

**LEGISTAR 56836 – 3<sup>RD</sup> SUBSTITUTE**

DRAFTER'S ANALYSIS: Routinely, restaurants prepare drinks for dine-in customers and automatically put a plastic straw or plastic stir stick in the drink. Often, dine-in customers do not actually use the straw or stir stick, which, having already been placed in the drink, then must go to waste. The purpose of this ordinance is therefore to prevent this "involuntary" use of straws and stir sticks by prohibiting restaurants from preparing drinks with plastic straws or stir sticks for dine-in customers unless the dine-in customer expresses a desire to have a plastic straw or stir stick.

This ordinance is not meant discourage restaurants from having straws on site for customers who may wish to use them, including specifically for individuals with disabilities who may depend on straws to consume a beverage. To that end, this substitute clarifies that this ordinance does not prohibit restaurant staff from asking if dine-in customers want a plastic straw or stir stick or from leaving those items out for dine-in customers to take voluntarily. This substitute also reduces the fine for violations of this ordinance. Finally, this substitute delays the effective date of this ordinance to three-months after the enactment date in order to give restaurants time to implement any changes that may be required by the ordinance.

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 Stat § 62.11(5) to enact an ordinance to prohibit or regulate the use of plastic straws, and that authority is not withdrawn by Wis.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.

This third substitute was necessary to incorporate changes requested by the Disability Rights Commission.

This ordinance shall take effect three months from the date of enactment.

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

1. Section 23.62 entitled "Distribution of Plastic Beverage Straws Regulated" of the Madison General Ordinances is created to read as follows:

**"23.62 DISTRIBUTION OF PLASTIC BEVERAGE STRAWS AND STIR STICKS 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 the 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.

Two types of single-use plastic product are the plastic beverage straw and plastic stir stick. 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. Similarly, millions more beverages are prepared with plastic stir sticks which, if used at all, are used for even less time. Plastic stir sticks are also difficult to recycle.

Thus, reducing reliance on plastic beverage straws and stir sticks 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.

The City also recognizes the importance of balancing the purpose of this ordinance with the needs of individuals with disabilities who may depend on plastic straws to consume beverages. This ordinance therefore encourages restaurants to have straws available for those customers and does not prohibit restaurants from providing plastic straws to customers who request them.

- (2) Restrictions. It shall be unlawful for a restaurant to prepare a drink with a plastic straw or plastic stir stick for a dine-in customer unless the restaurant asks the dine-in customer if they want a plastic straw or stir stick. This ordinance does not prohibit a restaurant from providing a plastic beverage straw or plastic stir stick to a take-out customer or making plastic straws or plastic stir sticks available for dine-in customers to take voluntarily. This ordinance also does not prohibit the restaurant from providing a straw upon a dine-in customer's request. Finally, this ordinance does not prohibit restaurants from preparing drinks with straws or stir sticks made from materials other than plastic.

- (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.

Plastic Stir Stick. A stick made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, for stirring a beverage semifluid in its container.

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 twenty-five dollars (\$25) nor more than one hundred dollars (\$100)."

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."	23.62	\$25, 1 <sup>st</sup> \$50, 2 <sup>nd</sup> \$100, 3 <sup>rd</sup> &
sub."		

3. This ordinance shall take effect three months from the date of enactment.

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

