



Legislation Text

File #: 56836, Version: 4

**Fiscal Note**

The monetary penalty for a restaurant violating any provision of this proposed ordinance will be a fine of \$25 for a first-time offense.

**Title**

3rd SUBSTITUTE Creating Section 23.62 and amending Section 1.08(3)(a) of the Madison General Ordinances to regulate the distribution of plastic straws and plastic stir sticks in the City of Madison and establish a bail deposit for violation thereof.

**Body**

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 Stat § 62.11(5) to enact an ordinance to prohibit or regulate the use of plastic straws, and that authority is not withdrawn by Wis.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

Please see "3rd Substitute" in Attachments.