

ORDINANCE

AN ORDINANCE AMENDING CHAPTER 20 (“PUBLIC HEALTH”), NEW ARTICLE XX (“SINGLE-USE PLASTIC PILOT PROGRAM”) OF THE OAK PARK VILLAGE CODE TO MAKE THE VILLAGE’S SINGLE-USE PLASTIC PROGRAM MANDATORY

WHEREAS, the Village of Oak Park (“Village”) as a home rule unit of local government as provided by Article VII, Section 6 of the Illinois Constitution of 1970 has the authority to exercise any power and perform any function pertaining to its government and affairs except as limited by Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, the UN has determined that global temperature is in significant jeopardy of rising by at least 1.5 degrees in the next 20 years; and

WHEREAS, the Village has determined that to discourage and pollution by single-use plastics due to commerce in the Village, it is necessary to regulate such use; and

WHEREAS, the Village has determined that it is desirable that villagers reduce their impact on the environment; and

WHEREAS, as a home rule unit, the Village of Oak Park’s powers shall be construed liberally as held by the Illinois Supreme Court in the case of *Scadron v. City of Des Plaines*, 153 Ill.2d 164 (1992); and

WHEREAS, this Ordinance is presumed constitutional and the burden of rebutting that strong presumption is on the party challenging the validity of the statute to clearly demonstrate a constitutional violation as held by the Illinois Supreme Court in the case of *Napleton v. Village of Hinsdale*, 229 Ill.2d 296, 306 (2008); and

WHEREAS, it is well-settled law in Illinois that the legislative judgment of the Village Board must be considered presumptively valid, and a court has a duty to uphold the constitutionality of an ordinance when reasonably possible, *Glenview State Bank v. Village of Deerfield*, 213 Ill.App.3d 747 (2nd Dist. 1992); and

WHEREAS, the Village Board finds that there is a compelling governmental interest in implementing reasonable regulations on the use of single use plastics within the Village and that such regulations are essential to discourage and decrease the use of single use plastic within the Village; and

WHEREAS, said regulations are in the best interest of the health, safety, and welfare of Village residents and these regulations reduce the adverse impacts of single use plastics on the environment and the Village;

WHEREAS, the Village Board has determined to make the Program mandatory for the restaurant establishments set forth herein; and

WHEREAS, other restaurants establishments not subject to this Ordinance that provide single-use plastics as defined in this Ordinance that wish to voluntarily meet the requirements of this Ordinance shall be eligible for marketing grants from the Village from the amounts remitted to the Village for waste stream diversion and litter reduction activities.

WHEREAS, Each year 22 million pounds of plastic enter the Great Lakes and plastic pollution dumped solely in Lake Michigan annually¹; and

¹ A.K. Baldwin, S.R. Corsi, S.A. Mason, Plastic Debris in 29 Great Lakes Tributaries: Relations to Watershed Attributes and Hydrology, *Env. Sci. Tech.*, 2016, <http://dx.doi.org/10.1021/acs.est.6b02917> and M.J. Hoffman, and E. Hittinger, Inventory and transport of plastic debris in the Laurentian Great Lakes, *Mar. Pollut. Bull.*, 2017, <https://doi.org/10.1016/j.marpolbul.2016.11.061>

WHEREAS, Only 9% of the plastic produced to date has been recycled, and annual recycling rates in the U.S. have stagnated at around 9% since 2012; and

WHEREAS, Plastic does not biodegrade but instead breaks down into smaller pieces that can turn into microplastic, which is becoming more prevalent in the Great Lakes and local waters and has been shown to enter the aquatic food chain; and

WHEREAS, Single-use plastics endanger local wildlife and human life that ingest plastic or microplastics, are consistently cited as top contributor to litter in local water ways and Great Lakes; and

WHEREAS, the Village of Oak Park desires to protect the integrity of the natural environment and wildlife from litter and pollution caused by plastic pollution

DEFINITIONS

PARTICIPATING RESTAURANT: Any lunchroom, café, or other establishment located in a permanent building for the accommodation of the public, equipped with a kitchen containing facilities and utensils for preparing and serving meals to the public, and outfitted with a public dining area. A restaurant does not include any area of a supermarket, department store, or other retail establishment beyond the kitchen and public dining area.

