

TO: BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee recommends adoption of “A LOCAL LAW amending the Laws of Westchester County by adding Chapter 542 regarding single-use foodware, beverage stirrers, and splash sticks.”

Your Committee understands that plastic utensils, stirrers, splash sticks, and condiment packets—among other single-use foodware items—are prevalent in Westchester County and around the world. According to a 2018 *Nature Magazine* article, globally, more than 320 million tons of plastic are consumed every year, and the use of plastics has continued to expand. In 2019, *National Geographic* reported that plastic production has increased exponentially, from 2.3 million tons in 1950, to 448 million tons in 2015; production will likely double by the year 2050. The manufacture of these plastics, which are made of petroleum and other fossil fuels, contributes to climate change and pollution.

Your Committee acknowledges that with the ubiquitous use of plastics and other disposable single-use items, comes staggering waste. People in the United States produce more plastic waste than in any other nation—an average of 231 pounds of plastic per year, according to a 2020 *Forbes* article. As for plastic utensils, specifically, a 2020 *Forbes* piece explained, “[s]ome estimates put the number of individual plastic utensils wasted at 40 billion per year in the United States alone. After just one single use, most of them are thrown out and end up in landfills and in our waterways.”

Your committee is aware that single-use foodware items, made both from plastics and from other types of materials, are commonly littered and thrown-away. Contaminated plastic utensils in particular generally cannot be recycled, and *National Geographic* reported in 2019 that billions of plastic forks, knives, and spoons are discarded every year. These plastic utensils can take centuries to break down, while they work their way into the environment. This is true of all plastics: according to a 2022 *New York Times* article, only about 9 percent of all plastics ever manufactured have been recycled, while nearly 80 percent have ended up in landfills, dumps, or the environment; the remainder are and have been burned, emitting pollutants that contribute to global warming. When plastic breaks down into smaller and smaller pieces, it harms sea life, wildlife, and threatens human health.

Your Committee recognizes that this Local Law, in making single-use foodware items and condiment packets available upon request, and in banning certain plastic items (splash sticks and stirrers) altogether, will eliminate some of the plastic consumption and pollution in the County. The law may also raise awareness about the simple decisions County residents can make to reduce their waste. Moreover, as *Westchester Magazine* explained in 2019, many businesses in Westchester County have already begun to take steps towards reducing this type of rubbish—for instance, some have stopped automatically providing single-use utensils with to-go orders, while others no longer offer plastic straws unless they are specifically requested. Notably, takeout and delivery from restaurants increased dramatically during the pandemic, and those orders often arrived with single-use foodware items that were not necessarily needed or desired by people eating at home. This trend coincided with single use-foodware items becoming more expensive for businesses. In addition to reducing waste, this proposed Local Law will also spare food

providers the financial burdens associated with providing unnecessary utensils, napkins, and condiment packets for every order they receive.

Your Committee notes that the intent of this Local Law is to maintain a healthful environment, and to benefit the health, safety, and welfare of County residents. The Local Law prohibits food service establishments and retail food stores from providing single-use foodware items, as defined—including, but not limited to, forks, knives, spoons, chopsticks, cup sleeves, beverage lids—or condiment packets to any dine-in or take-away customers, either directly or through a food delivery service, unless the items are specifically requested. The law would also prohibit food service establishments and retail food store cafes from providing any plastic beverage stirrers or plastic splash sticks. Finally, the law would ban, under most circumstances, foodware or condiment packets that are packaged together in a way that precludes a customer from selecting only the type of single-use foodware item or condiment packet that the customer wants—for instance, forks, knives, spoons, napkins, and salt and pepper packets that are bundled together in plastic wrap.

To further compliance, the Local Law provides for ordering option requirements, such that a customer must be allowed to request any applicable single-use foodware items or condiment packets when ordering food. Moreover, food service establishments and retail food stores will be responsible for coordinating with any third-party food delivery service as necessary in order to prompt the customer to affirmatively request the single-use foodware items or condiment packets that they want. Food service establishments and retail food stores, as applicable, must also post at least one sign advising clientele that single-use foodware items and condiment packets are

available upon request. This Local Law will be enforced by the County Department of Health and the County Department of Environmental Facilities.

Your Committee is informed that the proposed project does not meet the definition of an action under New York State Environmental Quality Review Act (“SEQRA”) and its implementing regulations, 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning, dated January 12, 2023, which is on file with the Clerk of the Board of Legislators. Your Committee concurs in this conclusion.

In light of all of the foregoing, your Committee recommends passage of this Local Law.

Dated: _____, 2023
White Plains, New York

COMMITTEE ON

LOCAL LAW INTRO. NO. - 2023

A LOCAL LAW amending the Laws of Westchester County by adding Chapter 542 regarding single-use foodware, beverage stirrers, and splash sticks.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. A new Chapter 542 is hereby added to the Laws of Westchester to read as follows:

CHAPTER 542

Single-use Foodware Law

Sec. 542.01. Short title.

Sec. 542.11. Definitions.

Sec. 542.21. Restrictions.

