

Legislation Meeting Agenda



Committee Chair: Colin Smith

800 Michaelian Office Bldg.
148 Martine Avenue, 8th Floor
White Plains, NY 10601
www.westchesterlegislators.com

Tuesday, February 21, 2023

2:30 PM

Committee Room

CALL TO ORDER

Please note: Meetings of the Board of Legislators and its committees are held at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601, and remotely via the WebEx video conferencing system. Legislators may participate in person or via Webex. Members of the public may attend meetings in person at any of its locations, or view it online on the Westchester County Legislature's website: <https://westchestercountyny.legistar.com/> This website also provides links to materials for all matters to be discussed at a given meeting.

Chairwoman Catherine Borgia will be participating remotely from Clear View School and Day Treatment Center, 480 Albany Post Road, Briarcliff, NY, 10510

Legislator Colin Smith will be participating remotely from 1132 Main Street, Suite 1, Peekskill, NY 10566

Joint with the Committee on Environment, Energy and Climate

MINUTES APPROVAL

February 10, 2023 at 3:00 PM Minutes

I. ITEMS FOR DISCUSSION

[2022-523](#)

LEGISLATORS PIERCE, BARR, WOODSON-SAMUELS, PARKER, MAHER, ALVARADO, BORGIA AND WILLIAMS JOHNSON - LL - Single Use Foodware

A LOCAL LAW amending the Laws of Westchester County be adding Chapter 541 regarding single-use foodware, beverage stirrers, splash sticks and reusable cups.

COMMITTEE REFERRAL: COMMITTEES ON LEGISLATION AND ENVIRONMENT, ENERGY & CLIMATE

Guests: Department of Law - Shawn Macleod, Senior Assistant County Attorney; Department of Health - Christopher Ericson, Deputy Commissioner

II. OTHER BUSINESS

III. RECEIVE & FILE

[2023-50](#)

**CLERK OF THE BOARD - Independent Office of Assigned Counsel
2022 Annual Report**

Forwarded by the Clerk of the Board, the 2022 Annual Report for the Independent Office of Assigned Counsel.

COMMITTEE REFERRAL: COMMITTEE ON LEGISLATION

ADJOURNMENT

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

SCM 02/03/2023

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 have the same meaning as provided in Section 873.420.1(1)(c) of the Laws of Westchester County. The term does not include retail food stores, as defined in this Chapter.
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 have the same meaning as provided in Section 500(1)(b) of the New York State Agriculture and Markets Law. The term does not include food service establishments, as defined in this Chapter.
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 have the same meaning as provided in Section 685.01(6) of the Laws of Westchester County.

Sec. 542.21. Restrictions.

Subject to the exemptions set forth in Section 542.51 of this Chapter:

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 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,

except that retail food stores may sell packages or boxes of single-use plastic beverage stirrers or single-use plastic beverage splash sticks to their customers.

3. Notwithstanding requests for single-use foodware or condiment packets by any dine-in or take away customer, no food service establishment or retail food store 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 dine-in or take-away 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 or retail food stores 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 or retail food store 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 or retail food store 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 or retail food store 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 or retail food stores 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 or retail food stores 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 or retail food stores 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 or retail food store such as plastic straws attached to juice boxes, or a separate plastic container of dressing included within a larger salad container, or any other similar prepackaged item.
4. Food service establishments or retail food stores 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.
5. Food service establishments or retail food stores 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 disaster emergency declared by the New York State Governor, a local state of emergency declared by the County Executive, a public health emergency declared by the County Department of Health, or a public health emergency declared by 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 and food service establishments that are not permitted or licensed by the County Department of Health, the County 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.
3. Any food service establishment or retail food store 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 County 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, nor the ability of the County Department of Health to enforce, 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.

