

**BOROUGH OF DARBY,
COUNTY OF DELAWARE,
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE NO. 766

**AN ORDINANCE OF THE BOROUGH OF DARBY, COUNTY OF DELAWARE,
COMMONWEALTH OF PENNSYLVANIA, AMENDING THE CODE OF THE
BOROUGH OF DARBY AND RELATED ORDINANCES CONCERNING RECYCLING.**

WHEREAS, the Borough of Darby is a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania, including but not limited to the Borough Code; and,

WHEREAS, the Legislature of the Commonwealth vests the Borough of Darby with the power and authority to make and adopt all such ordinances, bylaws, rules and regulations not inconsistent with or restrained by the Constitution and laws of this Commonwealth, as is expedient or necessary for the proper management, care and control of, inter alia, the Borough's finances, the maintenance of peace, good government, safety and welfare of the Borough, its trade, commerce and manufacturers; and,

WHEREAS, the Borough of Darby desires to increase participation in the Borough's recycling program because increased recycling participation benefits the community at large by removing materials from the waste stream and reuse them, decrease pollution, lower our carbon footprint, receiving increased grant reimbursement to support the recycling program, and limiting waste disposal costs in the form of tipping fees charged to the Borough by the Delaware County Solid Waste Authority; and

WHEREAS, providing for single stream recycling has been shown to increase participation in municipal recycling programs; and,

WHEREAS, Darby's current recycling program does not provide for single stream recycling; and

WHEREAS, the Borough desires to amend existing ordinances to further the efficient operation of government, increase participation in the Borough's recycling program, and clarify the duties and obligations thereunder; and,

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Darby that:

SECTION I: Article V of Chapter 79 of the Code of the Borough of Darby, entitled Recycling, is amended by deleting its contents and replacing it with the following:

§79-13. PURPOSE. The Borough of Darby hereby establishes a program for the reduction of the amount of solid waste that has been added to the municipal solid waste program in Delaware County and the State of Pennsylvania, and the conservation of certain recyclable material, as defined herein, by the separation and collection thereof in the Borough of Darby.

§79-14. STATUTORY AUTHORITY. This article is adopted pursuant to Section 1501 of Act 1988-101 (approved July 28, 1988, by the Governor of the State of Pennsylvania).

§79-15. DEFINITIONS. As used in this article, the following definitions shall apply:

Cans - Containers comprised of aluminum, tin, steel, or a combination thereof, which contain or formerly contained only nonaerosol substances.

Cardboard - All corrugated or other cardboard normally used for packing, mailing, shipping or containerizing goods, merchandise or other material, but excluding plastic, foam or wax-coated or soiled cardboard.

Catalogs - Printed material soliciting products for sale to the reader.

Commercial - Includes all business and industrial uses but not residential uses of property.

County plan - The district solid waste management plan for Delaware County as approved by the Pennsylvania Department of Environmental Protection.

Glass bottles/jars - Any bottles or jars made from melted sand formed into a container.

Junk mail/envelopes - Mail received but not for a specific purpose and container that mail is mailed in.

Leaves - Tree and plant leaves, garden residues, shrubbery and tree trimmings and similar material, but not including grass clippings.

Magazines - Magazines and other materials printed on similar paper.

Municipality - The Borough of Darby.

Newspaper - A newspaper and other materials printed on newsprint.

Paper (any grade) - Printing and writing papers not considered newspaper, including, without limitation, printed white ledger and computer print and notebook paper.

Paperboard - A heavier and thicker paper used as cereal boxes and beer and soda carriers.

Person - Any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, municipal authority, federal government or agency, state institution or agency (including but not limited to the Department of General Services and the State Public School Building Authority) or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. In any provisions of this article prescribing a fine, imprisonment or penalty, or any combination of the foregoing, the term "person" shall include the officers and directors of any corporation or other legal entity having officers and directors.

Plastic - Any plastic labeled with a SPI Code Number 1 through Number 7.

Public information and education program - A program developed and provided by the municipality to inform and encourage residents to use the recycling collection services.