CONTAINER: Any foldable box or lid provided by a restaurant to a customer at the point of food sale, food pickup, or food delivery for the purpose of containing leftover food product.

SINGLE-USE PLASTIC UTENSIL, STRAW, STIRRER, OR CONTAINER: Any plastic utensil, stirrer, straw or container that is non-recyclable or non-compostable and provided by a restaurant to a customer at the point of food sale, food pickup, or food delivery.

NECESSARY SINGLE-USE PLASTIC UTENSIL, STIRRER, OR CONTAINER: Any plastic utensil, stirrer, or container that is explicitly requested by a customer to accommodate a need associated with food or beverage consumption where a recyclable or compostable option is not available or reasonable to be provided. A necessary single-use plastic utensil, stirrer, or container is not:

1. A plastic utensil, stirrer, or container that is provided without the customer's request;
2. A plastic utensil, stirrer, or container that is provided in a customer's take out bag on presumed request;
3. A plastic utensil, stirrer, or container provided at the point of sale at a seasonal event, such as a farmer's market, street fair, or yard sale, or by an occasional retailer.

CUSTOMER(S): Any person purchasing goods from a restaurant

DIRECTOR: Director means the Village's Chief Financial Officer.

AGGREGATE UTILIZATION OF SINGLE USE PLASTICS: The sum total by individual units, also considered "eaches," consumed by participating restaurants every three months and audited on the close of each business quarter.

RECYCLABLE UTENSIL, STRAW, STIRRER, OR CONTAINER: Any disposable utensil, stirrer, straw or container made of material that is known to be acceptable to contracted recyclers in Oak Park or other recyclers that are not currently contracted.

COMPOSTABLE UTENSIL, STRAW, STIRRER, OR CONTAINER: Any disposable utensil, stirrer, straw or container made of material that is known to be compostable to contracted disposal agents in Oak Park or other agents that are not currently contracted.

SINGLE-USE PLASTIC UTENSIL USE REGULATION:

- A. Participating restaurants shall train its employees and staff to ask if the patron needs a single-use **plastic utensil, stirrer, or container** prior to providing any single-use plastics.
- B. Participating restaurants shall provide single-use plastic **straws** upon request only.
- C. Participating restaurants must attempt to reduce its aggregate utilization of single-use plastics by more than 50% year-over-year.
- D. Participating restaurants are strongly encouraged to increase the use of recyclable and / or compostable utensils, stirrers, straws, or containers.
Participating restaurants must indicate to the Director on a quarterly basis the aggregate utilization of single use plastics consumed for each quarter.
- E. Participating restaurants are eligible for training support from the Village and Village partners, as available.

PERMITTED UTENSILS, STIRRERS, CONTAINERS:

Nothing in this article shall be construed to prohibit participating restaurants from using utensils, stirrers, straws or containers of any type that are using materials that are recyclable or compostable materials or that the customer brings to the store for the customer's own use.

PROHIBITED CONDUCT:

Participating restaurants shall not:

- A. File an incomplete, false, or fraudulent report to the Director;
- B. Neglect or refuse to keep complete and accurate records; or
- C. Refuse to allow the Director to inspect and audit the participating store's retail establishment's record; or
- D. Neglect or refuse to collect or remit the fee levied under this article.

Effective Date. This Ordinance shall be in full force and effect after its approval, passage and publication as provided by law on March 1, 2019.

PENALTIES:

Any participating restaurant that violates key provision (i.e., annual reduction of single use plastic by 50%) of this article shall be subject to:

- 1. A warning for the first offense
- 2. A fine of not less than \$500.00 per quarter for subsequent offense
- 3. Each quarter that a violation continues shall constitute a separate and distinct offense. In addition, the Village Manager may revoke or suspend a restaurant's business license if the

Village Manager determines the restaurant has failed to comply with the duties imposed under this article after notice and hearing. The suspension or revocation of a license shall not release or discharge the restaurant from its liability to pay the fee or from any other penalties authorized by this article.

Penalties collected from participating restaurants will be accumulated in a subsidy fund designated to support composting from restaurants, which the Village shall employ once the fund achieves \$25,000.