



Committee: Economic Matters
Testimony on: HB 135 “Environment –Single-Use Plastics – Restrictions”
Position: Support with Amendments
Hearing Date: February 2, 2022

The Maryland Sierra Club and Plastic Free QAC support HB 135, which aims to reduce single-use plastic waste and litter. It will also save businesses money. The bill prohibits the provision of straws, stirrers, lid plugs, stoppers, condiment packets, and utensils by food service businesses unless requested by the customer or accepted by a customer after an offer. However, several features of the bill reduce its effectiveness. We request amendments to ensure its benefits are realized and that it is consistent with legislation already in effect in Washington, D.C., to minimize confusion and inconvenience across jurisdictions.

The potential benefits of “on request” legislation

Less single-use plastic food service ware waste. An “on request” policy for single-use items prompts customers to ask themselves: “Do I really need this item?” Many will decide to forego the items altogether. Evidence is building that this is the case. In one California municipality, restaurants that offered straws only on request provided 40% fewer straws than restaurants that provided them by default.¹

Less plastic litter that contributes to the plastic pollution crisis. In the United States, plastic straws and stirrers were among the top five items collected in coastal cleanups in 2019.² Plastic waste and pollution threaten Maryland’s coastline, fish and wildlife, and human health. Plastic straws, stirrers, beverage plugs, utensils, and condiment packets are not recyclable. They are used for a few minutes, yet last in the environment forever – in landfills or as litter. When littered, they pose hazards to wildlife. Exposed to sunlight, they break down into tiny pieces on land and in the water that are impossible to clean up and permeate the environment.³ One study found that 94 percent of U.S. drinking water systems sampled contained microplastics.⁴

Savings for businesses and taxpayers. Businesses save money because not all customers will want the single-use items. Less plastic waste and litter brings savings to local governments and taxpayers, who pay for waste disposal and litter clean-ups.

State and local “on request” legislation

Many local jurisdictions have enacted “on request” legislation across the country. One of the first, Portland, Oregon, requires that single-use plastic straws, stirrers, utensils, and condiment packaging be provided at eat-in food establishments only if the customer requests them, and fast food/take-out services may only provide them if the customer responds affirmatively when asked. Leading up to the adoption of

¹Wagner, Travis P., and Patti Toews. 2018. “Assessing the Use of Default Choice Modification to Reduce Consumption of Plastic Straws,” *Detritus* 4:113-121.

² Ocean Conservancy. 2020. “Together We Are Team Ocean, 2020 Report,” p. 21. https://oceanconservancy.org/wp-content/uploads/2020/10/FINAL_2020ICC_Report.pdf.

³Hale, R.C., M.E. Seeley, M. LaGuardia, L. Mai, and E.Y. Zeng. 2020. “A global perspective on microplastics,” *Journal of Geophysical Research: Oceans* 125.

⁴ Tyree, Chris, and Dan Morris. 2018. “Invisibles: The Plastics Inside Us.” An Investigative Report. Orb Media, March 15. https://orbmedia.org/stories/Invisibles_plastics

California’s statewide bill (effective January 1, 2022), more than 40 municipalities and three counties adopted local “on request” bills for food service ware. Washington state’s “on request” bill for food service ware and condiments will go into effect in June of this year. With passage of HB 135, Maryland would be the third state to adopt a statewide “on request” bill for food service ware and condiments.

Closer to home, Washington, D.C.’s “Zero Waste Omnibus Amendment Act of 2020” went into effect on January 1, 2022, including a requirement that food service entities only provide “accessory disposable food service ware”⁵ upon request by the customer or at a self-serve station. Montgomery County has banned straws that are not marine compostable; other straws can be provided only if the customer requests them. In Howard County, as of January 1, 2022, straws, stirrers, utensils, and condiment packets are available only on request of the customer.⁶

Amendments

We are requesting amendments to ensure that the potential benefits of “on request” policy are realized and to enhance compatibility with adjacent jurisdictions. The specific edits and justification are attached.

- We request removal of three provisions that would compromise the bill’s effectiveness or be inconsistent with the regulations already in effect in Washington, D.C., potentially creating confusion among consumers and businesses in adjacent Maryland counties:
 - the exemption of drive-through restaurants, a major source of roadside litter;⁷
 - the requirement that all restaurants stock plastic straws; and
 - allowing food service businesses to offer, suggest, or invite customers to take single-use items (“on affirmation” after an offer, rather than “on request” of the customer)
- A fourth amendment would add explicit requirements for takeout, on-line, and third-party platform orders, which account for the vast majority of single-use food ware.
- The last amendment clarifies that a “unit of local government” enforcing the bill can include an environment department (not solely a health department).

In summary, an effective “on request” policy will reduce single-use plastic waste, litter, and their environmental impact, while saving money for businesses and local government. It is one of several strategies that help protect oceans, waterways, wildlife, and humans from plastic pollution and its consequences. With these strengthening amendments, we respectfully request a favorable report on HB 135.

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Attachment: Proposed Amendments

⁵ This includes “any disposable food service ware, including straws, utensils, condiment cups and packets, cup sleeves, and napkins, that is not used to hold or contain food.” Washington, D.C., Zero Waste Omnibus Bill, p. 20.

⁶ CB-13-2021, “Plastic Reduction Act,” Howard County Council. This bill includes an even longer list of items available on request and also bans plastic straws and stirrers. A strength of HB 135 is that does not prevent local jurisdictions from enacting more stringent single-use plastic restrictions.