Sec. 542.31. Ordering Option Requirements.

Sec. 542.41. Posting of Signs.

Sec. 542.51. Exemptions.

Sec. 542.61. Enforcement and penalties.

Sec. 542.71. Construction.

Sec. 542.81. Severability.

Sec. 542.01. Short title.

This title shall be known as and may be cited as the “Single-use Foodware Law.”

Sec. 542.11. Definitions.

1. “Beverage splash stick” shall mean a device primarily intended to be used to keep heat and liquid from escaping a lidded cup.
2. “Beverage stirrer” shall mean a device primarily intended to be used by a person for the purpose of stirring beverages.

3. “Condiment packet” shall mean an individual single-use container, sealed by the manufacturer or a food service establishment or retail food store, containing a sauce or other substance used to enhance the flavor of food, which may include, but need not be limited to, mustard, ketchup, mayonnaise, soy sauce, hot sauce, salt, pepper, and salad dressing.
4. “Dine-in” shall mean food or beverage provided by a food service establishment or retail food store to be consumed on the premises of such food service establishment or retail food store.
5. “Electronic orders” shall mean food or beverage orders made through the website, mobile phone application, or other digital platform of a food service establishment, retail food store, or third-party food delivery service.
6. “Food service establishment” shall mean an establishment permitted by the Westchester County Department of Health, unless otherwise noted, including: any fixed or mobile restaurant; drive-in; coffee shop; cafeteria; short-order cafe; delicatessen (permitted by the County Department of Health or the New York State Department of Agriculture or Markets); luncheonette; grill; tearoom; sandwich shop; soda fountain; bar; tavern; cocktail lounge; night club; roadside stand; take-out prepared food place; retail bakery; industrial feeding establishment; private, public or nonprofit organization or institution, including: schools; nursing homes; day care centers; hospitals (permitted by the New York State Department of Health); religious and fraternal organizations routinely serving food; catering kitchens; commissary or similar places in which food is prepared for sale or for service on the premises or elsewhere; and any other establishment or operation where food is served or provided for the public, with or without charge.

7. “Plastic” shall mean a synthetic material made from organic polymers, including, but not limited to, polypropylene and polystyrene, that can be molded into shape while soft, and then set into a rigid or slightly elastic form.
8. “Retail food store” shall mean a business, permitted by the New York State Department of Agriculture and Markets, that sells food or food products for off-site consumption, such as a grocery store, and which may serve prepared foods or beverages to customers for on- or off-site consumption, for instance, through counter service or through an in-store café or eatery.
9. “Self-service station” shall mean a designated area or mechanical dispenser in a food service establishment or retail food store where customers may help themselves to single-use foodware or condiment packets.
10. “Single-use foodware” shall mean any eating utensil or other item used as part of food or beverage service that is designed and intended by the manufacturer for only one use before being discarded, including, but not limited to, forks, spoons, sporks, knives, chopsticks, beverage straws, cocktail sticks, toothpicks, napkins, wet-wipes, cup sleeves, beverage trays, beverage lids, empty plates, empty bowls, and empty cups. For the purposes of this Chapter, “single-use foodware” exempts, and shall not include: (a) a beverage stirrer or beverage splash stick, as defined in this Section; or (b) containers actively holding food or beverages for dine-in or take-away customers, such as plates, bowls, and cups.
11. “Take-away” shall mean food or beverage provided by a food service establishment or retail food store to be consumed off the premises of such food service establishment or retail food store, including same-day delivery or same-day pickup of food and beverages from food service establishments or retail food stores.

12. “Third-party food delivery service” shall mean any website, mobile application, or other internet service that offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from food service establishments or retail food stores located in the County that are owned and operated by different persons.

Sec. 542.21. Restrictions.

1. No food service establishment or retail food store shall provide single-use foodware or condiment packets to any dine-in or take-away customer, whether directly to such customer or through a third-party food delivery service, unless the customer requests such single-use foodware or condiment packets.
2. No food service establishment or retail food store café shall provide any single-use plastic beverage stirrer or single-use plastic beverage splash stick to any dine-in or take-away customer, whether directly to such customer or through a third-party food delivery service.
3. No food service establishment or retail food store on-premises eatery or counter service shall provide, in a self-service station or otherwise, single-use foodware or condiment packets that are bundled or packaged in a manner that prohibits a customer from taking only the type of single-use foodware item or condiment packet desired.

Sec. 542.31. Ordering Option Requirements.

1. Food service establishments that supply single-use foodware or condiment packets to customers shall provide options to allow a customer to affirmatively request applicable single-use foodware or condiment packets when ordering dine-in or take-out food and

beverages across all ordering or point of sale platforms, including through in-person, telephone, and electronic orders.

2. The food service establishment shall coordinate with any third-party food delivery service, as necessary, to prompt the customer to affirmatively request single-use foodware or condiment packets as applicable. The default selected option for electronic orders shall be that no single-use foodware or condiment packets are requested.

Sec. 542.41. Posting of Signs.

