

EXPLANATORY STATEMENT: This Ordinance amends the Township Code to add provisions regulating the use of disposable plastics (single-use plastic bags, single-use plastic beverage straws, and expanded polystyrene containers) by retail establishments within the Township of Berkeley Heights.

TOWNSHIP OF BERKELEY HEIGHTS, UNION COUNTY

ORDINANCE No. 2-2020

An Ordinance of the Township of Berkeley Heights, County of Union, State of New Jersey, Amending and Supplementing Title 8 of *The Code of the Township of Berkeley Heights* ("HEALTH AND SAFETY") to include a new chapter, Chapter 8.62, entitled "DISPOSABLE PLASTICS"

WHEREAS, the Mayor and Council of the Township of Berkeley Heights ("Township") believe they have a duty to investigate and implement any and all necessary and proper steps the Township can take to protect the environment, general welfare, and public health and safety of the Township's residents and visitors; and

WHEREAS, currently, in the Township, retail establishments offer single-use plastic carryout bags, plastic beverage straws, and expanded polystyrene containers to their customers free of charge, and this represents a cost those retail establishments incur; and

WHEREAS, according to *National Geographic* and *The Los Angeles Times*, 500 million plastic beverage straws are used and discarded daily in the United States alone; and

WHEREAS, expanded polystyrene is a petroleum-based plastic which may pose a toxic risk to humans, breaks down into environmentally damaging microplastics that the Township cannot recycle, and, according to the National Oceanic and Atmosphere Administration, passes through water filtration systems and results in a threat to aquatic life, and;

WHEREAS, based on estimates from the Environmental Protection Agency (EPA), the average American uses approximately 500 plastic and/or paper bags per year; and

WHEREAS, based upon the above estimates and upon New Jersey's having a population of approximately 8.8 million people according to the 2012 census, New Jersey residents use approximately 4.4 billion plastic bags annually; and

WHEREAS, EPA's Municipal Solid Waste Report 2010 indicates that after only a single use, less than 5% of all plastic bags are recycled annually. "Plastic bags" refer to thin film plastic bags that are made from petroleum products such as high density polyethylene ("HDPE") or alkathene and which are very versatile, lightweight, and strong; and

WHEREAS, as of January 1, 2018, China, a country that used to accept and recycle plastics that were shipped to them, no longer accepts plastics for recycling, including plastic bags; and

WHEREAS, plastic bags and other thin film plastics are not accepted as part of the residential curbside pick-up recycling program; and

WHEREAS, Township residents collected more than 8,300 pounds of thin film plastics during the period from June 2, 2018 – October 31, 2019 as part of a voluntary plastics recycling initiative; and

WHEREAS, it is beyond dispute that the plastic used in single-use plastic carryout bags, plastic beverage straws, and expanded polystyrene containers, which breaks down into microplastics that absorb toxic chemicals and measure 5 millimeters or less, has a severe and negative impact on the global and local environment as these items' presence in Township and in the Township's waterways, including the Passaic River and the Green Brook tributary to the Raritan River, adversely impact marine life, birds, and land-based wildlife insofar as these animals often mistake these items for food, or become entangled in them – particularly single-use plastic bags – leading to these animals' exhaustion, starvation, and eventual death, all of which negatively impact the ecosystem and food chain as a whole; and

WHEREAS, humans can ingest microplastics through their consumption of seafood and potable water; and

WHEREAS, the Township's residents currently bear both the monetary and environmental costs associated with the negative impact of single-use plastic carryout bags, plastic beverage straws, and expanded polystyrene containers (a) upon their entering the municipal waste stream (ending in incineration or inclusion in a landfill); and (b) upon becoming a significant cause of litter in the Township's neighborhoods, parks, storm drains, the Green Brook tributary, and the Passaic River, thereby increasing the likelihood of flooding; and

WHEREAS, the Township's taxpayers currently bear the costs associated with improper placement of single-use plastic carryout bags, plastic beverage straws, and expanded polystyrene containers in recycling bins, resulting in increased costs for contaminated recycling; and

WHEREAS, all single-use carry-out bags are wasteful, and while paper carry-out bags present adverse impacts on the environment, these impacts are less than single-use plastic carryout bags because they naturally decompose in the environment while plastic bags degrade at a much slower rate, estimated at hundreds of years, and release toxic materials during that process as well as pollute waterways; and

WHEREAS, according to the Environmental Education Fund, while non-thin film plastic bags collect bacteria just like other fabrics, hand or machine washing a reusable bag removes more than 99.99% of this bacteria; and

