

ORDINANCE NO. 208

AN ORDINANCE OF WEST VINCENT TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA TO PROMOTE THE USE OF REUSABLE BAGS, PROHIBIT THE USE OF SINGLE-USE CARRY-OUT PLASTIC BAGS, POLYSTYRENE FOOD AND DRINK CONTAINERS BY COMMERCIAL ESTABLISHMENTS, AND ESTABLISHING A CHARGE FOR THE PROVISION OF CERTAIN TYPES OF BAGS AT THE POINT OF SALE

WHEREAS, pursuant to the Second-Class Township Code, the Board of Supervisors (“Board”) of West Vincent Township (“Township”) has the power to adopt ordinances in which general or specific powers of the Township may be exercised. 53 P.S. § 66601;

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 aesthetic 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, the constitutional obligation found in Article 1, Section 27 of the Pennsylvania Constitution binds not only the Commonwealth, but “all government, state or local, concurrently.” *Robinson Twp., Washington Cty. v. Com.*, 83 A.3d 901, 952 (Pa. 2013); *Pennsylvania Env't Def. Found. v. Commonwealth*, 161 A.3d 911 (Pa. 2017);

WHEREAS, when 300 samples of water from 50 rivers and streams across the Commonwealth were recently tested, microplastic contamination was found in every waterway, according to a new report titled “Microplastics in Pennsylvania: a Survey of Waterways” conducted by PennEnvironment Research and Policy Center using methodology developed by NOAA;

WHEREAS, pursuant to the Second-Class Township Code, the Board may make and adopt any Ordinances, By-Laws, Rules and Regulations not inconsistent with or constrained by the Constitution and the Laws of this Commonwealth necessary for the property 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 citizens, trade, commerce and manufactures.

WHEREAS, the Board intends to preserve, maintain, and enhance the health of residents of and visitors to the Township, as well as the public natural resources and common property within the Township, by regulating the distribution of single-use carry-out plastic bags, polystyrene food and drink containers, and single-use plastic straws within the Township;

WHEREAS, use and distribution of single-use carry-out plastic bags, polystyrene food and drink containers, and single-use plastic straws are preventable and have a negative impact on the natural environment and the community of the Township;

WHEREAS, single-use carry-out plastic bags, polystyrene food and drink containers, and single-use plastic straws pollute the environment, harm wildlife and natural landscapes, clog storm drains and drainage systems, and enter into the waters of the Commonwealth creating further damage to aquatic life and ecosystems;

WHEREAS, reducing single-use carry-out plastic bags, polystyrene food and drink containers, and single-use plastic straws can mitigate harmful impacts to oceans, rivers, lakes, forests and the wildlife that inhabit them. It can also relieve pressure on landfills and waste management.

WHEREAS, the taxpayers of the Township pay the costs related to the cleanup of single-use carry-out plastic bags, polystyrene food and drink containers, and single-use plastic straws from the roadways, trees, sewers, waters, and parks within the Township.

WHEREAS, plastic film from single-use carry-out plastic bags bind and clog sorting equipment and become an operational and financial burden on recycling facilities and polystyrene food and drink containers do not biodegrade;

WHEREAS, reusable bags are a readily available alternative to single-use carry-out plastic bags and are both cost effective and help to preserve the natural environment;

WHEREAS, alternatives to polystyrene food and drink containers exist in the form of biodegradable products;

WHEREAS, the West Vincent Township Board of Supervisors and the Sustainability Committee support efforts to reduce the amount of waste that must be disposed of by supporting the waste management hierarchy (reduce, reuse, recycle, compost, waste-to-energy, landfill); and

WHEREAS, it is in the public interest of the residents of the Township to reduce the use of single-use carry-out plastic bags, polystyrene food and drink containers, and single-use plastic straws to protect the public health and natural environment of the surrounding area;

WHEREAS, the sustainability committee and other residents of West Vincent Township have requested the Board of Supervisors act on regulating the use of single-use carry-out plastic bags, polystyrene food and drink containers, and single-use plastic straws in the Township;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors for West Vincent Township, and it is hereby ordained and enacted, by the authority of the same, to wit:

I. Findings.

- A.** The use of single-use plastic products has severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, water consumption, and solid waste generation.

