

MEMORANDUM

October 7, 2020

TO: Transportation and Environment Committee

FROM: Amanda Mihill, Legislative Attorney

SUBJECT: Bill 33-20, Solid Waste (Trash) – Food Service Products Packaging Materials - Requirements¹

PURPOSE: Worksession – Committee to make recommendations on Bill

Bill 33-20, Solid Waste (Trash) – Food Service Products Packaging Materials - Requirements, sponsored by Lead Sponsor Council President at the request of the County Executive, was introduced on July 21. A public hearing was held on September 15 at which two speakers testified on the bill.

Bill 33-20 would:

- prohibit the use of expanded polystyrene food service products by food services businesses;
- require the use of compostable or recyclable food service ware by the County, County contractors or lessees, and food service businesses;
- prohibit the sale of expanded polystyrene food service products and polystyrene loose fill packaging;
- provide for enforcement; and
- generally amend County law regarding environmentally acceptable food service products and packaging materials.

Public Hearing Testimony/Correspondence

The Council has received primarily favorable testimony and correspondence on Bill 33-20. See ©17-32 for select correspondence. In addition to the attached materials, the Council has received dozens of letters supportive of Bill 33-20 that are quite similar in substance. An example of this letter is at ©26.

¹#FoodPackaging
Polystyrene, recycling, environment

Issues for Committee Discussion²

The most significant issue for the Committee to discuss is the central issue of whether Bill 33-20 should be enacted. The Council received testimony/correspondence in support as well as opposition to Bill 33-20.

Supportive testimony. In testimony on behalf of the Executive, Mr. Adam Ortiz, noted that Bill 33-20 is a clarification of the requirements of the County's existing ban on the use and sale of expanded polystyrene food service ware. Mr. Ortiz notes that current law (Section 48-54) presently requires a food service business selling or providing food or beverages for consumption on or off premises in disposable food service ware to use only compostable or recyclable disposable food service ware unless the Executive determines that there is no suitable affordable compostable or recyclable product available. Although current law only specifically bans the sale of expanded polystyrene food service ware, the intent was to require compostable or recyclable materials to be used. Bill 33-20 would clarify this.

In addition to the Executive testimony, the Council received many letters and testimony, including from the Sierra Club (©22), Clean Water Action (©19-21), and dozens of residents supportive of Bill 33-20.

Opposition testimony. The Council received testimony from the Maryland Retailers Association (©27-29) and the American Chemistry Council (©30-32) urging the Council not to enact Bill 33-20. In lieu of the bill, these entities suggested that the County partner with others, including the state, to advance recycling technologies.

Council staff recommendation: enact Bill 33-20.

This packet contains:	<u>Circle #</u>
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² There are technical amendments that are necessary for Bill 33-20 that are incorporated into the attached bill.

Bill No. 33-20
Concerning: Solid Waste (Trash) - Food
Service Products Packaging Materials -
Requirements
Revised: 10/7/2020 Draft No. 2
Introduced: July 21, 2020
Expires: January 21, 2022
Enacted: _____
Executive: _____
Effective: See Sec. 2
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the Request of the County Executive

AN ACT to:

- (1) prohibit the use of expanded polystyrene food service products by food services businesses;
- (2) require the use of compostable or recyclable food service ware by the County, County contractors or lessees, and food service businesses;
- (3) prohibit the sale of expanded polystyrene food service products and polystyrene loose fill packaging;
- (4) provide for enforcement; and
- (5) generally amend County law regarding environmentally acceptable food service products and packaging materials.

By amending

Montgomery County Code
Chapter 48, Solid Waste (Trash)
Sections 48-52, 48-53, and 48-56

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 48-52, 48-53, and 48-56 of Chapter 48 is amended as follows:

48-52. Definitions.

In this Article, the following terms have the meanings indicated:

ASTM standard means the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics.

