EAST COVENTRY TOWNSHIP

CHESTER COUNTY, PENNSYLVANIA

ORDINANCE NO. 2023-259

FOOD PROCESSING RESIDUAL APPLICATION ORDINANCE

AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF EAST COVENTRY TOWNSHIP, CHAPTER 10 ("HEALTH AND SAFETY") TO ADD A NEW PART 6 ENTITLED "FOOD PROCESSING RESIDUAL APPLICATION" TO IMPLEMENT REGULATIONS FOR LAND APPLICATION OF FOOD PROCESSING RESIDUAL (FPR) CONSISTENT WITH RULES AND REGULATIONS PROMULGATED BY THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION.

The Board of Supervisors of the Township of East Coventry does hereby **ENACT** and **ORDAIN** as follows:

SECTION I. - Amendment to Code

The Codified Ordinances of East Coventry Township, Chapter 10 ("Health and Safety") is hereby amended by adding new Part 6 entitled "Land Application of Food Processing Residual" as follows:

Part 6 Land Application of Food Processing Residual

Section 10-601 Purpose.

1. The purpose of this Part is to establish uniform standards for land application of food processing residual ("FPR"), as the term FPR is defined by the Pennsylvania Department of Environmental Protection ("PA DEP") in the Township. While the Township recognizes that PA DEP and the Courts of the Commonwealth have determined that land application of FPR is a "normal agricultural operation", the Township also recognizes that it has an obligation to protect public safety and to minimize the adverse effects of such land application of FPR through the standards set forth in the following provisions.

Section 10-602 Required Minimum Distances.

1. Unless otherwise agreed, in writing, by permission of the owner of the feature listed, the minimum setback of land application of FPR from the listed features is as follows:

Property line: 50 feet

Occupied buildings: 300 feet

Individual (private) water well: 300 feet

Public water well: 300 feet

Upgradient from a surface water source: 1,000 feet

Intermittent stream: 100 feet

Perennial streams 100 feet

Exceptional value wetlands as defined by PA DEP or the Environmental Protection Agency: 100 feet

Sinkhole: 100 feet

Sinkhole drainage area: 100 feet

Perimeter of pond or undrained depression: 25 feet

Bedrock outcrop: 25 feet

Section 10-603 Slopes.

1. Subject to compliance with all other provisions of this Part, land application of FPR is permitted on land having slopes of less than 15%.

2. Land application of FPR on land having slopes of greater than 15% but less than 20% is permitted on such slopes with well-established crop cover or adequate crop residue cover as required pursuant to PA DEP guidelines and regulations applicable to land application of FPR. Land application of FPR on slopes of 20% or more is discouraged.

3. Application of FPR on slopes of 20% to less than 25% is only permitted by subsurface injection approved by PA DEP.

4. Application of FPR on slopes of 25% or greater is prohibited.

5. For purposes of this Part, slopes shall be determined by the most current United States Geological Survey ("USGS") slope maps or actual topographical survey plan prepared and sealed by a surveyor professional licensed in the Commonwealth of Pennsylvania. In the event of a conflict between a USGS slope map and a sealed survey plan, the sealed survey plan will be used to determine slopes.

Section 10-604 Ground Water, Seasonal High-Water Table, Bedrock.

1. The regional groundwater depth under the site to which FPR will be applied must be greater than 4 feet.

a. For purposes of this Part, in the absence of actual measurements performed and certified by a licensed hydrogeologist, regional groundwater depth will be based upon USGS and Pennsylvania Geologic Survey.

b. In the event that regional groundwater depths applicable to a proposed FPR land application site are not available through USGS or Pennsylvania Geologic Survey, actual groundwater depths, measured and certified by a hydrogeologist must be provided.

2. The minimum seasonal-highwater table depth under a site to which FPR will be applied must be greater than 20 inches.

a. The seasonal-highwater table is determined by the presence of mottling as determined by a hydrogeologist or soil scientist.

b. If the FPRs to be applied are certified as FPRs which have been stabilized by a "Process that Significantly Reduces Pathogens" and a "Process that Further Reduces Pathogens" recognized as acceptable by PA DEP, the seasonal high-water table minimum depth may be reduced to 12 inches.

3. The minimum bedrock depth under a site to which FPR will be applied must be greater than 20 inches.

a. Bedrock depth must be determined by a hydrogeologist or soil scientist.

b. If the FPRs to be applied are certified as FPRs which have been stabilized by a "Process that Significantly Reduces Pathogens" and a "Process that Further Reduces Pathogens" recognized as acceptable by PA DEP, the bedrock minimum depth may be reduced to 12 inches.

Section 10-605 Quality, Sampling, Testing and Certification Prior to Application.

1. FPR for land application in the Township must meet the minimum quality standards for "food processing wastes used for agricultural purposes" required by PA DEP and Chapter 287 of Title 25 of the Pennsylvania Code as may be amended or restated from time to time.

2. FPR for land application in the Township must not contain any "hazardous waste" or "residual waste" as defined by Chapter 287 of Title 25 of the Pennsylvania Code, or any non-FPR waste.

