

ORDINANCE NO. – 2019

BOROUGH OF WEST CHESTER

CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE OF THE BOROUGH OF WEST CHESTER, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE CODE OF THE BOROUGH OF WEST CHESTER, TO ADD A NEW CHAPTER 81 TITLED, “PLASTIC BAG AND PLASTIC STRAW REGULATIONS” TO REGULATE THE DISTRIBUTION AND USE OF SINGLE-USE PLASTIC CARRY-OUT BAGS AND SINGLE-USE PLASTIC STRAWS; TO ADD FINDINGS, DEFINITIONS, REQUIREMENTS, ENFORCEMENT, PENALTIES, AND EXEMPTIONS RELATING TO THE DISTRIBUTION AND USE OF SINGLE-USE PLASTIC CARRY-OUT BAGS AND SINGLE-USE PLASTIC STRAWS.

WHEREAS, as a Home Rule Municipality, the Borough of West Chester may exercise any power and function not denied it by the Constitution of the United States of America, by the Constitution of the Commonwealth of Pennsylvania, by the General Assembly of the Commonwealth, or by this Charter; and

WHEREAS, the powers and functions of the Borough under the Borough’s Home Rule Charter are broadly construed in favor of the Borough; and

WHEREAS, pursuant to the Borough’s Home Rule Charter, the Borough Council may adopt such ordinances and such other codes as may be required from time to time to protect the safety and welfare of the citizens; and

WHEREAS, Article 1, Section 27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment, (the “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 trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people; and

WHEREAS, the Amendment 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); and

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 and to affirmatively enact legislation designed to protect the environment; and

WHEREAS, single-use plastic carry-out bags and single-use plastic straws degrade at a slower rate than recyclable paper carry out bags and paper straws and release toxic materials during degradation that pollute waterways; and

WHEREAS, for the reasons set forth in more detail below, 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 prohibiting the distribution of single-use, carry-out plastic bags and single-use, plastic straws within the Borough; and

WHEREAS, this Ordinance advances the goals of the Community Bill of Rights that was adopted by referendum on November 3, 2015 and is contained in Section 904 of the Borough's Home Rule Charter; and

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 Ordinance which regulates the distribution of single-use, carry-out plastic bags and single-use, plastic straws within the Borough;

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

SECTION 1. The West Chester Borough Code shall be amended by adding a new Chapter 81 entitled "Plastic Bag and Plastic Straw Regulations", to provide as follows:

**“CHAPTER 81
PLASTIC BAG AND PLASTIC STRAW REGULATIONS**

§ 81-1. Purpose and Findings.

- A. The purpose of this Chapter is to reduce the use of single-use, plastic carry-out bags and single-use, plastic straws by commercial establishments within the Borough of West Chester, 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 of West Chester, and to preserve the natural, scenic, historic, and esthetic values of the Borough of West Chester.

B. Findings.

1. The use of single-use, plastic carry-out bags and single use, plastic straws have severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, water consumption and solid waste generation.

2. There are numerous commercial establishments within the Borough of West Chester which provide single-use, plastic carry-out bags and single-use, plastic straws to their customers.

3. Most of single-use, plastic carry-out bags and single-use, plastic straws are made from plastic or other material that does not readily decompose.

4. Approximately one hundred billion single-use, plastic carry-out bags are discarded by United States consumers each year. In the Borough of West Chester such bags are not readily recyclable.

5. Hundreds of millions of single-use, plastic straws are discarded by United States consumers every day. In the Borough of West Chester, such straws are not readily recyclable.

6. Numerous studies have documented the prevalence of single-use, plastic carry-out bags and/or single-use plastic straws 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 of West Chester pay the costs related to the cleanup of single-use, plastic carry-out bags and single-use plastic straws 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 carry-out bags is a shift to reusable, compostable or recyclable paper bags, and the best alternative to single-use, plastic straws are reusable straws or straws made from other natural products, if a straw is required.

9. There are several alternatives to single-use, plastic carry-out bags and single use plastic straws readily available in and around the Borough of West Chester.

10. 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.

11. 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.

§ 81-2. Definitions.

For the purposes of this Chapter, the following definitions shall apply unless the context clearly requires otherwise:

BOROUGH - the Borough of West Chester.

COMMERCIAL ESTABLISHMENT - any store or retail 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 Borough of West Chester. Commercial establishments include: a business establishment that generates a sales or use tax; a drugstore, pharmacy, supermarket, grocery store, farmers market, 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 and snack foods; 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.

COMPLIANT BAG - Certain paper carry-out bags and reusable bags.

