

**ORDINANCE NO. 2024-03
BOROUGH OF WEST CONSHOHOCKEN
MONTGOMERY COUNTY, PENNSYLVANIA**

AN ORDINANCE OF THE BOROUGH OF WEST CONSHOHOCKEN, MONTGOMERY COUNTY, PENNSYLVANIA, AMENDING THE CODE OF THE BOROUGH OF WEST CONSHOHOCKEN TO CREATE A NEW CHAPTER ENTITLED "SINGLE-USE PLASTIC REGULATIONS" TO REGULATE THE DISTRIBUTION AND USE OF SINGLE-USE PLASTIC BAGS, SINGLE-USE PLASTIC STRAWS, SINGLE-USE PLASTIC UTENSILS, AND EXPANDED POLYSTYRENE FOOD SERVICE PRODUCTS; TO PROMOTE AND FACILITATE REUSABLE BAG, STRAW, UTENSIL, AND CONTAINER USE; AND TO ADD FINDINGS, DEFINITIONS, FEES, REQUIREMENTS, ENFORCEMENT, PENALTIES, AND EXEMPTIONS RELATING TO THE DISTRIBUTION AND USE OF SINGLE-USE PLASTIC BAGS, REUSABLE BAGS, SINGLE-USE PLASTIC STRAWS, SINGLE-USE PLASTIC UTENSILS, AND EXPANDED POLYSTYRENE FOOD SERVICE PRODUCTS

RECITALS

WHEREAS, the Borough Code authorizes the Borough Council of the Borough of West Conshohocken 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 and welfare of the Borough of West Conshohocken ("Borough") and its citizens;

WHEREAS, Article 1, Section 27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment ("Amendment"), 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 Amendment imposes two basic duties on the Commonwealth and its political subdivisions, such as the Borough, to: (1) prohibit the degradation, diminution, and depletion of the public natural resources, and (2) 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 the Borough's duties under the Amendment by minimizing the degradation, diminution and depletion of the public natural resources within the Borough and to affirmatively enact legislation designed to protect the environment within and around the Borough;

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 single-use plastic bags, single-use plastic straws, single-use plastic utensils, and expanded polystyrene food service products within the Borough;

WHEREAS, the Borough Council has met the procedural requirements of the Borough Code for the adoption of the proposed ordinance, including advertising and holding a public hearing;

WHEREAS, the 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 Code of the Borough of West Conshohocken to regulate the distribution of single-use plastic bags, single-use plastic straws, single-use plastic utensils, and expanded polystyrene food service products within the Borough.

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

SECTION I. RECITALS. The recitals are incorporated herein as if set forth in full.

SECTION II. CODE AMENDMENT. A new Chapter 92 entitled "Single-Use Plastic Regulations" is hereby added to Part II, General Legislation, of the Code of the Borough of West Conshohocken to read as follows:

CHAPTER 92 SINGLE-USE PLASTIC REGULATIONS

§ 92-1 Purpose and Findings.

A. Purpose. The purpose of this Chapter is:

- (1) To reduce the use of single-use plastic bags, single-use plastic straws, single-use plastic utensils, and expanded polystyrene food service products within the Borough.
- (2) 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 Borough, and to preserve the natural, scenic, historic, and esthetic values of the Borough.
- (3) To relieve the pressure on recyclers servicing the Borough, who cite single-use plastic bags, single-use plastic straws, single-use plastic utensils, and expanded

polystyrene food service products as a major source of contamination and inefficiency within the recycling stream.

- (4) To relieve the pressure for landfills to manage the disposition of single-use plastic products.
- (5) To reduce consumption of and exposure to microplastics, forever chemicals, and other chemicals found in plastics that have been scientifically shown to lead to health issues, including hormonal imbalances, infertility, and cancer.
- (6) To encourage Borough residents and businesses to adopt innovative solutions to transition away from single-use plastic products in favor of more cost-effective, reusable alternatives and more sustainable single-use alternatives.