- B. There are numerous commercial establishments within the Township, which provide single-use plastic products to their customers.
- C. Most single-use plastic products 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 Township, such bags are not readily recyclable.
- E. Numerous studies have documented the prevalence of single-use carry-out plastic bags, polystyrene food and drink containers, and single-use plastic straws littering the environment, blocking storm drains, entering local waterways, and becoming stuck in or upon natural resources and public property.
- F. Approximately one hundred billion single-use plastic bags are discarded by United States consumers each year. Given the difficulty of recycling these materials, less than 1 percent of single-use plastic bags are returned for recycling in the United State, and in West Vincent Township, such bags are not curbside recyclable.
- G. The taxpayers of the Township pay the costs related to the cleanup of single-use plastic products from the roadways, trees, sewers, waters, and parks within the Township.
- H. From an overall environmental and economic perspective, the best alternative to single-use plastic products is a shift to reusable, compostable, or recyclable products.
- I. There are several alternatives to single-use plastic products readily available in and around the Township.
- J. It is West Vincent Township'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 township residents and visitors.

II. The Ordinances of West Vincent Township, Chester County, Commonwealth of Pennsylvania are hereby amended to create a new chapter 280.

280-1 Purpose and Intent.

The purpose of the Ordinance is to encourage consumers and Commercial Establishments within the Township to help reduce the use and environmental impact of single-use plastic products by promoting the use of reusable bags, utilizing alternatives to polystyrene food and drink containers, and single-use plastic straws, training employees to ask customers first before providing a single use plastic item, and substituting other biodegradable products for single-use plastic items.

280-2. Definitions.

For purposes of this Ordinance, the following definitions shall apply:

A. Single-Use Carry-Out Plastic Bag means a bag that is made predominantly of plastic and is made using a blown-film extrusion process, other than a Reusable Bag, as defined below, provided at the check-out stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment. A Single-Use Plastic Carry-Out Bag shall not include any of the following:

1. Produce Bags or Product Bags;
2. Laundry or dry-cleaner bags;
3. Bags used to contain a newspaper for home delivery; or
4. Any bags provided for use by a Commercial Establishment operated by the Commonwealth of Pennsylvania, or otherwise provided by a federal, Commonwealth, or local government agency.

B. Produce Bag or Product Bag means any bag without handles used exclusively to carry produce, meats, fish, other foods items, merchandise, or bulk items such as nuts, grains, or candy to the point of sale inside a store; to prevent such items from coming in direct contact with other purchased items; to contain unwrapped prepared foods or bakery goods; or to contain or wrap flowers, potted plants, or similar items.

C. Reusable Bag means 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.

D. Recyclable Paper Bag means a paper bag that meets all of the following criteria:

1. Is 100% recyclable;
2. Contains no old growth fiber;
3. Contains a minimum of 40% post-consumer recycled content; and
4. Displays the word "Recyclable" in a highly visible manner on the outside of the bag, and is labeled with the name of the manufacturer, the location (country) where manufactured, and the percentage of post-consumer recycled content in an easy-to-read size font.

E. Polystyrene Food and Drink Container means a non-recyclable plastic disposable food or drink container made of synthetic resin of polystyrene (one example is known as Styrofoam®) which is for single use and intended for serving or transporting

ready-to-eat food or beverages. This definition includes cups, plates, trays, bowls, and hinged or lidded containers, but does not apply to cup lids.

F. Expanded Polystyrene Food Service Product means a product made of expanded polystyrene that is used for selling, providing, or transporting food or beverages, shall include:

1. food containers;
2. plates;
3. hot and cold beverage cups;
4. trays; and
5. clamshells.

shall not include food or beverages that have been packaged in expanded polystyrene outside West Vincent Township before receipt by a food service establishment or store:

1. a product made of expanded polystyrene that is used to package raw, uncooked, or butchered meat, fish, poultry, or seafood;
2. non-foam polystyrene food service products.

G. 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.

H. Distribute or Provide means the vending, sale, giving, deployment, or delivering for any purpose of a single-use carry-out plastic bag, a single-use plastic straw, or polystyrene food and drink container whether or not incident to the sale, vending, or production of any merchandise or beverage.