WHEREAS, the Township desires to reduce the number of recyclable paper carryout bags and single-use plastic carryout bags that are being burned or discarded as litter to promote the use of reusable bags by retail establishments located within the Township; and

WHEREAS, the Township Council finds that the reduction in the use of recyclable paper carryout bags and single-use plastic carryout bags by retail establishments within the Township promotes a legitimate public purpose; and

WHEREAS, in accordance with N.J.S.A. 40:48-2, a municipality in New Jersey may enact such ordinances “as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants;” and

WHEREAS, in the absence of the State of New Jersey passing a law banning the use of or otherwise mandating the reduction of single-use plastic carryout bags, the Township Council's taking prompt action regarding the regulation of the use of single-use plastic carryout bags and paper bags will preserve the public health, safety, and welfare of the municipality; and

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Berkeley Heights, New Jersey, as follows:

Section 1. Title 8 of *The Code of the Township of Berkeley Heights* ("HEALTH AND SAFETY") to include a new chapter, Chapter 8.62, entitled "DISPOSABLE PLASTICS" which shall read as follows [New language **bold and underlined**]:

Chapter 8.62 – DISPOSABLE PLASTICS

8.62.010 – Definitions

As used in this Chapter, the following terms shall have the meanings set forth below:

"Compliant Bag" means Recyclable Paper Carryout Bags and Reusable Bags

"Customer" means any person who purchases goods or services from a Retail Establishment.

"Expanded Polystyrene" or "EPS" means a light-weight material made from polystyrene, generally produced by extrusion or molding; it is used for food containers and packing material either as solid blocks formed to accommodate the item being protected or as loose-fill "peanuts".

"Expanded Polystyrene Containers" or "EPS Containers" means containers made from EPS for packaging and/or insulating hot, cold, or easily breakable products, or food products that may otherwise cause contamination. For purposes of this ordinance, EPS Containers shall include only cups, clamshells, and any other take-out containers from restaurants and prepared food providers.

"Operator" means any person in control of, or having the responsibility for, the operation of a Retail Establishment, which may include, but is not limited to, the owner of the Retail Establishment.

"Person" means any natural person, firm, corporation, partnership, or other organization or group, however organized.

"Polystyrene" means a synthetic polymer made from the monomer styrene, which can either be solid or foamed.

"Produce Bag" or "Product Bag" means a very thin bag without handles used exclusively to carry produce, meats, or other food items to the point of sale inside a Retail Establishment or, for reasons of public health and safety, to prevent such food items from coming into direct contact with other purchased items.

“Recyclable” means any material that can be sorted, cleansed, and reconstituted through available recycling collection programs for the purpose of reusing the material altered, incinerated, converted, or otherwise thermally destroyed solid waste generated therefrom.

“Recyclable Paper Carryout Bag” means a paper bag that meets all of the following requirements:

- (a) It is 100% recyclable overall;
- (b) It can be composted; and
- (c) It displays the words “recyclable” and/or “reusable” in a visible manner on the outside of the bag.

“Retail Establishment” means any store or commercial establishment, whether or not it is operated for profit, that sells perishable or non-perishable goods including, but not limited to, clothing, food, and personal items directly to the customer and is located within the Township’s geographical limits. This definition shall include, but is not limited to, the following: drug stores, pharmacies, supermarkets, farmers markets, grocery stores, food trucks, convenience stores, clothing stores, hardware stores, indoor or outdoor markets, street fairs, and other seasonal or temporary retail operations, and any other entity that engages in the retail sale of a limited line of goods that may include, but is not limited to, milk, bread, soda, and snack foods; and public eating establishments (i.e., restaurants, take-out food establishments, or any other business that prepares and sells made-to-order food or beverages to be consumed on or off its premises, whether for dine-in, take-out, or delivery purposes);

“Reusable Bag” is a durable carryout bag with stitched handles for reinforcement made from any natural or synthetic material other than plastic film, including, but not necessarily limited to, woven or nonwoven plastic or cloth, that is at least 10 mils thick, and that is specifically designed and manufactured for multiple reuse, and that is machine-washable or is made from a material that can be cleaned or disinfected regularly. Customers who possess Reusable Bags that they acquired from any other vendor that is not a Township Retail Establishment may use such Reusable Bags in Township Retail Establishments.”