B. Findings.

- (1) The use of single-use plastic bags, single-use plastic straws, single-use plastic utensils, and expanded polystyrene food service products has severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, ground level ozone formation, atmospheric acidification, water consumption, and solid waste generation.
- (2) There are several commercial establishments within the Borough which provide single-use plastic bags, single-use plastic straws, single-use plastic utensils, and expanded polystyrene food service products to their customers, sometimes without the request or the desire of the customers.
- (3) Single-use plastic bags, single-use plastic straws, single-use plastic utensils, and expanded polystyrene food service products do not readily decompose.
- (4) 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 one percent of single-use plastic bags are returned for recycling in the United States.
- (5) Approximately five hundred million single-use plastic straws are discarded by United States consumers every day.
- (6) Numerous studies have documented the prevalence of single-use plastic bags, single-use plastic straws, single-use plastic utensils, and expanded polystyrene food service products littering the environment, blocking storm drains, entering local waterways, and becoming stuck in or upon natural resources and public property.
- (7) The taxpayers of the Borough pay the costs related to the cleanup of single-use plastic bags, single-use plastic straws, single-use plastic utensils, and expanded

polystyrene food service products from the roadways, trees, sewers, waters, and parks within the Borough.

- (8) From an overall environmental and economic perspective, the best alternative to single-use plastic bags, single-use plastic straws, single-use plastic utensils, and expanded polystyrene food service products is a shift to reusable alternatives followed by single-use compostable or recyclable alternatives.
- (9) There are several alternatives to single-use plastic bags, single-use plastic straws, single-use plastic utensils, and expanded polystyrene food service products readily available in and around the Borough.
- (10) An important goal of the Borough is to encourage the use of sustainable products and services.
- (11) An important goal of the Borough is to preserve the natural, scenic, historic, and esthetic values of the Borough.
- (12) It is the Borough'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 the Borough's residents and visitors.
- (13) Studies and past experiences have shown that prohibiting the distribution of single-use plastic bags at the point-of-sale and placing a mandatory charge on other single-use plastic bags reduces plastic litter and use of single-use plastic bags and promotes the use of reusable bags.
- (14) As required by the Environmental Rights Amendment to the Pennsylvania Constitution, the Borough seeks to preserve the natural, scenic, historic, and esthetic values of the Borough.
- (15) It is the Borough Council'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 the Borough's residents and visitors.

§ 92-2 Definitions.

For purposes of this Chapter, the following terms shall be defined as follows:

BOROUGH

The Borough of West Conshohocken.

COMMERCIAL ESTABLISHMENT

Any store or retail establishment that sells perishable or nonperishable goods, including, but not limited to, clothing, grocery, prepared foods and personal items, directly to the customer and is located within or doing business within the geographical limits of the Borough. Commercial Establishments include, but are not limited to, a business establishment that generates a sales or use tax; a drugstore, pharmacy, supermarket, grocery store, farmers market, convenience food store/gas station, food mart or other commercial entity engaged in the retail sale of a limited line of goods; a public eating establishment (i.e., a restaurant, take-out food establishment, or any other business that prepares and sells prepared food to be eaten on or off its premises); and a business establishment that sells clothing, hardware, or any other nonperishable goods.

CUSTOMER

Any person purchasing goods or services from a Commercial Establishment, whether directly or through a delivery service. A Customer shall include a person receiving goods from a Commercial Establishment to deliver to another person who purchased such goods.

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: fusion of polymer spheres, known as expandable bead polystyrene; injection molding; foam molding; and extrusion-blow molding, also known as extruded foam polystyrene. Styrofoam shall be included as Expanded Polystyrene.

EXPANDED POLYSTYRENE FOOD SERVICE PRODUCT

A product made of synthetic resin of polystyrene or expanded polystyrene that is used for selling, providing, or transporting food or beverages including, but not limited to, food containers (including "clamshell", hinged, or lidded packaging/food containers), plates, hot and cold beverage cups, and/or trays. However, an Expanded Polystyrene Food Service Product shall not include:

- A. food, beverages, or other items that have been packaged in Expanded Polystyrene outside the Borough for general distribution;
- B. a product made of Expanded Polystyrene that is used to package raw, uncooked, or buttered meat, fish, poultry, or seafood; or
- C. a package or container containing multiple Expanded Polystyrene Food Service Products packaged by the manufacturer at the time of manufacturing and sold for home or business use.

