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## NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

*You should take this paper to your lawyer at once. If you do not have a lawyer, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.*

Dauphin County Bar Association  
Lawyer Referral Service  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536

## AVISO

Usted ha sido demandado/a en corte. Si usted desea defenderse de las demandas que se presentan mas adelante en las siguientes paginas, debe tomar accion dentro de los proximos veinte (20) dias despues de la notificacion de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aqui en contra suya. Se le advierte de que si usted falla de tomar accion como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamacion o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin mas aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

*Usted debe llevar este documento a su abogado inmediatamente. Si usted no tiene un abogado, llame o vaya a la siguiente oficina. Esta oficina puede proveerle informacion a cerca de como conseguir un abogado. Si usted no puede pagar por los servicios de un abogado, es posible que esta oficina le pueda proveer informacion sobre agencias que ofrezcan servicios legales sin cargo o bajo costo a personas que cualifican.*

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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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<b>CITY OF PHILADELPHIA,</b>	:	
<b>BOROUGH OF WEST CHESTER,</b>	:	
<b>BOROUGH OF NARBERTH, and</b>	:	
<b>LOWER MERION TOWNSHIP,</b>	:	<b>No.</b>
	:	
<b>Petitioners,</b>	:	<b>PETITION FOR REVIEW</b>
	:	
<b>v.</b>	:	
	:	
	:	
<b>THE COMMONWEALTH OF</b>	:	
<b>PENNSYLVANIA and</b>	:	
<b>THE PENNSYLVANIA</b>	:	
<b>GENERAL ASSEMBLY</b>	:	
<b>Respondents.</b>	:	

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**TO:**

**The Commonwealth of Pennsylvania**  
Pennsylvania Office of Attorney General  
Strawberry Square, 16th Floor  
Harrisburg, PA 17120

**The Pennsylvania General Assembly**  
c/o Senator Jake Corman  
Senate President Pro Tempore  
350 Main Capitol Building  
Senate Box 203034  
Harrisburg, PA 17120-3034

c/o Representative Bryan Cutler  
Speaker of the House  
139 Main Capitol Building  
PO Box 202100  
Harrisburg, PA 17120-2100

**NOTICE TO PLEAD**

You are hereby notified to file a written response to the enclosed Petition for Review within thirty (30) days from service hereof or a judgment may be entered against you.

By: Lydia Furst  
Deputy City Solicitor, Attorney ID No. 307450  
CITY OF PHILADELPHIA LAW DEPARTMENT  
1515 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102  
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*Philadelphia's Single Use Plastic Bag Ban*, Clean PHL, available at <https://cleanphl.org/plasticbagban/>.

3. Many plastics are not recyclable in curbside recycling programs and do not biodegrade in landfills. Much of this waste instead slowly degrades into microplastics and enters our water, food, and air.

4. To combat the destructive environmental impact of single use plastic bags, states and cities across the country have enacted laws restricting distribution of single-use plastic bags by retailers. More than 300 municipalities have plastic bag ban restrictions including Boston, Chicago, Los Angeles, San Francisco, Seattle, Boulder, Colo., Montgomery County, Md., New York, Portland, Maine, and Washington, D.C. *See State Plastic Bag Legislation*, National Conference of State Legislatures (Feb. 8, 2021), available at <https://www.ncsl.org/research/environment-and-natural-resources/plastic-bag-legislation.aspx>; David Funkhouser, *Banning Plastic Bags, Town by Town: A Guide*, State of the Planet (Feb. 20, 2019), <https://blogs.ei.columbia.edu/2019/02/20/banning-plastic-bags-town-guide/>.

5. Eight states have also enacted statewide plastic bag restrictions at retail establishments, including California, Connecticut, Delaware, Hawaii, Maine, New York, Oregon, and Vermont. *State Plastic Bag Legislation*, *supra*.

6. As of the date of this Petition, three Pennsylvania municipalities – Petitioners the Borough of Narberth, the Borough of West Chester, and the City of Philadelphia – have enacted plastic bag restrictions.

7. In addition, Petitioner Lower Merion Township has attempted to introduce plastic bag restrictions similar to those already enacted in Narberth, West Chester, and Philadelphia.

8. However, Petitioners’ efforts to enact or enforce plastic bag restrictions in their communities have been stymied by Respondents. In both 2019 and 2020, the Pennsylvania General Assembly used the annual fiscal code amendment – a must-pass omnibus-style bill that implements the state’s budget – to sneak in a provision prohibiting plastics legislation by Pennsylvania municipalities into state law.

9. On May 29, 2020, the Pennsylvania General Assembly passed an amendment to the Fiscal Code known as Act 23. Section 1706-E(d) of Act 23 prohibits “a local governmental body or agency” to “enact or enforce a law, rule, regulation or ordinance imposing a tax on or relation to the use, disposition, sale, prohibition or restriction of single-use plastics” (“Section 1706-E(d)” or “plastics preemption provision”).

10. As a result of Act 23, Petitioners may not enact or enforce otherwise valid local legislation to reduce the use, consumption, and distribution of single-use plastic bags.

11. The plastics preemption provision harms Petitioners and their residents.

12. Petitioners are now indefinitely barred from enacting or enforcing local single-use plastics ordinances. Petitioners Philadelphia, West Chester, and Narberth wish to move forward with enforcement of their ordinances, but enforcement is not possible due to the unlawful plastics preemption provision.

13. Petitioner Lower Merion is interested in considering a single-use plastics ordinance, but the plastics preemption provision bars not only enforcement but also enactment of new legislation.

14. Meanwhile, Petitioners' communities continue to suffer the health, environmental, aesthetic, and financial impacts of plastic bag litter and pollution.

15. Act 23 violates Article III, § 3 of the Pennsylvania Constitution, which provides that "no bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriations bill or a bill codifying or compiling the law or a part thereof." Pa. Const. art. III, § 3.

16. Act 23 violates Article III, § 1 of the Pennsylvania Constitution, which provides that "no bill shall be so altered or amended, on its passage through either House, as to change its original purpose."

17. Act 23 also violates Article I, § 27 of the Pennsylvania Constitution, which provides that "[t]he people have a 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.”

## **JURISDICTION AND VENUE**

18. This Court has original jurisdiction of this action pursuant to 42 Pa. C.S.A. § 761(a). This is an action brought against the Commonwealth and the General Assembly.

19. There is no administrative remedy available to Petitioners. Any actions by Petitioners at the administrative level would be inadequate to address the issues raised here.