I. Commercial Establishment means any person, corporation, partnership, business venture, vendor, or retail sales establishment located within the Township that regularly sells, rents, or provides food, merchandise, goods, or materials, whether perishable or non-perishable, for direct use or consumption and not for resale, 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.

J. Single use plastic utensils:

a. means any item used or provided by a retail establishment to serve, consume, or manipulate food or beverages that is primarily made from plastic;

b. includes but is not limited to straws, forks, spoons, sporks, knives, chopsticks, drink stirrers, beverage spill plugs, toothpicks, novelty cocktail accessories, and other drink or food accoutrements.

c. shall not include utensils provided under the following circumstances:

i. when packaged with beverages prepared and packaged outside of the Township, provided such beverages are not altered, packaged or repackaged within the Township.

280-3 Single-Use Carry-Out Plastics Restricted

A. Restrictions on Single-Use Carry-Out Plastic Bags. Except as provided in this Chapter, beginning 90 days after the effective date of this Ordinance, no Commercial Establishment shall provide a Single-Use Carry-Out Plastic Bag to a customer, patron, or user of the Commercial Establishment at the check-out, stand, cash register, point of sale, or other point of departure for the purposes of transporting food or merchandise out of the Commercial Establishment.

1. A Commercial Establishment may make available for sale to a customer, patron, or user of the Commercial Establishment Recyclable Paper Bags for a minimum charge of ten (\$0.10) cents per Recyclable Paper Bag.
2. A Commercial Establishment may make available for sale or otherwise to a customer, patron, or user of the Commercial Establishment Reusable Bags.
3. A Commercial Establishment shall train employees to ask customers first before providing a single use plastic item.
4. Any charge for a Recyclable Paper Bag or Reusable Bag shall be separately stated on a receipt provided to the customer, patron, or user of the Commercial Establishment at the time of sale and shall be identified as the "Carry-Out Bag Charge" thereon.
5. All monies collected by a Commercial Establishment for the sale of Recyclable Paper Bags or Reusable Bags under this Chapter may be retained and used by the Commercial Establishment for any lawful purpose.
6. All Commercial Establishments must post within such Commercial Establishment signage clearly indicating the per bag charge for Recyclable Paper Bags or Reusable Bags.

7. A Commercial Establishment shall not be required to charge the fee set forth in subsection (1) to a customer, patron or user, for any goods purchased with Supplemental Nutrition Assistance Program (SNAP), Pennsylvania Special Supplemental Nutrition Program for Women, Infants and Children (WIC) or Temporary Assistance for Needy Families (TANF) benefits.
8. No Commercial Establishment shall rebate or otherwise reimburse a customer, patron, or user of the Commercial Establishment any portion of the charge required in subsection (1) above. Any waiver of the charge by the Commercial Establishment or any reimbursement in any form to a customer, patron, or user of the Commercial Establishment for any portion of the charge for the provision of a Recyclable Paper Bag is a violation of this Chapter.

B. Signage Requirement. For 90 days after the effective date of this Ordinance, Commercial Establishments shall be required to post at all check-out stands, cash registers, points of sale, or other points of departure from the Commercial Establishment, conspicuous signage which shall:

1. Inform customers, patrons, or users of the Commercial Establishment that Single-Use Carry-out Plastic Bags will no longer be provided by the Commercial Establishment no less than 2 weeks prior of the date the prohibition begins;
2. State the mandatory, uniform charge of ten (\$0.10) cents per bag for any Recyclable Paper Bag that will be provided by the Commercial Establishment;
3. Provide the date such charges for Recyclable Paper Bags will begin to be collected;
4. Explain what types of bags and uses are impacted; and
5. Provide any other information the Township may require by regulation.

Signage may also state that Reusable Bags are available to a customer, patron, or user of the Commercial Establishment for sale or otherwise.

C. Permitted Bags and Carry-Outs. Nothing in this Chapter shall be construed to prohibit customers, patrons, or users of the Commercial Establishment from (1) using bags of any type that the customers, patrons, or users of the Commercial Establishment bring to the Commercial Establishment for their own use or (2) carrying away from the Commercial Establishment by other means any items that are not placed in a bag provided by the Commercial Establishment.