OPERATOR

A person in control of, or having responsibility for, the operation of a Commercial Establishment, which may include, but is not limited to, the owner or manager of a Commercial Establishment.

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 shape 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.

POST-CONSUMER RECYCLED MATERIAL

A material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle.

PRODUCT BAG

Any bag without used for the following purposes:

- A. to carry meats, vegetables, fruits, or other similar perishable, raw, or uncooked food item to the point-of-sale inside a Commercial Establishment;
- B. to package and carry bulk items such as dried fruits or vegetables, nuts, grains, or candy;
- C. for reasons of public health and safety, to prevent food items from coming into direct contact with other purchased items or a person's skin;
- D. to contain hot, prepared foods;
- E. to contain or wrap flowers, potted plants, or similar items;
- F. a bag used solely to contain live animals, such as fish or insects sold at a pet store; or
- G. to transport caustic chemicals sold at a retail level.

RECYCLABLE

Material that can be sorted, cleansed and reconstituted using available recycling programs for the purpose of reusing the altered or converted waste for use in new materials.

RECYCLED PAPER BAG

A paper bag that meets the following requirements:

- A. contains no old growth fiber;
- B. contains a minimum of forty percent (40%) post-consumer recycled content; and
- C. is labeled in a visible manner as "recyclable" with the percentage of post-consumer recycled content of the bag.

REUSABLE BAG

A bag that meets the following criteria:

- A. Is designed and manufactured to withstand repeated uses over time;
- B. Is machine washable or made from a material that can be readily cleaned and disinfected; and
- C. Is designed and manufactured to have the capability of carrying a minimum of eighteen (18) pounds.

SINGLE-USE PLASTIC BAG

Any bag that is made predominantly of Plastic and is made using a blown-film extrusion process, other than a Reusable Bag 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. This definition does not include Reusable Bags or Recycled Paper Bags. This definition specifically exempts the following from the category of Single-Use Plastic Bags:

- A. Product Bags;
- B. a bag sold in packaging containing multiple bags and packaged at the time of manufacturing, including food storage bags, garbage bags, or pet waste bags;
- C. newspaper delivery bags;
- D. a bag provided by a state, federal or local government agency; and
- E. laundry or dry cleaner bags.

SINGLE-USE PLASTIC STRAW

A Straw provided by a Commercial Establishment that is primarily made of Plastic, and including Straws composed of non-plastic materials such as bamboo, sugar cane, agave, corn, wood, hay or paper. In addition, a Single-Use Plastic Straw shall not include the following:

- A. Straws packaged with beverages prepared and packaged outside of the Borough, provided such beverages are not altered, packaged or repackaged within the Borough;
- B. Straws provided with a beverage on private property used at a residence;
- C. Straws provided by a state, federal or local government agency;

- D. a package or container containing multiple Single-Use Plastic Straws packaged by the manufacturer at the time of manufacturing and sold for home or business use; or
- E. Straws provided as an assistance device to reasonably accommodate a disability.

SINGLE-USE PLASTIC UTENSIL

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. In addition, Single-Use Plastic Utensils shall not include the following:

- A. When provided with food on private property used as a residence;
- B. When provided by a state, federal or local government agency; or
- C. When packaged with food prepared and packaged outside of the Borough, provided such food products are not altered, packaged or repackaged within the Borough;

STRAW

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 a beverage. 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.

UTENSIL

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.

§ 92-3 Single-Use Plastic Bags.

Beginning on January 1, 2025, Commercial Establishments are prohibited from providing a Single-Use Plastic Bag to a Customer. This prohibition applies to Single-Use Plastic Bags provided for the purpose of carrying goods away from the point-of-sale of a Commercial Establishment and to takeout deliveries, from a Commercial Establishments located within the Borough. The point-of-sale in such transactions is deemed to be at the Commercial Establishment, regardless of where ordering or payment for the transaction physically occurs.

§ 92-4 Recycled Paper Bags.