SCM-02/17/2023

INDEPENDENT OFFICE OF ASSIGNED COUNSEL

Annual Report for 2022

Submitted by the Board of Directors of the Independent Office of Assigned
Counsel

Wendy Weathers, Esq. Chair

Overview of the Office

The Independent Office of Assigned Counsel is Westchester County's largest provider of mandated representation as defined by County Law Article 722, offering high quality legal representation by approximately 280 independent lawyers in private practice to low income people with cases in the Criminal and Family Courts of the county as well as criminal and family law appeals and matters related to parole violations, revocations and appeals.

The office was created and operates pursuant to Westchester County Law Chapter 186, passed unanimously by the County Board of Legislators and signed into law by County Executive George Latimer in 2021. It is governed by a Board of Directors comprised of members selected in accordance with the law. Oversight of this office is also provided by the New York State Office of Indigent Legal Services (ILS).

Board of Directors Summary

Following establishment of the Board of Directors, its members studied issues relating to the administration of an assigned counsel panel. There were meetings with officials from ILS, the Legal Aid Society of Westchester County (LASW)—the long-time panel administrator replaced by this office, administrators from other counties in the state and heads of county departments that interface with the administration of the panel.

In June, 2022, the Board elected Wendy Marie Weathers, Esq. as its Chair. The Board also created a Hiring Subcommittee, worked with County Human Resources (HR) to create a job description to attract candidates with the skills and experience necessary for the Administrator and HR then determined a broad range of places to post the job description. The Hiring Subcommittee conducted numerous interviews and upon their conclusion, made a recommendation to the Board and to the County Executive. After the candidate was approved by both, the Board of Legislators unanimously approved the appointment of the Administrator.

The Board of Directors holds monthly public meetings during which time the Administrator reports to the Board and takes direction from directors.

Administrator's Summary

Below is a summary of the anticipated and unanticipated issues and hurdles as well as the definitive progress made since the OAC assumed responsibility for the administration of the assigned counsel panel on September 30, 2022.

Assumption of Responsibility on September 30, 2022

Prior to the OAC's assumption of responsibility for the administration of the assigned counsel panel, the County gave notice of termination to the Legal Aid Society (LAS) at least 30 days in advance. During this transition phase, Chair Weathers and the Administrator met with officials from the Legal Aid Society to obtain relevant data and other information, as well as officials from Indigent Legal Services and other county's Assigned Counsel Administrators.

Office Space

A lease was signed for approximately 2000 square feet of office space at 235 Main Street in White Plains. Renovations to the space, including upgrades for technology, are to be completed prior to the move in date, projected to be in early 2023.

Hiring

A search for the Deputy Administrator was conducted and, with the assistance of and consultation by the Hiring Subcommittee, a Deputy Administrator was hired.

After exhausting all search options to attract candidates for the two administrative support positions, two full-time staff members were hired, primarily to review vouchers submitted by attorneys and other service providers for payment by the Finance Department.

Administrator's Assessment of Program Status

During the transition phase, the Board Chair and the Administrator met with officials from LAS, ILS and the County. Information, particularly budget information, was sought from LAS; however, receipt was delayed, resulting in delays in assessing the budgetary needs and capacity of the OAC in the 4th Quarter of 2022 and into 2023.

On September 30, 2022, LAS transferred approximately 200 signed vouchers for payment and approximately the same number of assignment notices requiring creation of a blank voucher (a condition precedent to billing) to the OAC. The OAC also purchased the license to a case management system (CMS) to create vouchers, obtain and store data and have the capacity to generate reports based on the data.

As the Quarter progressed, several operational issues, including previous service gaps, emerged. They included the need to manually set up the vast majority of the approximately 280 attorneys in the (CMS) as they had no prior access to it, the lack of information recorded in the system, the failure to track the status of signed vouchers, the high volume of old, often closed cases for which no voucher had been generated, preventing the attorney or other service provider from submitting a bill, and the high number of pre-OAC vouchers rejected by the Finance Department due to provider error into the end of the Quarter.