20. Because jurisdiction is proper and exclusive in this Court, venue is proper as well.

## **PARTIES**

### **I. Petitioners**

21. The City of Philadelphia is a municipal corporation of the first class and political subdivision of the Commonwealth of Pennsylvania. Philadelphia is directly impacted by Act 23 because it cannot enforce its Ordinance prohibiting retail establishments from providing single-use plastic bags to customers.

22. The home rule municipality of the Borough of West Chester is a municipal corporation and political subdivision of the Commonwealth. The Borough

of West Chester is directly impacted by Act 23 because it cannot enforce its Ordinance prohibiting retail establishments from providing single-use plastic bags to customers.

23. The Borough of Narberth is a municipal corporation formed under the Pennsylvania Borough Code and a political subdivision of the Commonwealth. The Borough of Narberth is directly impacted by Act 23 because it cannot enforce its Ordinance requiring a fee for plastic bags in retail establishments.

24. Lower Merion Township a first-class township and a political subdivision of the Commonwealth. Lower Merion is directly impacted by Act 23 because it cannot even consider enacting legislation related to single-use plastics.

## **II. Respondents**

25. The Commonwealth of Pennsylvania is a state sovereign governmental unit providing for subnational governance of the Commonwealth of Pennsylvania.

26. The Pennsylvania General Assembly is the legislative body of the Pennsylvania State Government.

## **GENERAL ALLEGATIONS**

### **Background to Article III of the Pennsylvania Constitution**

27. Article III of the Pennsylvania Constitution places restraints on the legislative process to encourage an open and accountable government. *See*

*Pennsylvanians Against Gambling Expansion Fund, Inc. v. Com.*, 877 A.2d 383, 395 (Pa. 2005) (“PAGE”).

28. The protections of Article III were added to the Pennsylvania Constitution in the late 1800s in response to a public outcry against the General Assembly’s corrupt and secretive legislative process that served narrow interests to the detriment of the public good. *See Washington v. Dep’t of Pub. Welfare of Com.*, 188 A.3d 1135, 1145 (Pa. 2018).

29. Article III was specifically designed to eliminate abusive legislative practices of the time, including deceptive titling to mask legislation’s true purpose, holding quick votes on legislation that had been changed at the last minute, and using “omnibus bills” that hid legislation and allowed “logrolling” (the practice of combining in one bill several pieces of legislation, each pertaining to a different subject and none of which alone would be approved by the legislature). *Washington*, 1145-46; PAGE, 877 A.2d at 394 & n.7; *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 586 (Pa. 2003).

30. Section 3’s single-subject requirement also prevents the attachment of riders that could not become law on their own and protects the integrity of the Governor’s veto power. *See City of Philadelphia*, 838 A.2d at 586 & n.18.

## **Background to Article I, Section 27 of the Pennsylvania Constitution**

31. Article 1, Section 27 of the Pennsylvania Constitution, known as the “Environmental Rights Amendment” or “ERA,” was adopted in 1971.

32. In recent years, the Pennsylvania Supreme Court has clarified the meaning of the ERA, holding that the Environmental Rights Amendment “establishes a public trust, pursuant to which the natural resources are the corpus of the trust, the Commonwealth is the trustee, and the people are the named beneficiaries.” *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 161 A.3d 911, 931-32 (Pa. 2017).

33. The ERA “does two things: (1) it limits the power of ‘the state’ to act in derogation of protected environmental interests, and (2) it obligates ‘the Commonwealth’ to act as a trustee of Pennsylvania's public natural resources.” *Clean Air Council v. Sunoco Pipeline L.P.*, 185 A.3d 478, 494 (Pa. Cmwlth. Ct. 2018).

34. Under the Environmental Rights Amendment, “the Commonwealth has an obligation to refrain from performing its trustee duties respecting the environment unreasonably, including via legislative enactments or executive action; as trustee, the Commonwealth has a duty to refrain from permitting or encouraging the degradation, diminution, or depletion of public natural resources, whether such degradation, diminution, or depletion would occur through direct

state action or indirectly, e.g., because of the state's failure to restrain the actions of private parties.” *Robinson Twp., Washington Cty. v. Com.*, 83 A.3d 901, 957 (Pa. 2013).

**The General Assembly’s Failed Attempt to Enact  
a Stand-Alone Law Prohibiting Local Legislation  
Regarding Single-Use Plastics**

35. During the 2017-2018 legislative sessions, the Pennsylvania General Assembly took steps to strip local officials of their ability to address plastic pollution in their communities. In June of 2017, House Bill 1071 passed both the state House and the state Senate.

36. The following week, House Bill 1071 was vetoed by Governor Wolf, who cited the Environmental Rights Amendment. The General Assembly did not have enough votes to override Governor Wolf’s veto.

37. With the prospect of state preemption of local plastics laws no longer an obstacle, several Pennsylvania municipalities began the process of enacting ordinances related to single-use plastic bags.

**Petitioners Pass Ordinances Banning Single-Use Plastic Bags  
and the General Assembly Includes a Prohibition on Local Legislation  
Regarding Plastics in the 2019 Fiscal Code Amendment**

38. On October 17, 2018, the Council of the Borough of Narberth passed an ordinance requiring businesses to charge ten cents to customers for plastic bags

(“Narberth Ordinance”). A true and correct copy of the Narberth Ordinance is attached to this Petition as Exhibit A.

39. Narberth was the first Pennsylvania municipality to pass an ordinance relating to the retail use of single-use plastic bags. The Narberth Ordinance went into effect on April 17, 2019.

40. After passage of the Narberth Ordinance, other Pennsylvania municipalities considered and drafted similar ordinances.

41. In June of 2019, West Chester introduced an ordinance after a group of elementary school students petitioned Borough Council for action on single-use plastic issues, partly out of local environmental degradation and litter concerns, and partly due to recognition of single-use plastic waste as a global environmental issue. The ordinance was due to take effect on January 1, 2020.

42. On June 20, 2019, Councilmember Mark Squilla introduced a plastic bag ordinance for consideration by Philadelphia City Council. The version of the Philadelphia ordinance introduced on June 20, 2019 was to take effect immediately.

43. On June 27, 2019, one week after the Philadelphia Ordinance was introduced in City Council, Respondent the General Assembly added a last-minute amendment to the Fiscal Code Amendment, a yearly omnibus-style bill that implements the Commonwealth budget and is crucial to the functioning of government in the Commonwealth. The amendment, proposed by Senate Majority

Leader Jake Corman of Centre County, prohibited local government entities from enacting plastics restrictions for a period of one year, until July 1, 2020. The district represented by Rep. Corman includes a plastics manufacturer, Milesburg-based Hilex Poly.