“Single-Use Plastic Carryout Bag” means 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 Retail Establishment to a customer at the point of sale. The term includes compostable and biodegradable bags but does not include Reusable Bags, Produce Bags, or Product Bags. This definition specifically exempts the following from constituting a Single-Use Plastic Carryout Bag:

- (a) Bags made available by operators to consumers inside Retail Establishments to:
 - (1) Package bulk items, such as fruit, vegetables, nuts, grains, candies, or small hardware items;
 - (2) Contain or wrap frozen and non-frozen foods, meats, or fish, whether packaged or not;
 - (3) Contain or wrap flowers, potted plants, or other items where dampness may be an issue; and

- (4) Contain unwrapped prepared foods or bakery goods.
- (b) Pharmacy prescription bags; and
- (c) Newspaper bags, door-hanger bags, laundry and/or dry-cleaning bags, or bags sold in packages containing multiple bags intended as food storage bags, garbage bags, yard waste bags, or pet waste bags.

“Single-Use Plastic Beverage Straw” means a tube made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or other plant sources, for transferring a beverage from its container to the mouth of the drinker. This definition includes compostable and biodegradable straws, but does not include straws that are made from non-plastic materials, such as paper, sugar cane, bamboo, stainless steel, glass, etc.

8.62.020 – Effective Date

The provisions of this Chapter 8.62 shall become effective and enforceable on December 1, 2020. Prior to such effective date, Retail Establishments are encouraged to comply with these provisions on a voluntary basis.

8.62.030 – Prohibitions

Retail Establishments shall not provide any of the following to a Customer:

- A. Single-Use Plastic Carryout Bags. This prohibition applies to bags provided for the purpose of carrying goods away from the point of sale and does not apply to Product Bags or Produce Bags for carrying produce within the retail establishment to the point of sale. The prohibition applies to Single-Use Plastic Carryout Bags for take-out and deliveries from Retail Establishments within the Township.
- B. Single-Use Plastic Straws. This prohibition applies to Single-Use Plastic Straws provided to Customers at the point of sale. Notwithstanding the foregoing, upon request, a Retail Establishment may provide a Single-Use Plastic Straw to a Person who requires a Single-Use Plastic Straw due to a disability or medical condition.
- C. EPS Containers. This prohibition applies to EPS Containers provided to Customers at the point of sale. No Retail Establishment shall possess, sell, offer, or provide any food in an EPS Container. This paragraph shall not apply to the following
 - 1. Prepackaged Food or Products – EPS Containers used for prepackaged food or products that have been filled and sealed outside of Berkeley Heights prior to the Retail Establishment’s or mobile food commissary’s receipt of such items.
 - 2. Food Service Articles Package and Sold in Bulk – EPS Containers or food service articles packaged and sold in bulk that are used for the purpose of containing food and that are not used at the point of sale.

3. 3. Holders for Meat, Poultry, or Seafood – EPS Containers used to store raw beef, pork, poultry, seafood, or meat of any other kind that is sold from a butcher case or similar retail appliance.

For purposes of this section 8.62.030, the “point of sale” in any transactions is deemed to be at the Retail Establishment, regardless of where payment for the transaction and delivery of the goods physically occurs.

8.62.040 – Fees for Provision of Compliant Bags

- A. Retail Establishments must make Compliant Bags available to Customers for the purpose of carrying goods or other materials away from the point of sale, subject to the provisions of this Chapter. Any fee charged shall be reflected in the sales receipt.
 1. The fee for a Recyclable Paper Carryout Bag shall be at least \$0.10 but not more than \$0.25 per bag.
 2. The fee for a Reusable Bag shall be at the discretion of the Retail Establishment.
- B. Nothing in this Chapter shall prohibit Customers from bringing their own Reusable Bags or bags of any type that they choose to Retail Establishments, in lieu of bags available for a fee from the Retail Establishment, or from carrying away goods that are not placed in a bag.
- C. Each Retail Establishment shall educate its staff to promote the Reusable Bags, post signs encouraging Customers to choose Reusable Bags rather than Recyclable Paper Carryout Bags, and to ask Customers if a bag is needed prior to dispensing.
- D. Exempt Customers. All Retail Establishments must provide Compliant Bags at the point of sale, free of charge, to any customer who participates in, or is a beneficiary of, any United States government federal welfare program, or any local or Union County welfare assistance program, or any New Jersey State welfare program, including but not limited to the New Jersey Supplemental Nutritional Assistance Program (SNAP) or the New Jersey State Supplemental Security Income Program (SSI). Such customers must provide documentation proving that they participate in or are beneficiaries of such programs.