Notwithstanding these complications, during the Quarter, the OAC has been planning a transition to a partial digital voucher system in 2023 that will facilitate payment to providers and provide greater insight into billing practices and quality of representation. As well, the OAC applied for and was awarded a grant from ILS that will provide resources to individuals facing actual or potential Family Court Act Abuse, Neglect and Termination of Parental Rights cases and their attorneys, has forged a partnership with the Osborne Association for the preparation of mitigation reports in criminal cases, and has applied for stipends to panel attorneys to support weekend arraignments, parole recognizance hearings and Raise the Age arraignments.

OAC Priorities

The following priorities guide the office's development into 2023 and beyond:

1. Service to providers
 - a. Responding to inquiries immediately
 - b. Transparency
 - c. Regular communication with panel members
 - d. Customer service oriented approach
 - e. Assisting attorneys to correct ministerial errors and miscalculations to facilitate prompt payment
2. Development of a paperless payment system
 - a. Reduces billing errors
 - b. Tracks billing practices
 - c. Tracks quality of representation metrics
 - d. Provides transparency and accountability allowing service providers to be updated on the status of their bills
3. Client access to counsel
 - a. Providing immediate access to interpreters with plans to expand services in 2023
 - b. Obtaining attorney access to Securus Jail video conferencing at no cost to attorneys
 - c. Grant funding to provide pre-petition representation to parents in Family Court Article 10 Abuse, Neglect and Termination of Parental Rights cases
4. Quality Enhancement Through Resources and Support for Attorneys
 - a. Investigators
 - b. Access to online legal research search engine for all panel attorneys
 - c. Access to Westchester Records through County Clerk's Office at no cost to attorney
 - d. Stipends for attorneys on special duty
 - i. representation at weekend arraignments
 - ii. representation at Raise the Age arraignments when needed
 - iii. representation at parolee Recognizance Hearings

Case Volume and Attorney Caseload

Due to the absence of data from the prior provider, the OAC cannot provide reliable data regarding case volume and attorney caseload. Moreover, due to service gaps by the prior provider, the OAC has been opening cases, focusing on providing vouchers for cases that were not opened by the prior provider from as far back as 2018, thereby calling into question the accuracy of past case numbers and delaying the opening of cases from Quarter 4. The impact of this prior service gap is projected to continue into 2023. OAC staff is looking at ways to streamline processes to address this issue.

Budget

The OAC submitted a budget proposal to Westchester County that was approved as part of the Westchester County 2023 Operating Budget, that shows a minimal impact to tax levy. Given limitations in forecasting the needs of a new office, it may be necessary to request amendments to the 2023 budget during the year. The office also submitted funding requests under ILS's

Distribution 13 three-year funding period to support the work of both criminal and family court practitioners and clients and a one-year budget under the Hurrell-Haring Quality Enhancement Grant for funding exclusively for criminal defense. Both budgets contain a mixture of staffing requests and funding for resources, including such things as investigators, interpreters and experts as well as funding for training, a mentor program and a Second Chair program.

Additionally, as noted above, the OAC was awarded a grant to enhance the quality of Parental Representation and provide funding for early access to parental representation in pre-petition Abuse, Neglect and Termination of Parental Rights cases. Some of those services are to benefit clients represented by Legal Services of the Hudson Valley. Also during the Quarter, the office applied for a grant to support attorney representation at weekend criminal arraignments.

Conclusion

In its first Quarter of operation, with oversight from the Board of Directors and ILS and tremendous assistance from numerous county departments, OAC staff has worked hard to identify needed resources to enhance representation and provide training, funding and support for attorneys to do their finest work. The office is also focusing on ensuring early access to counsel by those in need of representation without the financial means to retain counsel.

While staff has been hampered by the pressing need to address widespread service gaps preceding OAC's assumption of responsibility that affected attorneys and caused payment delays, plans are nearing completion to transition to a partial digital payment system by the end of the Second Quarter of 2023 that will significantly reduce billing errors and track billing practices and quality of representation while allowing providers to see the status of their bills.

Plans for 2023 include implementation of the funding initiatives outlined above as well as the implementation of a digital payment system, setting performance standards, recruitment planning and the development of a robust training program.