44. One day later, on June 28, 2019, the General Assembly passed the Fiscal Code Amendment, containing Rep. Corman’s amendment thereto, as Act 20 of 2019 (“Act 20”).

45. Act 20 was signed by Pennsylvania Governor Tom Wolf on June 28, 2019, along with other bills necessary to finalize the 2019-2020 Commonwealth budget.

46. Governor Wolf did not attempt to partially veto any provisions of Act 20. Under Commonwealth law, the governor may only partially veto “items of appropriation.” *See* Pa. Const. Article IV, § 16. Under Pennsylvania law, an “item of appropriation” is “an item which in itself is a specific appropriation of money, not some general provision of law . . .” *Jubelirer v. Rendell*, 953 A.2d 514, 534 (2008).

47. The 2019-2020 Commonwealth budget provided for crucial investments in education, workforce development, support services for vulnerable Pennsylvanians, farmers, and veterans, and the Commonwealth’s Rainy Day Fund. *See* Gov. Wolf Press Release (June 28, 2019) (*available at* <https://www.governor.pa.gov/newsroom/gov-wolf-budget-sets-pennsylvania-on->

path-toward-long-term-prosperity/). Act 20 was a necessary piece of legislation to implement the 2019-2020 budget.

48. In its final form, Act 20 included Section 1706-E(c), which prohibited Pennsylvania local government bodies from enacting any law relating to single-use plastics:

Until such time as the Independent Fiscal Office and the Legislative Budget and Finance Committee submit the reports required under subsections (a) and (b), respectively, the General Assembly or a local governmental body or agency may not enact a law, rule, regulation or ordinance imposing a tax on or relating to the use, disposition, sale, prohibition or restriction of single-use plastics, reusable plastics, auxiliary containers, wrappings or polystyrene containers.

According to Sections 1706E-(a) and (b) of Act 20, reports of the Fiscal Office and Budget and Finance Committee were to be submitted by July 1, 2020; therefore, the prohibition contained in section (c) continued until July 1, 2020 and was premised on the need for further study of the issue by the Independent Fiscal Office and the Legislative Budget and Finance Committee.

49. The stated intent of Act 20 was to “provide for the implementation of the 2019-2020 Commonwealth budget.” Act 20’s 495-word title contains no mention of plastics or local environmental laws.

50. Because the Narberth Ordinance was enacted and became effective prior to the passage of Act 20 and because Act 20 prohibited only enactment and not enforcement, Act 20’s moratorium did not apply to Narberth. However, other

Pennsylvania municipalities that were in the process of drafting and considering ordinances related to single-use plastics were impacted by Act 20.

51. On July 17, 2019, Council of the Borough of West Chester passed an ordinance prohibiting retail establishments from providing single-use plastic bags to customers (“West Chester Ordinance”). A true and correct copy of the West Chester Ordinance is attached to this Petition as Exhibit B.

52. While the version of the West Chester Ordinance that was introduced prior to passage of Act 20 would have become effective on January 1, 2020, the West Chester Ordinance was revised to make the effective date July 2, 2020, to align with the expiration of the state moratorium.

53. On December 12, 2019, Philadelphia City Council passed an ordinance adding a chapter to Title 9 of The Philadelphia Code entitled “Prohibition on Use of Certain Bags by Retail Establishments” (“Philadelphia Ordinance”).

54. The Philadelphia Ordinance was signed by the Philadelphia Mayor on December 30, 2019. Like the West Chester Ordinance, the effective date of the Philadelphia Ordinance was revised to July 2, 2020, one day after the expiration of the plastic bag ban prohibition contained in Act 20. A true and correct copy of the Philadelphia Ordinance is attached to this Petition as Exhibit C.

55. The Philadelphia Ordinance prohibits retail establishments from providing single-use plastic bags to customers 60 days after the effective date. The

Philadelphia Ordinance requires retail establishments beginning 30 days after the effective date and for six months thereafter to post conspicuous signage at points of sale informing customers that single-use plastic bags will no longer be provided by the establishment and explaining what types of bags and purchases are impacted.

56. Because of Act 20, both West Chester and Philadelphia had to delay the implementation of their ordinances, to account for the Act 20 prohibition period through July 1, 2020.

**Petitioners Respond to the COVID-19 Pandemic and Respondents  
Indefinitely Extend the Prohibition on Local Plastics Laws**

57. On April 21, 2020, the City of Philadelphia announced that due to Philadelphia's ongoing response to the COVID-19 pandemic and to ensure that businesses were supported, it would delay the effective date of the Philadelphia Ordinance from July 2, 2020 to January 1, 2021, with signage requirements beginning February 1, 2021, and enforcement beginning April 1, 2021. Kelly Cofrancisco, *What's Next for Philadelphia's Plastic Bag Ban*, City of Philadelphia (April 21, 2020), *available at* <https://www.phila.gov/2020-04-21-whats-next-for-philadelphias-plastic-bag-ban/>.

58. In May 2020, Respondents again used the annual Fiscal Code Amendment to prohibit municipalities from moving forward with single-use plastics ordinances on their own timelines.

59. On May 28, 2020, the Pennsylvania House of Representatives considered Senate amendments to House Bill 1083, the bill that became Act 23. The Senate's amendments included the plastics preemption provision

60. Representative Greg Vitali made a motion to have House Bill 1083 referred to the Rules Committee and a motion to suspend so that the plastics preemption provision added by the Senate could be removed. During the House session on May 28, 2020, Rep. Vitali noted that within the past six hours, there had been a groundswell of opposition to the last-minute amendment by municipalities and environmental organizations.

61. The purpose of Rep. Vitali's motions was to provide the Rules Committee an opportunity to consider the wisdom of the last-minute amendment that added the plastics preemption provision, in light of the strong opposition by municipalities and environmental groups.

62. The motions were not approved. Immediately after, the House moved on to approval or disapproval of the Senate's amendments, including the plastics preemption provision.

63. Representative Sankey urged concurrence in the Senate's amendments, stating "there is a lot more in this bill than plastics. What is in this bill is the ability for us to implement our general appropriations budget" and "everything we need in

order to push this budget forward and continue this process in in that bill, so I suggest that we just finish it now and vote it through.”

64. The House subsequently voted to concur with the Senate amendments and passed Act 23 on May 29, 2020.

65. Act 23 was signed by Governor Wolf on the same day, May 29, 2020. As with Act 20, Governor Wolf was unable to partially veto Section 1706-E(d) of Act 23 because it is not an “item of appropriation.”