Recyclable materials - Any materials established by the Borough Council from time to time by resolution, which may include: cans, cardboard, catalogs, glass bottles/jars, junk mail/envelopes, magazines, newspaper, paper (any grade), paperboard, plastic bottles, telephone/soft-covered books and/or yard waste and any other materials which the Borough Council may deem to be recyclable by resolution.

Recycling - Any process by which material that would otherwise become solid waste is collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

Recycling collection services - The collection of recyclable materials from locations within the municipality and the delivery of recyclable materials to a recycling facility.

Recycling containers - A container approved by the municipality for the storage of recyclable materials. The container shall either be a recycling container provided by the Borough or be clearly labeled with a label provided by the Borough to identify the container as containing recyclable material.

Recycling dropoff - Any facility designed and operated solely for the receiving and storing of materials that are to be returned to the economic mainstream instead of becoming part of the solid waste stream.

Single-stream recycling - Commingling of several recyclable materials into one container for processing and pickup.

Solid waste - Waste, including but not limited to municipal, commercial, institutional, or industrial waste.

Source-separate - To separate recyclable materials from the solid waste stream at the point of waste generation.

Telephone/soft-cover books - Printed material with non-hardbound covers used for reading or listing of phone numbers.

Yard waste - Tree limbs and branches may not exceed eight inches in diameter or six feet in length; the term does not include leaves or grass clippings.

§79-16. RECYCLING PROGRAM

A - Authority to establish regulations by resolution. The Borough Council shall have the authority to adopt, modify, and amend recycling regulations from time to time by resolution, including, without limitation, regulations regarding which recyclable materials must be recycled and regulations requiring residents to source-separate recyclable materials and/or place recyclable materials for collection through single-stream recycling. Any regulations so adopted by the Borough Council shall be published at least one time in a newspaper of general circulation in the Borough and posted on the Borough's website. Violations of any such regulations shall be deemed violations of this article and subject to the same penalties hereunder.

B. Residential property.

1- Except as otherwise herein provided, all persons owning or occupying residential property in the Borough of Darby shall recycle all recyclable materials (as determined by the Council by resolution from time to time) generated at their homes, apartments and other residential establishments in the Borough of Darby and place such materials at locations designated by the Borough Council for collection by the Borough of Darby or its agents, servants or contractors.

2- Recyclable materials shall not be separated into individual commodities by residents. Collection of recyclable materials shall be done on a single-stream basis.

3- Recyclable materials for collection shall be placed in recycling containers, and placed at the curbside on the day set by the Borough Council.

4- Collections by the Borough of Darby of recyclable materials shall be made in accordance with a schedule of areas and dates to be publicly advertised by the Borough of Darby.

5- All recyclable materials placed by residents for collection pursuant to the program established under this article shall be prepared for collection in a secure manner to prevent such recyclable materials from being blown about or otherwise scattered upon the streets or private property within the Borough.

6- Multifamily residential properties with no more than four units shall be served by the collection system operated by the Borough of Darby.

7- The owners and occupiers of multifamily housing properties with more than four units will not be served by the collection system operated by the Borough of Darby but such persons must establish a system for source separation, collection, transportation and recycling of the materials designated by this article at each property within 30 days of the date of the Borough of Darby's publication of an appropriate notice in a newspaper of general circulation within the Borough of Darby. Arrangement for collection of designated recyclables for disposition herein shall be the responsibility of the owner or occupier of the property in which the recyclables were generated and/or the person contractually obligated to the generator to arrange for collection and disposal of its solid waste. Such arrangements may include, without limitation, direct marketing of recyclables, delivery to a dropoff, contracts with solid waste collectors/haulers for separate or commingled collection of any or all designated recyclables or contracts with other persons for separate or commingled collection of any or all designated recyclables. The owner of a multifamily housing property containing more than four units shall provide an appropriate number of recycling containers at a sufficient number of dropoff points to accommodate the amount of recycling generated by the property. The Borough reserves the right to require the owner to provide additional containers if the number of containers in place is not adequate. All persons not served by the collection system operated by the Borough of Darby must provide the Borough of Darby, before January 20 of each year, a written report stating the name of the hauling contractor (if the property owner is using one) and the total weight of each kind of material recycled during the previous calendar year and any other relevant information required by the Borough of Darby.

