes during the life cycle and after disposal.

Polystyrene Containers shall mean a container comprising a synthetic thermoplastic material obtained by polymerizing styrene; formed into a white rigid foam (expanded Polystyrene) for insulating and packaging, including cups, clamshells and any other take-out containers from restaurants and prepared food providers.

Product Bag shall mean a very thin bag without handles used exclusively to carry produce, meats, or other food items to the point of sale inside a Retail Establishment or, for reasons of public health and safety, to prevent such food items from coming into direct contact with other purchased items.

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

Retail Establishment means any store or commercial 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 Township of Millburn. Retail Establishments include, for example: a business establishment that generates a sales or use-tax; a drug store, a pharmacy, a supermarket, grocery store, 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, snack foods and alcoholic beverages; a public eating establishment (i.e., a restaurant, take-out food establishment, or any other business that prepares and sells food to be eaten on or off its premises); and a business establishment that sells clothing, hardware, electronics, books, jewelry, furniture, cosmetics or any other non-perishable goods. Retail Establishment does not include non-profit charitable resellers as defined in Section 501(c) (3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization that reuses and recycles donated goods or materials and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.

Single-Use Plastic Carryout Bag or Polystyrene Container shall mean any bag or container produced or manufactured from material commonly known as Plastic or Polystyrene that is provided by the Operator of a Retail Establishment at the point of sale or other point of departure from the premises for transporting goods or products out of the establishment for off-site delivery. The term includes compostable and biodegradable bags, but does not include Reusable Bags or Product Bags. This definition specifically exempts the following:

- (a) bags made available by Operators to consumers inside Retail Establishments to:
1. package bulk items, such as fruit, vegetables, nuts, grains, candles, or small hardware items;
 2. contain or wrap frozen and non-frozen foods, meat, or fish, whether packaged or not;
 3. contain or wrap flowers, potted plants, or other items where dampness may be an issue;
 4. contain unwrapped prepared foods or bakery goods, or
 5. pharmacy prescription bags
 6. contain articles of clothing in garment bags.
- (b) newspaper bags, door-hanger bags, laundry and/or dry-cleaning bags, or bags sold in packages containing multiple bags intended as food storage bags, garbage bags, yard waste bags, or pet waste bags.

§18-2.2 SINGLE-USE PLASTIC CARRYOUT BAGS AND POLYSTYRENE CONTAINERS PROHIBITED

No Retail Establishment may provide to any Customer a single-use Plastic Carryout Bag or a Polystyrene Container provided for the purpose of carrying goods away from the point of sale. This does not apply to Product Bags. The prohibition also applies to single-use Plastic Carryout Bags and Polystyrene Containers for take-out and deliveries from Retail Establishments. The point of sale in such transactions is deemed to be at the Retail Establishment, regardless of where payment for the transaction and delivery of the goods physically occurs, provided however, that the charge established pursuant to Section 18.2.4 shall not be made to off-site recipients of deliveries from Retail Establishments for products delivered in Compliant Bags and containers.

§18-2.3 COMPLIANT BAGS FOR A FEE

- 1) All Retail Establishments may make available to Customers, for a fee, Compliant Bags, as defined herein, for the purpose of carrying goods or other materials away from the point of sale subject to the provisions of this Ordinance. The fee charged shall be reflected in the sales receipt.
- 2) Nothing in this Ordinance prohibits Customers from bringing bags of any type that they choose to Retail Establishments themselves, in lieu of bags available for a fee from the Retail Establishment, or from carrying away goods that are not placed in a bag.

§ 18-2.4 REGULATION OF RECYCLABLE PAPER CARRYOUT BAGS

- 1) All Retail Establishments may make Compliant Recyclable Paper carryout bags available to Customers upon request for a fee of 5 cents per bag if Customers choose not to bring their own Reusable Bags.

- 2) A Retail Establishment may provide Customers with a Compliant Reusable Bag, as defined herein, for a fee of at least 10 cents.

§ 18-2.5 PROVIDING REUSABLE BAGS OR RECYCLABLE PAPER CARRYOUT BAGS

- 1) All Retail Establishments must provide Customers with Compliant Bags, upon request, if Customers fail to bring their own bags, in accordance with the fee structure set forth in § 18- 2.4 above. A Retail Establishment may choose, in its discretion, to provide a credit to Customers that choose to bring their own bags.
- 2) Each Retail Establishment shall be strongly encouraged to educate its staff to promote the Reusable Bags, to post signs encouraging Customers to choose Reusable Bags rather than Recyclable Paper carryout bags, and to ask Customers if a bag is needed prior to dispensing.

§ 18-2.6 STRAWS

- 1) A Food Service Business may provide a single-use straw to a Person only upon request.

§ 18-2.7 ENFORCEMENT AND VIOLATION PENALTIES

- 1) The Millburn Township Code Enforcement Officer or the Health Officer or their designees, have the responsibility for enforcement of this Ordinance, including, but not limited to, investigating violations and issuing fines.
- 2) a) Any Retail Establishment that violates or fails to comply with any of the requirements of this Ordinance after an initial written warning notice has been issued for that violation shall be liable for a penalty.

b) If a Retail Establishment has subsequent violations of this Ordinance after the issuance of an initial written warning notice of a violation, the following penalties will be imposed and shall be payable by the Operator of the Retail establishment:
 - i. a fine not exceeding one hundred dollars (\$100.00) for the first violation after the written warning notice is given;
 - ii. a fine not exceeding two hundred dollars (\$200.00) for the second violation after the written warning notice is given; and
 - iii. a fine not exceeding five hundred dollars (\$500.00) for the third and any subsequent violations after the written warning notice is given.
- c) A fine shall be imposed for each day a violation occurs or is allowed to continue.
- 3) Any appeal of a written warning notice or fine shall be conducted pursuant to municipal regulations and procedures concerning appeals already adopted by the Township of Millburn.

§ 18-2.8 NO CONFLICT WITH FEDERAL OR STATE LAW

Nothing in this Ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

SECTION 2 REPEAL OF INCONSISTENT PROVISIONS

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency. It being the legislative intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

SECTION 3 SEVERABILITY

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, which shall remain in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 4 EFFECTIVE DATE

This Ordinance shall take effect six months after passage and publication as provided by law.

Ordinance 2547-19

ATTEST:

MILLBURN TOWNSHIP

Christine A. Gatti, RMC
Municipal Clerk

By: _____
Dianne Thall Eglow, Mayor

Introduced: 11/12/2019
Published: 11/21/2019
Public Hearing/Adopted: 12/3/2019
Published: 12/12/2019

Ordinance 2547-19

CERTIFICATION

I, Christine A. Gatti, Clerk of the Township of Millburn, in the County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Township Committee at a regular meeting held on the 3rd day of December, 2019.

Christine A. Gatti, RMC Township Clerk