66. The Commonwealth 2020-2021 budget provided “12 months of sustained public education funding at 2019-20 levels” and made “important investments in communities and programs to help begin to restore the economy.” *See Gov. Wolf Signs Budget to Sustain Education, Support Communities Amid Pandemic*, Governor Tom Wolf (May 29, 2020), <https://www.governor.pa.gov/newsroom/gov-wolf-signs-budget-to-sustain-education-support-communities-amid-pandemic/>.

67. The 2020-2021 budget also made crucial investments related to the COVID-19 pandemic, including “\$420 million to assist nursing homes with COVID-19-related costs, \$50 million to help Pennsylvanians with food insecurity and \$225 million for grants to small businesses[.]” *Id.*

68. As the piece of the yearly budget package that would implement the Commonwealth's budget during an unprecedented global pandemic, Act 23 was a must-pass bill.

69. The preemption provision in Act 23 is different from the preemption provision in Act 20 in three key respects. First, Section 1706–E(d) of Act 23 prohibits local governments from enacting or enforcing legislation regarding single-use plastics until July 1, 2021 or six months after the expiration of Pennsylvania Governor Wolf's COVID-19 disaster declaration, whichever is later. *See* Act 23 at § 1706-E(d) (“ . . . until July 1, 2021, or six months after the order issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and any renewal of the state of disaster emergency, whichever is later”).

70. As of the date of this filing, the Governor's March 6, 2020 order is still in effect. With high levels of COVID-19 infections in the Commonwealth and a majority of Pennsylvanians not yet vaccinated, the March 6, 2020 Order is unlikely to be lifted for many months.

71. In fact, the Governor has renewed the March 6, 2020 Proclamation of Disaster Emergency on June 3, 2020, on August 31, 2020, on November 24, 2020, and most recently on February 19, 2021 for an additional ninety days.

72. With the extension of the Proclamation of Disaster Emergency on February 19, 2021, the plastics preemption provision bars Pennsylvania

municipalities from enacting or enforcing restrictions and ordinances on single-use plastic bags until at least mid-November of 2021.

73. Second, the preemption provision in Act 23 applies to both enactment and *enforcement* of legislation. Specifically, Section 1706–E(d) states that “[t]he General Assembly or a local governmental body or agency may not enact or enforce a law, rule, regulation or ordinance imposing a tax on or relating to the use, disposition, sale, prohibition or restriction of single-use plastic, auxiliary containers, wrappings or polystyrene containers . . .”

74. As a result, the new preemption provision applies to Petitioner Narberth, a municipality that enacted its ordinance months before the preemption provision in the previous year’s Fiscal Code Amendment (Act 20) was passed. In addition, Petitioners Philadelphia and West Chester, which had passed ordinances due to take effect after July 1, 2020 in reliance upon Act 20 of 2019, were again stymied in their efforts to implement and enforce their plastic bag legislation.

75. Third, in enacting Act 23, Respondents gave no consideration to the reports of the Independent Fiscal Office and Legislative Budget and Finance Committee, which were not issued until June 2020, following passage of Act 23. Thus, in enacting Act 23, Respondents abandoned entirely Act 20’s premise that plastics preemption was necessary to study the impacts of single-use plastics restrictions.

76. Similar to Act 20, Act 23 is a large omnibus-style bill amending the Pennsylvania Fiscal Code. The stated purpose of Act 23 is to “provide for the implementation of the 2020-2021 Commonwealth budget.” Act 23’s 444-word title contains no mention of plastics or local environmental laws. The Act 23 preemption provision is sandwiched between two provisions dealing with state gambling proceeds.

**Act 23 Interferes with Petitioners’ Efforts  
to Enact and Enforce Single-Use Plastics Ordinances**

77. Following the passage of Act 23 in May 2020, West Chester announced a delay to enforcement of its ordinance, this time due to the indefinite moratorium contained in Act 23:

Due to last-minute language inserted in the Pennsylvania statewide budget, the Borough is unable to enforce the single-use plastic ban at this time. While the ordinance is still on the books, enforcement is delayed until July 1 2021 or the end of the state’s COVID-19 disaster declaration, whichever is later.

*See News and Events*, Borough of West Chester (July 2020), <https://www.west-chester.com/572/News-and-Events>.

78. With enforcement of its ordinance prohibited by Act 23, West Chester developed an opt-in recognition program to encourage businesses to voluntarily comply with the West Chester Ordinance. As of February 2021, seven businesses had opted into West Chester’s recognition program. *See Single Use Plastics*, Borough of West Chester, <https://west-chester.com/611/Single-Use-Plastics>.

79. Like West Chester, Narberth is unable to enforce its Ordinance until six months after the expiration of the Commonwealth's COVID-19 disaster declaration, which will be mid-November 2021 at the earliest.

80. On December 30, 2020, Petitioner Philadelphia announced it would further delay implementation and enforcement of the Ordinance due to the continued impact of the COVID-19 Pandemic on the business community, especially small businesses. The Philadelphia Ordinance is now due to take effect on July 1, 2021.

81. Although Philadelphia has now postponed implementation and enforcement of the Philadelphia Ordinance by an entire year to support businesses through the worst of the COVID-19 pandemic, its planned implementation and enforcement efforts will still be barred by Respondents' last-minute addition of the plastics preemption provision to Act 23.

82. Taking into account the impact of the pandemic on its businesses and residents, Philadelphia has developed and publicly announced a detailed implementation and enforcement plan, with the following key milestones:

- a. July 1, 2021: Beginning of implementation and education phase
- b. July 31, 2021: Businesses required to post signage regarding plastic bags prohibition

- c. October 1, 2021: Single-use plastic bags prohibited; beginning of enforcement phase; warnings issued for failure to use compliant bags; residents may report non-compliant businesses using 311
- d. April 1, 2022: Citations and penalties issued for non-compliant bags

*City Provides Update on COVID-19 for Wednesday, December 30, 2020*, City of Philadelphia (Dec. 30, 2020), *available at* <https://www.phila.gov/2020-12-30-city-provides-update-on-covid-19-for-wednesday-december-30-2020/>.

83. Under this plan, Philadelphia would be in violation of Act 23 on July 1, 2021 and that violation would continue at least through mid-November 2021, the earliest possible date on which the moratorium will expire. Under Philadelphia’s current plan, the Philadelphia Ordinance will be enforced beginning October 1, 2021.