3. The landowner of the land to which FPR will be applied must provide, at their option, one of the following to the Township: 1) prior to land application, the results of the Toxic Characteristics Leaching Procedure (TCLP) test, the American Society for Testing Materials (ASTM) water leaching test, or such other test acceptable to the Township on the FPR to be applied and a written certification, made under penalty of perjury, that said results are true, correct and

representative of the FPR to be applied; or, 2) at least 7 days prior to application, a sample of the FPR to be applied, which sample must be sufficient in form, substance and size for the Toxic Characteristics Leaching Procedure (TCLP) test, the American Society for Testing Materials (ASTM) water leaching test, or such other test acceptable to the Township. In the event FPR is stored on-site, in the alternative, the landowner may choose to provide the Township with access to stored FPR to conduct its own sampling, provided that such access is provided 10 days prior to application. Further, the landowner hereby authorizes the Township to use the sample to conduct testing of the FPR to determine, among other things, that the FPR does not contain substances that would, for example, classify the FPR as residual waste or hazardous waste under PA DEP regulations. In the event any test performed or test results obtained under this Section indicate that the FPR to be land applied contains any substance that would reclassify the FPR as residual waste or hazardous waste under PA DEP regulations, said reclassified FPR shall not be land applied in the Township.

4. The landowner of the land to which FPR are applied must provide the Township with annual access to the lands upon which FPR is applied so that the Township may take samples of soil. The landowner hereby authorizes the Township to use the sample to conduct soil chemistry testing to ensure that the land application of FPR is not introducing, for example, higher than acceptable levels of heavy metals or synthetic organics onto the land.

5. In the event the FPR to be land applied must be stabilized pursuant to this Part prior to application, the landowner of the land to which FPR will be applied must provide a certification acceptable to the Township that the FPRs have been stabilized by a "Process that Significantly Reduces Pathogens" and a "Process that Further Reduces Pathogens" recognized as acceptable by PA DEP, and a summary of the manner of stabilization.

Section 10-606. Violation and Penalties.

1. Any person who shall violate any provision of this Part 6 or who, being the owner of a lot, shall permit such violation to occur thereon, shall, upon conviction before a District Judge, be sentenced to pay a fine of not less $1,000.00 for each separate offense plus costs and attorney's fees incurred in the prosecution of such violation. Each day that FPR is land applied in violation of this Part 6 shall constitute a separate violation punishable by a separate fine or penalty. In addition to the penalty provisions herein, the Board of Supervisors may authorize institution of proceedings in equity to compel compliance with this Part and/or seek to enjoin temporarily or permanently the land application of FPR.

2. The Township, by allowing land application of FPR or taking any other action pursuant to this Part 6, does not waive, reduce, lessen, or impair the lawful police powers vested in the Township under applicable federal, state, and local laws and regulations.

Section 10-607. Compliance with Laws and Regulations.

1. This Part is intended to supplement and not supersede the laws of the Commonwealth or rules and regulations promulgated by PA DEP or any other agency having jurisdiction over and application of FPR which are more stringent than provisions hereof.

2. If a law of the Commonwealth of Pennsylvania, law of the Federal Government, holding of the Pennsylvania Supreme Court or holding of the United States Supreme Court determines that

land application of FPR is not a "normal agricultural operation" this ordinance shall null and void and automatically repealed.

SECTION II. – Severability

The provisions of this Ordinance are severable, and if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Council that this Ordinance would have been adopted even if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

SECTION III. – Failure to Enforce not a Waiver

The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

SECTION IV. – Effective Date

This Ordinance shall take effect and be in force from and after its approval as required by the law.

SECTION V. – Repealer

All other ordinances and resolutions or parts thereof insofar as they are inconsistent with this Ordinance are hereby repealed.

ORDAINED and **ENACTED** by the Board of Supervisors of East Coventry Township, Chester County, Pennsylvania, this 10th day of April, 2023.

EAST COVENTRY BOARD OF SUPERVISORS

By: _____
Ray Kolb, Chairman

Attest: _____
Eugene C. Briggs, Jr., Secretary

NOTICE

NOTICE is hereby given that the East Coventry Board of Supervisors, at its public meeting on April 10, 2023 at 7:00 p.m. at the East Coventry Township Building, 855 Ellis Woods Road, Pottstown, Pennsylvania 19465, will consider and could vote to adopt an ordinance amending the Code of Ordinances of East Coventry Township, Chapter 10 ("Health and Safety") to add a new Part 6 entitled "Food Processing Residual Application" to implement regulations for land application of food processing residual (FPR) consistent with rules and regulations promulgated by the Pennsylvania Department of Environmental Protection.

Copies of the proposed Ordinance are available for public inspection at the Township Offices, 855 Ellis Woods Road, Pottstown, Pennsylvania 19465 where a copy of the proposed ordinance may be obtained at a charge not greater than the cost thereof, the offices of the Pottstown Mercury, 307 Derstine Avenue, Lansdale, PA 19446 and the Chester County Law Library, Court House, West Chester, Pennsylvania, during normal business hours.

MARK A. HOSTERMAN, ESQUIRE
WISLER PEARLSTINE, LLP

Solicitor for the Township of East Coventry