8- All owners/agents of multifamily residential properties (regardless of the number of units) in the Borough shall be required to provide notice to tenants of the Borough's mandatory recycling program and to provide such notice, in writing, either by including language in the lease notifying the tenant of the recycling obligation at time of tenant change or lease renewal with the tenant; or by prominently posting written notice of

the recycling obligation in the common area of the building. This written notice shall be kept accessible for inspection by the Borough official, if requested.

C. Commercial and institutional establishments and community activities.

1- Except as specifically provided in this article, all persons occupying commercial or institutional establishments or conducting community activities in the Borough of Darby shall be subject to the same duties and requirements of this article as owners and occupiers of multifamily residential properties containing more than four units.

2- The Borough of Darby shall not be responsible for the collection, transportation, processing or marketing of materials or contracting for the collection, transportation, processing or marketing of materials from commercial or institutional establishments or from community activities; provided, however, that the owners or occupiers of commercial office buildings may request to have the Borough collect recycling materials from such properties on the same basis as residential properties for which the Borough collects recycling materials for an annual fee set by the Borough Council by resolution from time to time. The Borough may elect to reject any such request if the Borough, in its sole discretion, determines that the amount of recyclable materials generated from such commercial office building is excessive or burdensome to the Borough.

3- All persons owning or occupying commercial or institutional establishments or conducting community activities within the Borough of Darby and all other persons not served by the collection system operated by the Borough of Darby must establish a system for source separation, collection, transportation and designated recyclables at each property within 30 days of the date of the Borough of Darby's publication of an appropriate notice in a newspaper of general circulation within the Borough of Darby. Arrangement for collection of designated recyclables for disposition herein shall be the responsibility of the person who generated the recyclables and/or the person contractually obligated to the generator to arrange for collection and disposal of its solid waste. Such arrangements may include, without limitation, direct marketing of recyclables, delivery to a dropoff, contracts with solid waste collectors/haulers for separate or commingled collection of any or all designated recyclables or contracts with other persons for separate or commingled collection of any or all designated recyclables. The system must include suitable containers for collecting and sorting materials at an easily accessible location and written instructions to the occupants concerning the use and availability of the system. All persons not served by the collection system operated by the Borough of Darby must provide the Borough of Darby, before January 20 of each year, a written report stating the name of the hauling contractor (if the property owner is using one) and the total weight of each kind of material recycled during the previous calendar year and any other relevant information required by the Borough of Darby.

D. Leaves.

1- Nothing herein shall prevent any person from utilizing leaves for compost, mulch or other agricultural, horticultural, silvicultural, gardening or landscaping purpose.

2- No leaves shall be commingled with other waste collected by the Borough or its agents, servants or contractors. The Borough, under regulations hereafter established, will collect leaves source-separated by the owners or occupiers of properties served by the Borough's trash collection program.

3- All other persons who are not served by the Borough's trash collection program shall arrange for the separate disposal and processing of leaves at a composting facility or an agricultural, horticultural, silvicultural, or other facility that processes or utilizes leaves for compost, mulch or other beneficial uses.

E. Notice of public education.

The Borough of Darby shall establish a public information and education program explaining the features and requirements of the program in this article. The Borough of Darby shall give at least 30 days' public notice prior to the initiation of the recycling program and provide periodic public notice every six months thereafter to all persons occupying residential, commercial, institutional and municipal premises within its boundaries of the requirements of this article.

F. Refusal to collect solid waste contaminated by designated recyclable materials.

This municipality or any other person collecting solid waste generated within this municipality may refuse to collect solid waste from any person who has clearly failed to source-separate recyclables designated under an applicable section of this article.

§79-17. Unauthorized collection or interference; Unlawful activities; public nuisance; Violations and penalties; Enforcement; Injunctions; concurrent remedies.

A. Unauthorized collection or interference.

1- Except in accordance with the provisions of this article, no person shall collect any material source-separated for collection without specific written prior permission from the Borough.

2- No person shall interfere with the recycling process established by this article.

B. Unlawful activities; public nuisance.

1. - It shall be unlawful for:

(a) - Any person other than the municipality, or another person authorized by the municipality, to collect any designated recyclable which has been placed for collection pursuant to this article.