**Petitioners are Harmed by the Prohibition on Local Legislation  
Regarding Single-Use Plastics Contained in Act 23**

84. Petitioner Philadelphia has already invested significant time and resources in implementation and planned enforcement of the Philadelphia Ordinance. These efforts include preparing communications such as a website and flyers to educate the public and business owners, outreach to organizations that can provide re-useable bags to Philadelphia residents who need them; preparing 311 to receive and process reports of non-compliant businesses, and preparing Licenses & Inspections for enforcement activities.

85. Philadelphia's plan for implementation and enforcement of the Philadelphia Ordinance has been severely jeopardized by the unlawful plastics preemption provision. While Philadelphia plans to implement its ordinance on July 1, 2021 and begin enforcement on October 1, 2021, both of these phases are prohibited by Act 23 at least through mid-November 2021.

86. Philadelphia is presently harmed by the ongoing uncertainty regarding when (if ever) it will be permitted under state law to move forward with implementation and enforcement of the Philadelphia Ordinance.

87. Beginning July 1, 2021, unless the plastics preemption provision is first invalidated, Philadelphia will be further harmed because the plastics preemption provision will prevent it from carrying out its carefully considered plan for implementation and enforcement of the Philadelphia Ordinance.

88. In response to the passage of Act 23, Petitioners West Chester and Narberth delayed enforcement of their ordinances until July 1, 2021 or six months after the expiration of Governor Wolf's COVID-19 disaster declaration. But for Act 23, West Chester and Narberth would enforce their ordinances sooner.

89. Like Philadelphia, West Chester and Narberth are presently harmed by the uncertainty regarding when state law will permit them to begin enforcing their ordinances. This uncertainty is further exacerbated by the fact that the General Assembly has unlawfully included plastics preemption provisions in the past two

Fiscal Code Amendments. In light of this history, it is possible (if not likely), that the General Assembly will do to the same thing in future Fiscal Code Amendments.

90. As a result of Respondents' actions, Petitioners are barred from taking reasonable steps to significantly reduce plastic bag pollution and litter in their communities. So long as Petitioners' hands are tied by Section 1706-E(d), Petitioners and their residents will continue to experience the negative environmental, health, aesthetic and financial impacts of unrestricted single-use plastics pollution.

### **Count I**

#### **Violation of the Pennsylvania Constitution's Single Subject and Clear Title Requirements**

#### **Art. III, § 3**

91. Article III, Section 3 of the Pennsylvania Constitution provides: "No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof."

92. The overarching purpose of these and the other restrictions on the legislative process contained in Article III was to "furnish essential constitutional safeguards to ensure our Commonwealth's government is open, deliberate and accountable to the people it serves." *Washington v. Dep't of Pub. Welfare of Commonwealth*, 188 A.3d 1135, 1147. (Pa. 2018).

93. Act 23 violates Article III, Section 3 because it contains more than one subject. Specifically, while Act 23 is a fiscal code amendment intended to implement the Commonwealth's 2020-2021 budget, it contains a preemption provision prohibiting local governments from enacting or enforcing single-use plastics legislation. This provision bears no relation to the obvious subject of the bill – amending the fiscal code so that the Commonwealth's budget can be implemented.

94. Act 23 does not meet the constitutional requirements for a general appropriation bill as “[t]he general appropriation bill shall embrace nothing but appropriations for the executive, legislative and judicial departments of the Commonwealth, for the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.” Pa. Const. art III, § 11.

95. The Fiscal Code Amendment is not exempt from the “single subject” rule of the Pennsylvania Constitution. The Pennsylvania Supreme Court has noted that “without any limitations whatsoever, the [Fiscal Code Amendment] practice would seem to be susceptible to the ‘logrolling’ concern underlying Article III, Section 3's single-subject requirement. Accordingly, in an appropriate case, we may be required to determine whether judicial intervention is possible and/or appropriate and, if so, what may be the appropriate standards.” *Sears v. Wolf*, 118 A.3d 1091, 1103 (Pa. 2015).

96. Act 23 also violates Article III, Section 3's requirement of a "clear title." Act 23's title does not indicate whatsoever that Act 23 contains provisions related to single-use plastics.

97. Respondents' inclusion of Section 1706-E(d) in Act 23 violates Article III, § 3 of the Pennsylvania Constitution because it causes Act 23 to contain more than one subject and because the inclusion of a plastics preemption provision is not expressed at all in Act 23's title.

## **Count II**

### **Violation of the Original Purpose Clause of the Pennsylvania Constitution**

#### **Article III, § 1**

98. Article III, Section 1 of the Pennsylvania Constitution provides: "No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose."

99. Courts review legislation under Article III, Section 1 with a two-prong test; failure to satisfy either prong renders the legislation unconstitutional. "First, the court will consider the original purpose of the legislation and compare it to the final purpose and determine whether there has been an alteration or amendment so as to change the original purpose. Second, a court will consider, whether in its final form, the title and contents of the bill are deceptive." *Pennsylvanians Against Gambling*

*Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 408-09 (Pa. 2005) (“PAGE”).

100. The original purpose of Act 23 was implementation of the 2020-2021 Commonwealth budget.

101. The last-minute addition of the plastics preemption provision to Act 23 changed the bill’s original purpose because plastics preemption did not relate to implementation of the budget.

102. Further, Act 23’s title is deceptive, because it does not reflect or even suggest that Act 23 includes a clause prohibiting Pennsylvania municipalities from restricting single-use plastics.

103. The inclusion of Section 1706-E(d) in Act 23 violates Article III, § 1 of the Pennsylvania Constitution.

### **Count III**

#### **Violation of Environmental Rights Amendment of the Pennsylvania Constitution**

#### **Article I, § 27**

104. Article I, Section 27 of the Pennsylvania Constitution provides: “The people have a 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.”

105. The unregulated distribution of single-use plastic bags contributes to the degradation of the natural environment and public natural resources in the Commonwealth.

106. By enacting Section 1706-E(d) to prevent Petitioners and other Pennsylvania local government entities from enacting or enforcing single-use plastics legislation, Respondents have acted in derogation of protected environmental interests and have failed in their duty to act as trustee of Pennsylvania’s public natural resources.

107. By enacting Section 1706-E(d), Respondents have unreasonably restrained Pennsylvania municipalities from addressing single-use plastics pollution through local legislation and thereby have actively encouraged continuing damage to Pennsylvania’s environment, in violation of the Environmental Rights Amendment.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioners request that this Court enter judgment in their favor and:

1. Declare Section 1706-E(d) of Act 23 unconstitutional under Article III, Sections 1 and 3 of the Pennsylvania Constitution.