1. Each food service establishment that provides single-use foodware and/or condiment packets shall post at least one sign on its premises meeting the requirements of this Section.
2. Such sign shall be posted in a conspicuous area on the premises in a manner that is clearly visible to customers approaching a point of service.
3. The sign shall state as follows (except that items listed in the following that are not offered by the food service establishment shall not be included in the sign): “SINGLE-USE FOODWARE ITEMS SUCH AS PLASTIC STRAWS, UTENSILS, AND CONDIMENT PACKETS ARE AVAILABLE UPON REQUEST.”
4. The sign shall be at least two inches by seven inches, and text on the sign shall be no smaller than 21-point font size and in a contrasting color to the background.
5. The sign shall be available for inspection at all times by the County Department of Health and the County Department of Environmental Facilities.
6. The Commissioner of the County Department of Health, in consultation with the Commissioner of the County Department of Environmental Facilities, is authorized to

design, create, and make available, through a website download or otherwise, signs that conform to the requirements of this Section.

Sec. 542.51. Exemptions.

The following situations are permitted under this Chapter and shall not constitute a violation of the Sec. 542.21 restrictions, or the Sec. 542.31 or Sec. 542.41 requirements:

1. Food service establishments with counter service may allow customers to access a self-service station for single-use foodware and/or condiment packets, provided that such single-use foodware and/or condiment packets are not bundled or packaged in a manner that prohibits a customer from taking only the type of single-use foodware item or condiment packet desired.
2. For take-away orders, food service establishments and/or third-party food delivery services may choose to include specific single-use foodware, such as beverage lids and beverage trays, in order to prevent spills and ensure safety.
3. Food service establishments may provide single-use foodware or condiment packets that are prepackaged with or attached to any food or beverage products by the manufacturer prior to receipt by the food service establishment (for example, plastic straws attached to juice boxes, or a separate plastic container of dressing included within a larger salad container).
4. Food service establishments may provide single-use foodware or condiment packets with free or reduced-price meals as part of a charitable program or donation, including, without limitation, free or reduced-price meals provided by school systems, homeless shelters, and programs that deliver meals to the elderly.

5. Food service establishments may provide single-use foodware items or condiment packets pursuant to an order of the Commissioner of the County Department of Health, or pursuant to a public health emergency declared by the New York State Governor, New York State Commissioner of Health, County Executive, County Board of Health, or any other authorized federal, state, or local official.
6. Hospitals, health-care facilities, and congregate care facilities (including, for the purposes of this Section, nursing homes, assisted living facilities, adult day cares, hospice facilities, rehabilitation facilities, correctional facilities, jails, juvenile justice facilities, and residential treatment centers) may provide single-use foodware or condiment packets, including those that are bundled or packaged together, to their patients and/or residents.

Sec. 542.61. Enforcement and Penalties.

1. For food service establishments that are permitted by the County Department of Health under the County Sanitary Code or the New York State Sanitary Code, the County Board of Health is authorized to enforce the provisions of this Chapter 542 in the same manner that it enforces the provisions of Chapter 873 of the Laws of Westchester County (i.e., the Westchester County Sanitary Code).
2. For retail food stores (permitted by the New York State Department of Agriculture and Markets) and food service establishments that are not permitted by the County Department of Health, including, but not limited to, food service establishments within hospitals (permitted by the New York State Department of Health) and delicatessens with food service that accounts for less than 50% of sales (permitted by the New York State Department of Agriculture and Markets), the Department of Environmental Facilities is authorized to enforce the provisions of this Chapter 542 in the same manner that it enforces

the provisions of Chapter 825 of the Laws of Westchester County (i.e., the Source Separation Law).

3. Any food service establishment that violates any provision of Section 542.21, 542.31, or 542.41 of this Chapter may be subject to a civil penalty. Such penalty shall be in the amount of one hundred dollars (\$100) for the first violation, two hundred dollars (\$200) for the second violation committed on a different day within a period of twelve (12) months, and four hundred dollars (\$400) for the third and each subsequent violation committed on different days within a period of twelve (12) months, except that neither the Westchester County Board of Health, nor the Department of Environmental Facilities shall issue a notice of violation, but shall issue a warning and provide a copy of this Local Law, for any violation that occurs within the first six months of the effective date of this Local Law. Notwithstanding the foregoing, no single incident of non-compliance shall be subject to violation from more than one Department of the County of Westchester; however, violations issued by one Department of the County of Westchester shall be considered in the determination of the number of total violations received by a food service establishment or retail food store.
4. No civil penalty shall be imposed as provided for herein unless the alleged violator has received notice of the violation and has had an opportunity to be heard.

Sec. 542.71. Construction.

No provision of this Chapter shall be construed or interpreted to limit or frustrate a food service establishment's or retail food store's lawful compliance with the New York State Sanitary Code, including 10 N.Y.C.R.R. § 14-1.97, or the Westchester County Sanitary Code, Chapter 873 of the Laws of Westchester County.

Sec. 542.81. Severability.

If any clause, sentence, paragraph, section, or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 2.

This Local Law shall take effect one-hundred-eighty (180) days after adoption.