

LEGISTAR #56836 - Body

DRAFTER'S ANALYSIS: This ordinance regulates the distribution of plastic beverage straws in the City of Madison. Under this ordinance, restaurants shall be prohibited from providing plastic beverage straws to dine-in customers unless the dine-in customer requests a plastic beverage straw. Under this ordinance, restaurants may still provide plastic beverage straws to take-out customers, including those using a drive-thru window.

The City has the authority under Wis. Stat § 62.11(5) to enact an ordinance to prohibit or regulate the use of plastic straws, and that authority is not withdrawn by Wis. Stat § 66.0419, which prohibits municipalities from regulating the use of containers, specifically plastic grocery bags, not plastic straws. The two operative phrases of Wis. Stat. § 66.0419 are: "a bag, cup, bottle, can, or other packaging that is designed to be reusable or single-use" and "that is designed for transporting or protecting merchandise, food, or beverages from a food service or retail facility." The Wisconsin Supreme Court defines terms not statutorily defined by referring to dictionary definitions, and dictionary definitions for these terms do not include straws. Accordingly, a straw is not packaging and a straw is not designed for transporting or protecting liquids from a food service or retail facility, and thus may be regulated by local units of government.

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 23.61 entitled "Distribution of Plastic Beverage Straws Regulated" of the Madison General Ordinances is created to read as follows:

"23.61 DISTRIBUTION OF PLASTIC BEVERAGE STRAWS REGULATED.

- (1) Purpose. Research has shown that single-use plastic products are harmful to the environment because, if not recycled, these products often end up in our natural environment, including in oceans, lakes, and rivers where they pose serious threats to marine life. For example, scientists estimate that each year approximately 1 million seabirds and 100,000 marine animals die from ingesting plastic.

One type of single-use plastic product is the plastic beverage straw. Research shows that Americans use almost 500 million plastic beverage straws per day, often for no more than 10 minutes at a time. Moreover, the single-use plastic beverage straw is one single-use plastic product that is particularly harmful to the environment because most cities, like Madison, cannot recycle plastic beverage straws due to their small size and unusual shape.

Thus, reducing reliance on plastic beverage straws is one way Madison can help ensure that these products, which are used briefly but can take nearly 200 years to decompose, do not unnecessarily harm the environment.

- (2) Restrictions. It shall be unlawful for a restaurant to provide a dine-in customer with a plastic beverage straw unless the dine-in customer requests a plastic beverage straw. This prohibition shall not prohibit a restaurant from providing a plastic beverage straw to a take-out customer.

- (3) Definitions.

Customer. An individual, business, or organization.

Dine-In Customer. A customer that orders and consumes food or beverage items on a restaurant's premises.

Plastic Beverage Straw. A tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, for transferring a beverage or semifluid from its container to the mouth of the drinker.

Restaurant. The term "restaurant" shall mean restaurant, coffee shop, cafeteria, short order cafe, luncheonette, tavern, sandwich stand, and all other eating and drinking establishments. Kitchens or other places in which meals, lunches or sandwiches are prepared for sale elsewhere, and any conveyance or place from which meals, lunches, or sandwiches are sold are termed "restaurant" for the purpose of this ordinance. The term

"restaurant" does not apply to churches, religious and fraternal organizations which occasionally prepare and serve or sell meals or lunches to transients or the general public.

Single-Use. A product designed to be only used one time in the same form by the original user.

Take-Out Customer. A customer that purchases food or beverage items at a restaurant and does not intend to eat on the restaurant's premises, including customers obtaining food or beverages at a drive-thru window.

- (4) Penalty. Any restaurant violating any provision of this ordinance shall be subject to a forfeiture of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000)."

2. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by creating therein the following:

<u>"Offense</u>	<u>Ord. No./Adopted Statute No.</u>	<u>Deposit</u>
Provide dine-in customer with plastic straw."	23.61	\$200, 1 st \$500, 2 nd \$750, 3 rd & sub."

EDITOR'S NOTE: A new forfeiture range must be approved by the Municipal Judge prior to adoption. This revised range has been so approved.