2. Declare Section 1706-E(d) of Act 23 unconstitutional under Article 1, Section 27 of the Pennsylvania Constitution.

3. Preliminarily and permanently enjoin Respondents, their agents, officers, and employees, and all other State officials, from enforcing Section 1706-E(d) of Act 23.

4. Grant such other relief as may be just and proper.

Respectfully Submitted,

/s/ Lydia Furst

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Date: March 3, 2021

# **EXHIBIT A**

**ORDINANCE NO. 1009  
BOROUGH OF NARBERTH  
MONTGOMERY COUNTY, PENNSYLVANIA**

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**AN ORDINANCE AMENDING THE NARBERTH BOROUGH ORDINANCE  
REGULATING THE DISTRIBUTION OF SINGLE-USE CARRY-OUT PLASTIC BAGS  
AND SINGLE-USE PLASTIC STRAWS; AND PROVIDING FOR RELATED  
PURPOSES AND FINDINGS, DEFINITIONS, REQUIREMENTS, ENFORCEMENT,  
PENALTIES, AND EXEMPTIONS**

---

**WHEREAS**, the Borough Code and the Pennsylvania Municipalities Planning Code authorizes the Borough Council of the Borough of Narberth (“Borough Council”) 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 Narberth (“Borough”) and its citizens;

**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 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.

**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 regulating the distribution of single-use, carry-out plastic bags and straws within the Borough of Narberth;

**WHEREAS**, the Narberth Borough Council has met the procedural requirements of 53 P.S. § 10101, *et seq.*, the Pennsylvania Municipalities Planning Code, for the adoption of the proposed ordinance, including holding a public hearing; 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 Narberth Borough will be served by this amendment of the Narberth Borough Ordinance to regulate the distribution of single-use, carry-out plastic bags and straws within the Borough of Narberth;

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

**Section I. Code Amendment.** The Narberth Borough Ordinance shall be amended by providing a new Chapter under Part II, *General Legislation*, entitled “Plastics Regulations”, to provide as follows:

**1. Purpose and Findings.**

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

B. Findings.

- a. The use of single-use bags and plastic straws have severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, ground level ozone formation, atmospheric acidification, water consumption and solid waster generation.
- b. There are numerous commercial establishments within the Borough of Narberth which provide single-use, plastic carry-out bags and single-use, plastic straws to their customers.
- c. The majority of such single-use, plastic carry-out bags and single-use, plastic straws 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 Borough or Narberth, such bags are not readily recyclable.
- e. Approximately five hundred million single-use, plastic straws are discarded by United States consumers every day. In the Borough or Narberth, such straws are not readily recyclable.
- f. Numerous studies have documented the prevalence of single-use, plastic carry-out bags and/or plastic straws littering the environment, blocking storm drains, entering local waterways, and becoming stuck in or upon natural resources and public property.
- g. The taxpayers of the Borough of Narberth pay the costs related to the cleanup of single-use, plastic carry-out bags and plastic straws from the roadways, trees, sewers, waters, and parks within the Borough.

- h. 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, recyclable paper straws, or straws made from other natural products.
- i. There are several alternatives to single-use, plastic carry-out bags and single use plastic straws readily available in and around the Borough of Narberth.
- j. An important goal of the Borough of Narberth is to procure and use sustainable products and services.
- k. An important goal of the Borough of Narberth is to preserve the natural, scenic, historic, and esthetic values of the Borough of Narberth.
- l. It is the Borough of Narberth'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.
- m. Studies have documented that placing a mandatory charge on single-use, plastic carry-out bags and banning single-use, plastic straws will dramatically reduce the use of such items.

## **2. Definitions.**

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

- a. "Borough" shall mean the Borough of Narberth.
- b. "Commercial Establishment" shall mean any person, corporation, partnership, business venture, or vendor that sells or provides merchandise, goods, or materials directly to a customer, whether or not for profit, including, but not limited to, restaurants (eat-in and/or take-out food), bars, pharmacies, convenience and grocery stores, seasonal and temporary businesses or markets, retail stores, or other similar nonresidential uses. For purposes of this Chapter, Commercial Establishments shall not include bazaars or festivals operated by nonprofit organizations or religious institutions.
- c. "Compostable Plastic Bag" and "Compostable Plastic Straw" shall mean, respectively, a plastic bag or plastic Straw that (1) conforms to the current ASTM D6400; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) must be capable of undergoing biological decomposition in a compost site such that the

material breaks down into carbon dioxide, water, inorganic compounds and biomass at a rate consistent with known compostable materials.

- d. "Distribution" or to "distribute" means the vending, sale, giving, deployment or delivering for any purpose of a Single-Use Plastic Carry-Out Bag or Single-Use Plastic Straw, whether or not incident to the sale, vending, or production of any merchandise or beverage.
- e. "Recyclable Paper Bag" shall mean a paper bag that is (1) one hundred percent (100%) recyclable including the handles; (2) contains at least forty percent (40%) post-consumer recycled paper content; and displays the words "recyclable" and "made from 40% post-consumer recycled amount content (or other applicable amount), or substantially similar wording, in a visible manner on the outside of the bag.
- f. "Recyclable Paper Straw" shall mean a paper Straw that is one hundred percent (100%) recyclable.
- g. "Reusable Bag" shall mean a bag with handles that is specifically designed and manufactured for multiple reuse. Reusable Bags shall be made of either polyester, polypropylene, cotton, or other durable material, or durable plastic that is at least 3.0 mils in thickness.
- h. "Reusable Straw" shall mean a Straw that is specifically designed and manufactured for multiple reuse. Reusable Straws shall be made of either glass, stainless steel, silicone, durable and reusable plastic, or other similar durable material.
- i. "Single-Use Plastic Carry-Out Bag" shall mean a bag made of plastic or other similar material that is provided by a Commercial Establishment to a customer at or around the point of sale that is not a Reusable Bag, Recyclable Paper Bag or Compostable Plastic Bag. A "Single-Use Plastic Carry-Out Bag" shall not include the following:
  - i. Bags in which loose produce or products are placed by a consumer to deliver such items to the point of sale or check-out area of a Commercial Establishment;
  - ii. Laundry or dry-cleaner bags;
  - iii. Newspaper bags;
  - iv. Bags used to contain or wrap frozen foods, meat or fish, whether prepackaged or not, to prevent moisture;

- v. A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a Reusable Bag, Recyclable Paper Bag or Compostable Plastic Bag; and
  - vi. Any bags provided for use by a Commercial Establishment operated by the Commonwealth of Pennsylvania, or otherwise distributed by a federal, Commonwealth, or local government agency.
- j. “Single-Use Plastic Straw” shall mean a Straw provided by a Commercial Establishment that is not a Reusable Straw, Recyclable Paper Straw, or Compostable Straw. A “Single-Use Plastic Straw” shall not include Straws provided under the following circumstances:
- i. When provided with a beverage on private property used as a residence;
  - ii. When provided by a state, federal or local government agency;
  - iii. When packaged with beverages prepared and packaged outside of the Borough, provided such beverages are not altered, packaged or repackaged within the Borough;
  - iv. When provided as an assistance device to reasonably accommodate a disability.
- k. “Straw” shall mean 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.