⁷An estimated 79% of disposable food ware is for takeout and delivery, vs. 21% for on-site dining. *Source:* Gordon, Miriam. 2021. *Reuse Wins: The Environmental, Economic and Business Case for Transitioning from Single-Use to Reuse in Food Service*. Upstream Policy Institute, p. 18. (<https://upstreamsolutions.org/reuse-wins-report>),



PROPOSED AMENDMENTS

1. p. 3, lines 16-17, deletion: ~~(4) FOOD OR BEVERAGE PRODUCTS THAT ARE PROVIDED BY A FOOD SERVICE BUSINESS AT A DRIVE THROUGH WINDOW.~~

Rationale: Exempting customers at drive-through restaurants will greatly weaken the impact of the bill on reducing roadside litter and plastic pollution. It will also introduce an inconsistency between the Maryland and Washington, D.C., bills, sowing confusion among restaurants and customers in the D.C. suburbs in Montgomery and Prince George’s Counties. Drive-through restaurants can post on the menu board the available single-use items that the customers can order with the rest of their food.

2. p. 3, lines 26-29, edit: ~~(B) BEGINNING JANUARY 1, 2023, A FOOD SERVICE BUSINESS MAY NOT SHALL PROVIDE ANY OF THE FOLLOWING SINGLE-USE FOOD OR BEVERAGE PRODUCTS TO A ONLY UPON REQUEST BY THE CUSTOMER OR AT A SELF-SERVE STATION; ORDERING CARRYOUT OR DELIVERY FROM OR DINING INSIDE THE FOOD SERVICE BUSINESS UNLESS THE CUSTOMER REQUESTS OR ACCEPTS AN OFFER FOR:~~

Rationale: This edit, which is based on the wording of the D.C. legislation (p. 21), clarifies that self-serve stations and dispensers satisfy “on request” policy (not just for beverages, as suggested on p. 3, lines 20-22), and removes the option for food service providers to offer, invite, or suggest to the customer to take these items. Limiting the bill to “on request” by the customer (not by affirmation after an offer) will result in fewer takers (less waste and lower costs for businesses) and make the Maryland bill consistent with those in D.C. and Howard County, which are solely on request and do not include affirmation after an offer. Carryout and delivery are covered in amendment 4, below.

3. p. 4, lines 7-10, deletion:
~~(C) EVERY FOOD SERVICE BUSINESS SHALL MAINTAIN A LIMITED STOCK OF SINGLE-USE PLASTIC STRAWS TO ACCOMMODATE THE PHYSICAL OR MEDICAL NEEDS OF AN INDIVIDUAL, IN COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS.~~

Rationale: This type of requirement is typically found in bills that ban plastic straws altogether. Since this bill is not banning any single-use items, but rather making them available only on request, the requirement is unnecessary. Requiring all food service businesses to stock plastic straws, including those that do not currently offer them, would undermine the purpose of the legislation to reduce plastic waste and litter and would increase costs for some businesses. Neither the California nor the Washington state bill have this requirement.⁸

⁸ “Those laws that simply make plastic straws available on request would ... not violate the ADA because they do not ask more of people with disabilities than they do of the public at large and they do not limit the full enjoyment of a service or good.” See Kessler, Duncan. 2019. “Plastic Straw Bans Can Run Afoul of the Americans with Disabilities Act,” *American University Law Review* 69. (<https://auilawreview.org/blog/plastic-straw-bans-can-run-afoul-of-the-americans-with-disabilities-act/>)

4. p. 4, replace lines 7-10 with the following:

(C) (1) FOOD SERVICE BUSINESSES SHALL PROVIDE OPTIONS FOR CUSTOMERS TO REQUEST THE ITEMS IN PARAGRAPH (B) ACROSS ALL ORDERING PLATFORMS, INCLUDING DIGITAL PLATFORMS, TELEPHONE, AND IN PERSON, WHETHER FOR ON-SITE DINING, TAKEOUT, OR DELIVERY. THIS SHALL APPLY EVEN WHEN A THIRD-PARTY ENTITY USES A THIRD-PARTY FOOD ORDERING PLATFORM.

(2) BY JANUARY 1, 2023, THIRD-PARTY FOOD ORDERING PLATFORMS SHALL PROVIDE CUSTOMERS THE ABILITY TO REQUEST THE ITEMS IN PARAGRAPH (B), INCLUDING THE ABILITY TO SELECT THE SPECIFIC ITEMS THEY NEED.

Rationale: Food ordered for takeout or delivery to a home is the major source of unnecessary single-use plastic that ends up as waste; most of these customers will consume their food at home where reusable utensils and condiments are generally available. On-request legislation in both California and Washington, D.C. has explicit language on digital, phone, and third party platforms; this language comes from the D.C. bill (p. 21). This requirement will enhance the ability to assess compliance of takeout or delivery operations.

5. p. 4, lines 28-29, edit: (2) A UNIT OF LOCAL GOVERNMENT, INCLUDING BUT NOT LIMITED TO: THAT HAS THE AUTHORITY TO INSPECT FOOD SERVICE BUSINESSES; OR
(I) A LOCAL HEALTH DEPARTMENT; OR
(II) A LOCAL ENVIRONMENT DEPARTMENT.

Rationale: In several counties plastic food ware bans are enforced by environment departments rather than health departments (e.g., Montgomery and Prince George's Counties). An environment department might also include an Office of Sustainability (e.g., Howard County, Baltimore City) or a public works department. Some counties also have departments of permitting and inspection that could enforce. Enforcement of plastic legislation is often complaint-driven.