- A. A paper bag that meets all the following minimum requirements:
 - (1) It is considered a recyclable material based on the Borough Code, as the same may be amended from time to time, contains a minimum of 40% postconsumer recycled material and displays the words recyclable and/or reusable in a highly visible manner on the outside of the bag; or
 - (2) It can be composted.
- B. A reusable bag is a bag made of cloth, fabric or other material that is specifically designed and manufactured for multiple reuse. If the bag is made of plastic, it must be a minimum of 4.0 mils thick.

CUSTOMER - any person purchasing goods or services from a Commercial Establishment.

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

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. "Post-consumer recycled material" does not include materials and by-products generated from and commonly reused within an original manufacturing and fabrication process.

PRODUCT BAG - a very thin bag without handles used exclusively to carry meats or other uncooked food items to the point of sale inside a Commercial Establishment or, for reasons of public health and safety, to prevent such food items from coming into direct contact with other purchased items.

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

SINGLE-USE PLASTIC CARRY-OUT BAG - any bag made predominantly of plastic derived from either petroleum or a biologically based source, such as corn or other plant sources, that is provided by an Operator of a Commercial Establishment to a Customer at the point-of-sale. The term does not include bags intentionally designed for reuse or product packaging. This definition specifically exempts the following from the category of single-use plastic carry-out bags:

- A. Product Bags;
- B. Newspaper bags; or
- C. Bags sold in packages containing multiple bags intended for use as food storage bags, garbage bags, or pet waste bags.

SINGLE-USE PLASTIC STRAW - a Straw provided by a Commercial Establishment that is primarily made of plastic. A "Single-Use Plastic Straw" shall not include Straws provided under the following circumstances:

- A. When packaged with beverages prepared and packaged outside of the Borough, provided such beverages are not altered, packaged or repackaged within the Borough; and
- B. When provided as an assistance device to reasonably accommodate a disability.

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.

§ 81-3. Single-Use Plastic Carry Out Bags Prohibited.

Effective January 1, 2020, no Commercial Establishment shall provide to any Customer a Single- Use Plastic Carry-Out Bag, as defined in §81-2 above. This

prohibition applies to bags provided for the purpose of carrying goods away from the point-of-sale. This prohibition applies to Single-Use Plastic Carry-Out Bags used for takeout deliveries from Commercial Establishments within the Borough of West Chester. The point-of-sale in such transactions is deemed to be at the Commercial Establishment, regardless of where payment for the transaction physically occurs.

§ 81-4. Single-Use Plastic Straws Prohibited.

Effective January 1, 2020, no Commercial Establishment shall provide to any Customer a Single-Use Plastic Straw, as defined in §81-2 above.

§ 81-5. Compliant bags.

- A. If the Commercial Establishment provides a Compliant Bag, as defined in §81-2 above, for the purpose of carrying goods or other materials away from the point-of-sale, they shall charge a fee in the amount of \$0.10 per Compliant Bag. This charge shall be reflected in the sales receipt.
- B. Customers may use bags of any type that they bring to the Commercial Establishment themselves, without incurring a fee for a Compliant Bag.

§81-6. Exemptions.

The Borough Sustainability Advisory Committee 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 Sustainability Advisory Committee 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 that it has a unique circumstance or situation such that there are no reasonable alternatives to the use of Single-Use Plastic Carry-Out Bags or Single-Use Plastic Straws.

§81-7. Enforcement.

- A. The Borough Manager, or his designee, has the responsibility for enforcement of this Chapter and may promulgate reasonable rules and regulations in order to enforce the provisions thereof, including, but not limited to, investigating violations and issuing fines.
- B. Any 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 liable for a violation.
- C. Any Commercial Establishment that receives an initial written warning notice may file a request for an exemption pursuant to the procedure in §81-6 above.

D. If a Commercial Establishment has subsequent violations of this Chapter after the issuance of an initial written warning notice of violation, the following penalties shall be imposed and shall be payable by the Operator of the Commercial Establishment:

- (1) A fine not exceeding \$100.00 for the first violation;
- (2) A fine not exceeding \$200.00 for the second violation in the same year dating from the first violation;
- (3) A fine not exceeding \$500.00 for the third and each subsequent violation in the same year dating from the first violation.

E. In addition to the penalties set forth in this Chapter, the Borough may seek legal, injunctive, or other equitable relief to enforce this Chapter.”

SECTION 2. SEVERABILITY. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of Council of the Borough of West Chester that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

SECTION 3. REPEALER. All Ordinances or parts of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 4. EFFECTIVE DATE. This Ordinance shall become effective upon enactment as provided by law.

ENACTED AND ORDAINED THIS _____ DAY OF _____, 2019.

ATTEST:

**COUNCIL FOR THE BOROUGH
OF WEST CHESTER**

Michael A. Perrone, Secretary

By: _____
Diane C. LeBold, President

APPROVED THIS _____ DAY OF _____, 2019.

Dianne T. Herrin, Mayor