### **3. Requirements.**

#### **A. Distribution of Single-Use Plastic Carry-Out Bags.**

- a. Any Commercial Establishment that distributes a Single-Use Plastic Carry-Out Bag shall sell the bag for no less than ten cents (\$0.10) per bag. All monies collected pursuant to this Chapter shall be retained by the Commercial Establishment.
- b. Any charge for a Single-Use Plastic Carry-Out Bag shall be separately stated on a receipt provided to the customer at the time of sale and shall be identified as the “Plastic Carry-Out Bag Charge” thereon.
- c. Nothing in this section shall be read to preclude Commercial Establishments from making Reusable Bags, Recyclable Paper Bags or Compostable Plastic Bags available for sale to customers.

**B. Distribution of Single-Use Plastic Straws.**

- a. The Distribution of Single-Use Plastic Straws by Retail Establishments within the Borough is prohibited.
- b. Nothing in this section shall be read to preclude Commercial Establishments from making Reusable Straws, Recyclable Paper Straws, or Compostable Straws available for sale to customers.

**4. Enforcement.**

- a. The Borough Code Enforcement Officer, and any other persons appointed by Borough Council, shall have the authority to do inspections, issue citations, pursue prosecutions, and enforce the provisions of this Chapter.
- b. If it is determined that a violation has occurred, the designated Code Enforcement Official shall issue a warning notice to the Commercial Establishment.
- c. If an additional violation of this Chapter occurs after a warning notice has been issued for an initial violation, the Code Enforcement Official shall issue a notice of violation to the Commercial Establishment and, upon conviction thereof, the Commercial Establishment shall be sentenced to pay a fine, as set forth below, together with the costs of prosecution, including court costs and attorneys' fees for services in connection with enforcement, such fee amounts being the solicitor's contracted then-current hourly rate(s) with the Borough. Commercial Establishments shall be strictly liable for the violations of their employees.
- d. The penalty for each violation that occurs after the issuance of the warning notice shall be a fine of no more than:
  - i. \$100.00 for the first violation;
  - ii. \$200.00 for the second violation in the same year dating from the first violation;
  - iii. \$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.

- 5. Exemptions.** Borough Council 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 upon a finding by Borough Council that the requirements of this Chapter would cause undue hardship to the Commercial Establishment. An “undue hardship” shall be found only in the following circumstances or situations, and any exemptions may be provided by Borough Council with conditions:
- a. The Commercial Establishment has a unique circumstance or situation such that there are no reasonable alternatives to Single-Use Plastic Carry-Out Bags 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 of Single-Use Plastic Carry-Out Bags or Single-Use Plastic Straws.

**Section II. Repealer.** In addition to the above, all other ordinances or parts of ordinances that are inconsistent herewith, are hereby repealed. Further, it is understood and intended that all other sections, parts, provisions, and ordinances that are not otherwise specifically in conflict or inconsistent with this Ordinance, shall remain in full force and effect, the same being reaffirmed hereby.

**Section III. Severability.** In the event that any section, sentence, clause, phrase or word of this Ordinance, including the incorporated Appendices, shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose enforcement of any of the remaining portions of this Ordinance. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal law or laws of the Commonwealth of Pennsylvania.

**Section IV. Effective Date.** This Ordinance shall take effect six (6) months after its legal enactment.

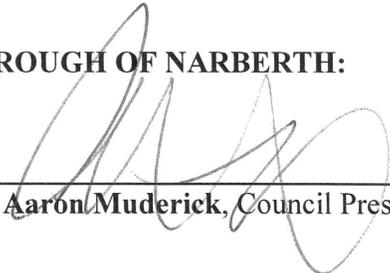
**Section V. Failure to Enforce Not a Waiver.** The failure of the Borough of Narberth to enforce any provision of this Ordinance shall not constitute a waiver by the Borough of its rights of future enforcement hereunder.

**ORDAINED AND ENACTED** by the Borough Council of the Borough of Narberth, Montgomery County, Pennsylvania, this 17<sup>th</sup> day of October, 2018.

**Attest:**

  
\_\_\_\_\_  
**Sean Metrick, Borough Secretary**

**BOROUGH OF NARBERTH:**

**By:**   
\_\_\_\_\_  
**Aaron Muderick, Council President**

Examined and approved as an Ordinance, this 17 day of October, 2018.

  
\_\_\_\_\_  
**Andrea Deutsch, Mayor**

**EXHIBIT B**

ORDINANCE NO. 09 – 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 July 2, 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 July 2, 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.”

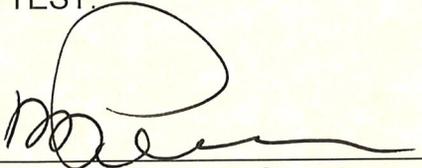
**SECTION 2. SEVERABILITY.** If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts 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 17th DAY OF JULY, 2019.

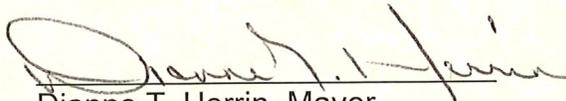
ATTEST:

  
Michael A. Perrone, Secretary

**COUNCIL FOR THE BOROUGH  
OF WEST CHESTER**

By:   
Diane C. LeBold, President

APPROVED THIS 17th DAY OF JULY, 2019.