8.62.050 – Enforcement; Violations and Penalties

- A. The Township’s Zoning Officer or his/her designee has the responsibility for the 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 Retail Establishment that violates or fails to comply with any of the requirements of this Chapter shall receive an initial written warning notice.

C. If a Retail Establishment incurs subsequent violations of this Ordinance after the issuance of an initial written warning notice, the following penalties will be imposed and shall be payable by the owner or operator of the Retail Establishment:

- 1. a fine of \$100 for the first violation after the written warning notice is given;**
- 2. a fine of \$200 for the second violation after the written warning notice is given; and**
- 3. a fine not less than \$300 and not exceeding \$500 for the third and any subsequent violations after the written warning notice is given.**

D. A fine shall be imposed for each day during which a violation occurs.

Section 2. Nothing in this Ordinance is intended to create any requirement, power, or duty that is in conflict with any federal or state law.

Section 3. The provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid for any reason by any court of competent jurisdiction, such judgment shall be limited in its effect only to that portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.

Section 4. This Ordinance is not meant to repeal any provisions of the Township Code or any other ordinance other than those designated herein, and all ordinances or portions of ordinances which are inconsistent or in conflict with the provisions of this Ordinance are repealed only to the extent of such inconsistency or conflict.

Section 5. This Ordinance shall be presented to the Mayor for her approval and signature, which approval shall be granted or denied within ten days of receipt of same, pursuant to N.J.S.A. 40:69A-149.7. If the Mayor fails to return this Ordinance with either her approval or objection to same within ten days after it has been presented to her, then this Ordinance shall be deemed approved.

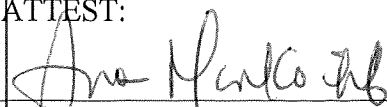
Section 6. This Ordinance shall take effect upon passage and publication according to law.

INTRODUCED the 21st day of January, 2020.

ADOPTED the 4th day of February, 2020.

By: 
Angie Devanney, Mayor

ATTEST:


Ana Minkoff, Township Clerk

**NOTICE OF
INTRODUCTION**

Ordinance -2020

An Ordinance of the Township of Berkeley Heights, County of Union, State of New Jersey, Amending and Supplementing Title 8 of *The Code of the Township of Berkeley Heights* (“HEALTH AND SAFETY”) to include a new chapter, Chapter 8.62, entitled “DISPOSABLE PLASTICS”

I, Ana Minkoff, Township Clerk of the Township of Berkeley Heights , do hereby certify that the foregoing Ordinance was introduced on First Reading at a meeting of the Township Council of the Township of Berkeley Heights, County of Union and State of New Jersey, on **January 21, 2020** and that said Ordinance shall be submitted for consideration and final passage at the Public Hearing to be held on **February 4, 2020** at **7:00** p.m. or as soon thereafter, as practical, same can be considered, at the Municipal Building, 29 Park Avenue, Berkeley Heights, NJ, at which time and place all persons interested therein or affected thereby will be given an opportunity to be heard concerning the same. During the week prior to and up to the time of Public Hearing, copies of said Ordinance will be available in the Municipal Clerk’s office in said Municipal Building, to the members of the general public who shall request the same.

**Ana Minkoff
Township Clerk**

ROLL CALL	AYE	NAY	ABSTAIN	ABSENT
BRAHIMAJ		✓		
COUTO	✓			
KINGSLEY	✓			
MEDEIROS	✓			
POAGE	✓			
YELLIN	✓			
TIE:				
MAYOR DEVANNEY				

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

NOTICE OF FINAL ADOPTION

**PUBLIC HEARING AND FINAL ADOPTION OF ORDINANCE
INTRODUCED ON JANUARY 21, 2020:**

**An Ordinance of the Township of Berkeley Heights, County of Union,
State of New Jersey, Amending and Supplementing Title 8 of *The Code of
the Township of Berkeley Heights* (“HEALTH AND SAFETY”) to include a
new chapter, Chapter 8.62, entitled “DISPOSABLE PLASTICS.”**

I, Ana Minkoff, Township Clerk of the Township of Berkeley Heights, County of Union, State of New Jersey, hereby certify that the above entitled Ordinance was adopted on final Passage by the Township Council of the Township of Berkeley Heights at its meeting held on February 4, 2020.

**Ana Minkoff,
Township Clerk
Township of Berkeley Heights**

ROLL CALL	AYE	NAY	ABSTAIN	ABSENT
BRAHIMAJ		✓		
COUTO	✓			
KINGSLEY	✓			
MEDEIROS	✓			
POAGE	✓			
YELLIN	✓			
TIE:				
MAYOR DEVANNEY				