280-4 Prohibition Against Single-Use Polystyrene Food and Drink Containers.

Except as provided in this Chapter, beginning 90 days after the effective date of this Ordinance, Commercial Establishments are prohibited from providing Single-Use Polystyrene Food and Drink Containers to a customer, patron, or user of the Commercial Establishment under any circumstance, unless subject to an exemption. The prohibition set forth in this section shall not apply to Single-Use Polystyrene Food and Drink Containers such as plates, cups, and bowls, which (A) contain multiple Single-Use Plastic Straws and Single-Use Polystyrene Food and Drink Containers (B) are packaged by the manufacturers of such items at the time of their manufacture, and (C) are ultimately sold to consumers for home use.

280-5 Restriction on distribution of single use plastic straws and single use plastic utensils except upon request.

Beginning 90 days after the effective date, retail establishments are prohibited from providing plastic straws and single use plastic utensils to a customer at the retail establishment or through a delivery service, except upon request by the customer.

280-6. Exemptions.

The Township may, in its sole discretion, upon written request of a Commercial Establishment, exempt a Commercial Establishment from the requirements of this Chapter for a period of not more than one year from the Effective Date upon a finding by the Board that the requirements of this Chapter would cause undue hardship to the Commercial Establishment. The Board may make a finding of undue hardship only in the following circumstances or situations, and any exemptions that may be provided by the Board pursuant hereto may, in the Board's discretion, contain conditions:

- A.** The Commercial Establishment has a unique circumstance or situation such that there are no reasonable alternatives to Single-Use Carry-Out Plastic Bags, Single-Use Polystyrene Food and Drink Containers 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 held by the Commercial Establishment of Single-Use Carry-Out Plastic Bags, Single-Use Polystyrene Food and Drink Containers or Single-Use Plastic Straws.

280-7 Enforcement and Penalties.

- A.** The Township Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Ordinance.
- B.** Failure of any Commercial Establishment to comply with the provisions of this part or any section thereof, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the

Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay fines as set forth in this section, plus costs.

C. If the Township Manager or his/her designee(s) determines that a violation under this Chapter has occurred, and such violation is the first such violation of the Commercial Establishment noted hereunder, the Township Manager or his/her designee(s) shall issue a written warning (“Written Warning”) to the Commercial Establishment which shall notify the Commercial Establishment that the violation has occurred. No other Written Warning of any kind shall be required at any time under this Chapter.

D. If the Township Manager or his/her designee(s) determines that a violation under this Chapter has occurred, and such violation occurs after the Commercial Establishment has been previously warned pursuant to the preceding paragraph, then the first such violation subsequent to the Written Warning (“First Violation”) shall be punishable by a fine not to exceed \$250.00.

E. Each violation of the Commercial Establishment subsequent to the First Violation shall be punishable by a fine not to exceed \$500.00.

F. The Township may institute suits, in equity or at law, to restrain, prevent, or abate a violation of this Chapter. Such proceedings may be initiated before any court of competent jurisdiction. The expense of such proceedings shall be recoverable from the violator in any manner as may now or hereafter be provided by law.

III. Partial Repealer

All other provisions of the Ordinances of West Vincent Township, as amended, shall remain in full force and effect. All other Ordinances or provisions of Ordinances inconsistent herewith or in conflict with any of the terms hereof are, to the extent of said inconsistencies or conflicts, hereby specifically repealed.

IV Severability.

The provisions of this Ordinance are severable. If any section, clause, sentence, part or provision thereof shall be held illegal, invalid, or unconstitutional by a court of competent jurisdiction, such decision of the court shall not affect or impair any of the remaining sections, clauses, sentences, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Township Board of Supervisors that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence or part of a provision had not been included herein.

V. Effective Date.

This Ordinance shall become effective 5 days after the date of its adoption.

VI. Failure to Enforce Not A Waiver

The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

**BOARD OF SUPERVISORS
WEST VINCENT TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

ATTEST:

By: _____
Kathryn Shillenn
Township Secretary

By: _____
Dana Alan, Chairperson

By: _____
Sara Shick, Vice-Chairperson

By: _____
Bernie Couris, Supervisor