

ORDINANCE NO. 3 – 2022

WEST GOSHEN TOWNSHIP

CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE OF WEST GOSHEN TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA, AMENDING CHAPTER 61 OF THE CODE OF WEST GOSHEN TOWNSHIP, TITLED, “PLASTIC BAG AND PLASTIC STRAW REGULATIONS” TO CLARIFY DEFINITIONS AND ENFORCEMENT REGULATIONS RELATED TO THE DISTRIBUTION AND USE OF SINGLE-USE PLASTIC CARRY-OUT BAGS AND SINGLE-USE PLASTIC STRAWS.

WHEREAS, under the Second Class Township Code, 53 P.S. § 65607(1), the Board of Supervisors of West Goshen Township is charged with the responsibility to ensure the health, safety, and welfare of its citizens; and

WHEREAS, pursuant to the Second Class Township Code, 53 P.S. § 66506, the Board of Supervisors may adopt such ordinances and such other codes not inconsistent with the Pennsylvania Constitution and 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 and its political subdivisions 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 Township- 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 Township'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, the Board of Supervisors, intending to preserve, maintain, and enhance the health of its residents and visitors, as well as the public natural resources and common property within the Township, by prohibiting the distribution of single-use, carry-out plastic bags and single-use, plastic straws within the Township, has previously enacted, by Ordinance No. 16-2021, certain regulations codified at Chapter 61 of the West Goshen Township Code ("Chapter 61"); and

WHEREAS, blown film extrusion is a process that is used to convert plastic into film rolls that are then manufactured into usable products including plastic bags, pouches, plastic wrap, laminating film, and packaging film; and

WHEREAS, plastic bags made through the blown film extrusion process are not as durable as bags made of other substances such as cloth, fabric or other material that is specifically designed and manufactured for multiple reuse, and thus are typically used for a single use and then immediately discarded; and

WHEREAS, the Board of Supervisors, 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 Township will be served by this Ordinance which amends and clarifies certain regulations of Chapter 61 regulating the distribution of single-use, carry-out plastic bags and single-use, plastic straws manufactured via a blown-film extrusion process within the Township, and enforcement of the same regulations;

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

SECTION 1. The West Goshen Township Code shall be amended by deleting the text of Chapter 61 in its entirety and replacing it with the following text:

**"CHAPTER 61
PLASTIC BAG AND PLASTIC STRAW REGULATIONS**

§ 61-1. 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 West Goshen Township, 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 West Goshen Township, and to preserve the natural, scenic, historic, and esthetic values of West Goshen Township.

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 West Goshen Township which, prior to the enactment of this Chapter, provided single-use, plastic carry-out bags and single-use, plastic straws to their customers.

3. Most of the single-use, plastic carry-out bags are manufactured via the blown-film extrusion process, 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 West Goshen Township such bags are not readily recyclable.

5. Hundreds of millions of single-use, plastic straws are discarded by United States consumers every day. In West Goshen Township, 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 West Goshen Township 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 Township.

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 West Goshen Township.

10. As required by the Environmental Rights Amendment to the Pennsylvania Constitution, the Township seeks to preserve the natural, scenic, historic, and esthetic values of the Township.

11. It is the desire of the Board of Supervisors 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 Township's residents and visitors.

§ 61-2. Definitions.

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

TOWNSHIP - West Goshen Township.

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 West Goshen Township. 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 Township 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: (i) a bag made of nylon, cotton, cloth, polyester, or other materials, other than plastic, that is specifically designed and manufactured for multiple reuses; or (ii) a bag made of plastic having a thickness greater than 4 mils which has not been manufactured by a blown film extrusion process.

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 from plastic that is less than 4.0 mils thick and made through the blown film extrusion process provided by an Operator of a Commercial Establishment to a Customer at the point-of-sale. The term does not include product packaging. This definition specifically exempts the following from the category of single-use plastic carry-out bags:

- A. Product Bags;
- B. Newspaper bags;
- C. Bags sold in packages containing multiple bags intended for use as food storage bags, garbage bags, or pet waste bags; and
- D. Compliant 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 Township, provided such beverages are not altered, packaged, or repackaged within the Township; 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.

§ 61-3. Single-Use Plastic Carry Out Bags Prohibited.

No Commercial Establishment shall provide to any Customer a Single- Use Plastic Carry-Out Bag, as defined in § 61-2 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 West Goshen Township. The point-of-sale in such transactions is deemed to be at the Commercial Establishment, regardless of where payment for the transaction physically occurs.

§ 61-4. Single-Use Plastic Straws Prohibited.

No Commercial Establishment shall provide to any Customer a Single-Use Plastic Straw, as defined in §61-2 above.

§ 61-5. Exemptions.

The Township 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 circumstances or situations such that there are no reasonable alternatives to the use of Single-Use Plastic Carry-Out Bags or Single-Use Plastic Straws.

§ 61-6. Enforcement.

- A. The Township 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 §61-5 above. A request for an exemption must be filed within 15 days of the date of the initial warning notice.
- D. If a Commercial Establishment has subsequent violations of this Chapter after the issuance of an initial written warning notice of violation, the Township may issue a summary criminal citation and seek a minimum fine of \$500 and a maximum fine of \$1,000 upon conviction thereof in a

summary proceeding brought before a District Justice under the Pennsylvania Rules of Criminal Procedure.: In default of payment thereof, the defendant may be sentenced to imprisonment in the county prison for a term of not more than 30 days. Each section of this chapter violated shall constitute a separate offense, and each day or portion thereof in which a violation of this chapter is found to exist shall constitute a separate offense, each of which violations shall be punishable by a separate fine imposed by the District Justice. All fines and penalties collected for the violation of this chapter shall be paid to the Township Treasurer.

- E. In addition to the penalties set forth in this Chapter, the Township 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 Board of Supervisors of West Goshen Township 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 thirty (30) days after its enactment.

ENACTED AND ORDAINED THIS 6 DAY OF September, 2022.

ATTEST:

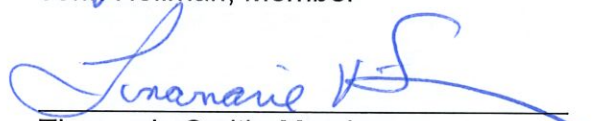

Christopher Bashore, Secretary

**BOARD OF SUPERVISORS
WEST GOSHEN TOWNSHIP**

BY 
Shaun Walsh, Chair


Ashley Gagné, Vice-Chair


John Hellman, Member


Tinamarie Smith, Member

Robin Stuntebeck, Member