  
Dianne T. Herrin, Mayor

# **EXHIBIT C**

# City of Philadelphia



(Bill No. 190610-A)

## AN ORDINANCE

Amending Title 9 of The Philadelphia Code, entitled “Regulation of Businesses, Trades and Professions,” by adding a new Chapter 9-4500, entitled “Prohibition on Use of Certain Bags and Checkout Bag Charge,” to permit the use of only certain bags by retail establishments at the point of sale or for a delivery; and establishing a charge, payable by the consumer to the establishment, for the provision of other types of bags; all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Chapter 9 of The Philadelphia Code is hereby amended to read as follows:

### CHAPTER 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS

\* \* \*

#### *CHAPTER 9-4500. PROHIBITION ON USE OF CERTAIN BAGS BY RETAIL ESTABLISHMENTS.*

*§9-4501. Definitions.*

(1) “Effective Date” means the effective date of the ordinance that added this Chapter to The Philadelphia Code.

(2) “Exempted Bag” means:

(a) a bag used inside a retail establishment by a customer to deliver perishable items to the point of-sale at that establishment, such as: to package bulk items such as fruit, vegetables, nuts, grains, or candy; to contain or wrap meats or fish; to contain unwrapped prepared foods or bakery goods; or to contain or wrap flowers, potted plants, or similar items; or

(b) a bag sold in packaging containing multiple bags and packaged at the time of manufacture of the bag.

(3) “Plastic” means solid material that is produced from petrochemicals

# City of Philadelphia

BILL NO. 190610-A continued

Certified Copy

*and that is often used to make bags for carrying products out of retail establishments.*

(4) *"Recyclable Paper Bag" means a paper bag that meets the following, but not including an Exempted Bag:*

(a) *contains no old growth fiber;*

(b) *contains a minimum of 40% post-consumer recycled content;*

*and*

(c) *displays the word "Recyclable" or "Recycled Content" in a highly visible manner and is labeled with the name of the manufacturer and the percentage of post-consumer recycled content of the bag in an easy-to-read font size.*

(5) *"Retail Establishment" means a location where food or other products are offered to the public for direct sale or delivery to a customer, including but not limited to the following: supermarket, convenience store, service station, department store, dollar store, clothing store, restaurant, food truck, farmers' market or delivery service, but not including drycleaners.*

(6) *"Single-use Plastic Bag" means a bag made from plastic that is less than 2.25 mils thick or made through a blown-film extrusion process, but not including an Exempted Bag.*

*§9-4502. Prohibition Against Single-use Plastic Bags.*

(1) *Beginning 90 days after the Effective Date, Retail Establishments are prohibited from providing a Single-use Plastic Bag or a non-Recyclable Paper Bag to a customer at the retail establishment or through a delivery.*

*§9-4503. Signage Requirement.*

(1) *Beginning 30 days after the effective date, and for six months thereafter, Retail Establishments are required to post at all points of sale conspicuous signage: informing customers that Single-use Plastic Bags and non-Recyclable Paper Bags will no longer be provided by the establishment as of the date the prohibition begins; explaining what types of bags and purchases are impacted; and providing any other*

# City of Philadelphia

BILL NO. 190610-A continued

Certified Copy

*information the Department may require by regulation.*

*§9-4504. Study of Bag Use.*

*The Office of Sustainability, or such other office or department as may be designated by the Mayor, is called upon to conduct or commission a study of the quantities and frequency of the provision by retail establishments to customers of Single-use Plastic Bags, other plastic bags, non-Recyclable Paper Bags, Recyclable Paper Bags and any other bags before the effective date; six months after the effective date; and one year after the effective date. Any such reports shall be provided to the Chief Clerk of Council and posted on a City webpage within two weeks of finalization of the report.*

\* \* \*

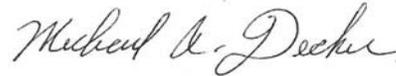
SECTION 2. This Ordinance shall take effect July 2, 2020.

# City of Philadelphia

*BILL NO. 190610-A continued*

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 12, 2019. The Bill was Signed by the Mayor on December 30, 2019.

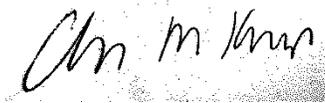


Michael A. Decker  
Chief Clerk of the City Council

## VERIFICATION

I, Christine Knapp, hereby state:

1. I am the Director of the Office of Sustainability of the City of Philadelphia;
2. I am authorized to make this verification on behalf of the City of Philadelphia in this action;
3. I have personal knowledge of the statements made in the foregoing Petition for Review;
4. The statements made in the foregoing Petition for Review are true and correct to the best of my own personal knowledge, information, and belief;  
and
5. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



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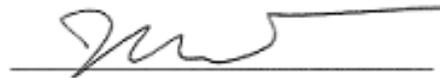
Christine Knapp, on behalf of  
the City of Philadelphia

Dated: March 2, 2021

## VERIFICATION

I, John F. Walko, hereby state:

1. I am the Solicitor for the Borough of Narberth, Pennsylvania;
2. I am authorized to make this verification on behalf of the Borough of Narberth in this action;
3. I have personal knowledge of the statements made in the foregoing Petition for Review;
4. The statements made in the foregoing Petition for Review are true and correct to the best of my own personal knowledge, information, and belief;  
and
5. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



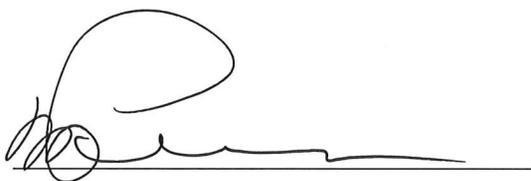
John F. Walko, on behalf of  
the Borough of Narberth

Dated: March 2, 2021

## VERIFICATION

I, Michael A. Perrone, hereby state:

1. I am the Borough Manager of the West Chester Borough;
2. I am authorized to make this verification on behalf of the West Chester Borough in this action;
3. I have personal knowledge of the statements made in the foregoing Petition for Review;
4. The statements made in the foregoing Petition for Review are true and correct to the best of my own personal knowledge, information, and belief;  
and
5. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'Michael A. Perrone', written over a horizontal line.

Michael A. Perrone, on behalf of  
West Chester Borough

Dated: March 1st, 2021

## VERIFICATION

I, Daniel S. Bernheim, hereby state:

1. I am a Commissioner of Lower Merion Township and the President of the Lower Merion Township Board of Commissioners;
2. I am authorized to make this verification on behalf of the Lower Merion Township in this action;
3. I have personal knowledge of the statements made in the foregoing Complaint;
4. The statements made in the foregoing Complaint are true and correct to the best of my own personal knowledge, information, and belief; and
5. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

/s/ Daniel S. Bernheim

Daniel S. Bernheim, on behalf of  
Lower Merion Township

Dated: March 3, 2021