- A. Beginning on January 1, 2025, Commercial Establishments are prohibited from providing a non-Recycled Paper Bag to a Customer at the Commercial Establishment or through a delivery service.
- B. A Commercial Establishment may provide a Customer a Recycled Paper Bag at the point-of-sale if the bag is provided to the Customer for a charge of not less than ten cents (\$0.10)

per bag. A Commercial Establishment may opt out of such charge for prepaid takeout orders or deliveries. Commercial Establishments shall post signage that is visible to Customers at the point-of-sale that advises the Customers of the per bag charge.

- C. All monies collected by a Commercial Establishment under this Chapter for provision of a Recycled Paper Bag shall be retained by the Commercial Establishment.
- D. Any charge for a Recycled Paper Bag shall be separately stated on a receipt provided to the Customer at the time of sale and shall be identified on the receipt.
- E. A Commercial Establishment shall not be permitted to waive, rebate, or otherwise reimburse a Customer for any portion of the Recycled Paper Bag fee in a manner that results in a charge less than the minimum required hereunder unless the Customer is effectuating payment through an Electronic Benefits Transfer (EBT) card, a payment or voucher issued by/through the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), or a similar government assistance program related to retail food purchases.

§ 92-5 Reusable Bags.

- A. A Commercial Establishment may provide a Reusable Bag to a Customer at or before the point-of-sale if the Reusable Bag is provided to the Customer for a charge of not less than ten cents (\$0.10) per bag.
- B. All monies collected by a Commercial Establishment under this Chapter for provision of a Reusable Bag may be retained by the Commercial 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 on the receipt.
- D. Customers may use bags of any type that they bring to the Commercial Establishment themselves for the purpose of carrying goods or other materials away from the point-of-sale, without incurring any charges for such bag. In addition, Customers shall be permitted to carry away purchased items without a bag.
- E. Nothing in this Section shall be construed to prohibit the retail sale of Reusable Bags to Customers. In addition, nothing in this Section shall prohibit the free distribution of Reusable Bags by entities that are not Commercial Establishments for promotional purposes or by Commercial Establishments, for promotional purposes, in instances where the Commercial Establishment is not selling its goods.
- F. A Commercial Establishment shall not be permitted to waive, rebate, or otherwise reimburse a Customer for any portion of the Reusable Bag fee in a manner that results in a charge less than the minimum required hereunder.

§ 92-6 Single-Use Plastic Straws.

Beginning on January 1, 2025, Commercial Establishments are prohibited from providing a Single-Use Plastic Straw to a Customer at the Commercial Establishment or through a delivery service, except upon the request of the Customer.

§ 92-7 Single-Use Plastic Utensils.

Beginning on January 1, 2025, Commercial Establishments are prohibited from providing Single-Use Plastic Utensils to a Customer at the Commercial Establishment or through a delivery service.

§ 92-8 Expanded Polystyrene Food Service Products.

Beginning on January 1, 2025, Commercial Establishments are prohibited from providing an Expanded Polystyrene Food Service Product to a Customer at the Commercial Establishment or through a delivery service.

§ 92-9 Temporary Signage Requirement.

Beginning thirty (30) days after the enactment date of this Ordinance, and until December 31, 2024, Commercial Establishments shall post conspicuous signage at all points-of-sale informing Customers of the following:

- A. that Single-Use Plastic Bags, non-Recycled Paper Bags, Plastic Straws, Single-Use Plastic Utensils and Expanded Polystyrene Food Service Products will no longer be provided by the Commercial Establishment as of the date of the above stated prohibitions;
- B. the mandatory, minimum charge (or the desired higher charge, if a higher charge is desired by the Commercial Establishment) for a Recycled Paper Bag provided by the Commercial Establishment;
- C. the date such charges for Recycled Paper Bags will commence;
- D. what types of bags and purchases are impacted; and
- E. any other information the Borough may require by regulation.

§ 92-10 Exemptions.