(b) - Any person to violate, or to cause or to assist in the violation of, any provision of this article.

(c) - Any person to hinder, to obstruct, to prevent or to interfere with this municipality, or its personnel, in the performance of any duty under this article or in the enforcement of this article.

2. - All unlawful conduct set forth in this section shall constitute a public nuisance.

C. Violations and penalties.

Any person who violates any of the provisions of this article shall, upon conviction thereof before a Magisterial District Judge, be fined not more than \$1,000, plus costs of prosecution, and in default of payment of such fine and costs be imprisoned for not more than 30 days. Each day that a violation continues in effect shall be deemed a separate violation.

D. Enforcement.

The Code Enforcement Official, Borough police officers and other appointed Borough officials are hereby individually and severally empowered to enforce the provisions of this article. An inspection may consist of sorting through containers and opening of solid waste bags to detect, by sound or sight, the presence of any recyclable material.

E. Injunctions; concurrent remedies.

1- In addition to any other remedy provided in this article, the Borough of Darby may institute a suit in equity where unlawful conduct or public nuisance exists as defined in this article for an injunction to restrain a violation of this article. In addition to an injunction, the court may impose penalties as authorized by this Article.

2- The penalties and remedies prescribed by this article shall be deemed concurrent. The existence or exercise of any remedy shall not prevent the Borough of Darby from exercising any other remedy provided by this article or otherwise provided at law or equity.

§79-18. Construal of Provisions; Existing Contracts.

A. Construal of provisions. The terms and provisions of this article are to be liberally construed so as best to achieve and to effect the goals and purposes hereof.

B. Existing contracts.

1- Nothing contained in this article shall be construed to interfere with or in any way modify the provisions of any existing contract that is in force in the municipality on the effective date of this article.

2- No renewal of any existing contract upon the expiration of the original term thereof and no new contract for the collection, transportation, processing or purchase of solid waste or recyclables shall be entered into after the effective date of this article, unless such renewal or such contract shall conform to the requirements of this article.

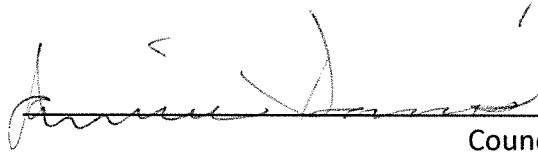
SECTION II: All Borough elected and appointed officials are authorized to take all action necessary to ensure the implementation and effect the purpose hereof.

SECTION III: All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed and/or amended to the extent of their inconsistency. The Borough Council may from time to time amend, supplement, change, modify, or repeal this ordinance pursuant to the provisions of Federal, State, and Local Laws.

SECTION IV: The provisions of this Ordinance are severable, and if any clause, sentence, subsection or section hereof shall be adjudged by any court of competent jurisdiction to be illegal, invalid or unconstitutional, such judgment or decision shall not affect, impair or invalidate the remainder but shall be confined in its operation and application to the clause, sentence, subsection or section rendered. It is hereby declared the intent of the Borough Council that this ordinance would have been adopted if such illegal, invalid, or unconstitutional clause, sentence, subsection, or section had not been included therein.

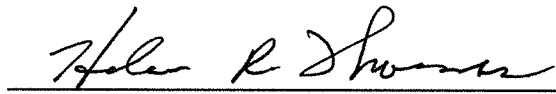
SECTION V: This is effective immediately upon enactment according to law, and shall remain in effect hereafter until revised, amended, or revoked by action of the Council of the Borough of Darby.

ADOPTED by the Borough Council this 19th day of November, 2014.



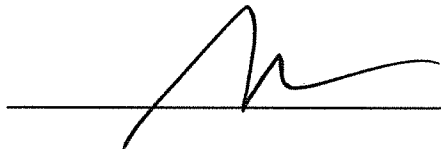
Council President

APPROVED by the Mayor, this 19th day of November, 2014.




Mayor

ENACTED this 19th day of November, 2014.



Secretary

I HEREBY CERTIFY that the foregoing is a true and correct copy of the said Ordinance duly adopted at a meeting of Borough Council held on the 19th day of November, 2014.



Secretary