The Borough Manager, or their designee, may, upon written request of a Commercial Establishment, exempt a Commercial Establishment from the requirements of this Chapter for a period of one (1) year from the Effective Date of this Ordinance upon a finding by the Borough Manager, or their designee, that the requirements of this Chapter would cause undue hardship to the Commercial Establishment. An "undue hardship" shall be found only if the Commercial Establishment demonstrates one or more of the following:

- A. that it has a unique circumstance or situation such that there are no reasonable alternatives to the use of Single-Use Plastic Bags, non-Recycled Paper Bags, Plastic Straws, Single-Use Plastic Utensils and Expanded Polystyrene Food Service Products;
- B. compliance with this Chapter would deprive the Commercial Establishment of a legally protected right, with such right being specifically identified by the Commercial Establishment; or
- C. additional time is necessary to deplete an existing inventory held by the Commercial Establishment, as of the Effective Date of this Ordinance, of Single-Use Plastic Bags, non-Recycled Paper Bags, Plastic Straws, Single-Use Plastic Utensils and Expanded Polystyrene Food Service Products.

§ 92-11 Enforcement.

- A. The Borough Manager, or their designee, has the responsibility for enforcement of this Chapter and may promulgate reasonable rules and regulations to enforce the provisions thereof, including, but not limited to, investigating and reporting violations and issuing verbal or written warnings and/or fines.
- B. Any Operator and/or Commercial Establishment that violates or fails to comply with any of the requirements of this Chapter, after an initial written warning notice has been issued for that violation, shall be in violation and subject to the penalties established herein.
- C. Any Operator and/or Commercial Establishment that receives an initial written warning notice may file a request for an exemption pursuant to § 92-10 if the warning is issued within one (1) year of the Effective Date of this Ordinance.
- D. After a written warning is issued, and if additional violations occur, an Operator and/or a Commercial Establishment shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a non-traffic summary offense and shall be punishable by a fine as set forth below, plus court costs and reasonable attorneys' fees incurred by the Borough through enforcement proceedings. The fines for violations of this Chapter shall be as follows:
 - (a) \$50.00 for a first offense occurring within twelve (12) months of the written warning;
 - (b) \$100.00 for a second offense occurring within twelve (12) months of the first offense; and
 - (c) \$200.00 for a third offense occurring within twelve (12) months of the second offense, and for each subsequent offense occurring within twelve (12) months of the prior offense.

- E. For the purposes of enforcement under this Chapter, a separate offense shall occur each day an Operator and/or Commercial Establishment is violating a requirement of this Chapter. In addition, penalties may be imposed against both, or either, the Operator and/or the Commercial Establishment for the same violation of this Chapter.
- F. In addition to or in lieu of the penalties set forth in this Chapter, the Borough may seek additional legal, injunctive, or other equitable relief to enforce this Chapter.
- G. The penalty provisions of this Chapter shall not limit the ability of the Borough to enforce other Borough ordinances and to utilize the penalties, remedies and procedures provided under such other Borough ordinances and/or Federal or Commonwealth laws.

SECTION III. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provisions shall be separate, distinct and independent, and such holding shall not affect the validity of the remaining portions of this Ordinance.

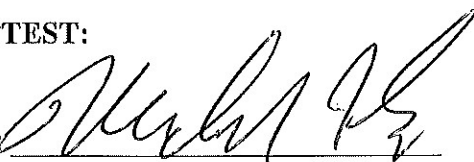
SECTION IV. REPEALER. Any and all other ordinances or parts of ordinances in conflict with the terms, conditions and provisions of this Ordinance are hereby repealed to the extent of such irreconcilable conflict.

SECTION V. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its enactment as provided by law, with enforcement of this Ordinance to occur on the specific date(s) set forth in Section II.

SECTION VI. FAILURE TO ENFORCE NOT A WAIVER. The failure of the Borough to enforce or delay any provision of this Ordinance shall not constitute a waiver by the Borough of its rights of future enforcement hereunder.

ORDAINED AND ENACTED by the Council of the Borough of West Conshohocken, Montgomery County, Pennsylvania, this 14th day of May, 2024.

ATTEST:

By: 
 Michael English, Borough Manager

BOROUGH OF WEST CONSHOHOCKEN:

By: 
 Stephen Blumenthal, Council President

Approved by the Mayor of the Borough of West Conshohocken, this 14 day of May, 2024.

By: 
 Danelle Fournier, Mayor