* * *

Disposable food service ware means containers, bowls, plates, trays, cartons, cups, lids, [straws, forks, spoons, knives, napkins,] and other items that are designed for one-time use for beverages, prepared food, or leftovers from means prepared by a food service business. [The term “*disposable*” *Disposable food service ware*”] does not include items composed entirely of aluminum.

[*Expanded polystyrene* means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by a number of techniques, including fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).]

[*Expanded polystyrene food service products* means food containers, plates, hot and cold beverage cups, meat and vegetable trays, egg cartons, and other products made of expanded polystyrene and used for selling, providing, or serving food that are:

- (1) intended by the manufacturer to be used once for eating or drinking; or
- (2) generally recognized by the public as items to be discarded after one use.]

Food service business means a full-service restaurant, limited-service restaurant, fast food restaurant, café, delicatessen, coffee shop, supermarket, grocery store, vending truck or cart, food truck, business or institutional

cafeteria, including those operated by or on behalf of County departments and agencies, and/or other business selling or providing food within the County for consumption on or off the premises.

Polystyrene means the synthetic aromatic hydrocarbon polymer made from the monomer styrene. Polystyrene products are thermoplastic petrochemical materials that include injection molded, vacuum formed, or extruded solid materials, and blown, expanded, and extruded foams.

Polystyrene food service products means food containers, plates, hot and cold beverage cups, meat and vegetable trays, egg cartons, and other products made of polystyrene and used for selling, providing, or serving food and drink which are:

- (1) intended by the manufacturer to be used once for eating or drinking; or
- (2) generally recognized by the public as items to be discarded after one use.

* * *

48-53. Prohibition on use of [expanded] polystyrene food service products.

(a) A food service business must not sell or provide food in [expanded] polystyrene food service products, regardless of where the food will be consumed.

(b) Subsection (a) does not apply to:

- (1) food or beverages that were filled and sealed in [expanded] polystyrene containers outside of the County before a food service business received them; or
- (2) materials used to package raw, uncooked, or butchered meat, fish, poultry, or seafood for off-premises consumption.

* * *

48-56. Prohibition on sale.

A person must not sell or offer for sale in the County:

- (a) [expanded] polystyrene food service products; or
- (b) polystyrene loose fill packaging.

* * *

Sec. 2. Effective Date.

The prohibition on use of polystyrene food service products contained in Section 48-53 and the prohibition on the sale of polystyrene food service products contained in Section 48-56 take effect 12 months after this Act becomes law, or on January 1, 2022, whichever comes first.

LEGISLATIVE REQUEST REPORT

Bill 33-20

Solid Waste (Trash) – Food Service Products Packaging Materials – Requirements

DESCRIPTION:	Bill 33-20 would revise County Council Bill 41-14 and Montgomery County Code Chapter 48, which currently ban the use and sale of expanded polystyrene food service ware products, to expand the prohibition to include all food service products made from polystyrene.
PROBLEM:	Polystyrene #6 plastic products are not recyclable in Montgomery County and are a source of contamination in the recycling stream.
GOALS AND OBJECTIVES:	To eliminate the sale and use of all polystyrene disposable food service ware products and promote the use of recyclable or compostable food service ware products.
COORDINATION:	Office of the County Attorney, Office of Procurement, Office of Management and Budget, Office of Finance, Department of Health and Human Services
FISCAL IMPACT:	Department of Finance.
ECONOMIC IMPACT:	OLO
EVALUATION:	To be researched.
EXPERIENCE ELSEWHERE:	Montgomery County and a number of jurisdictions locally and across the US have adopted bans on expanded polystyrene disposable food service ware products: this proposed legislation goes further to include all polystyrene #6 food service ware products.
SOURCE OF INFORMATION:	Adam Ortiz, Director, Department of Environmental Protection, 240-777-7781
APPLICATION WITHIN MUNICIPALITIES:	None
PENALTIES:	Class B

Fiscal Impact Statement
Bill XX-XX – Solid Waste (Trash) – Food Service Products Packaging Materials – Requirements

1. Legislative Summary:

This legislation extends the current ban on the use and sale of expanded polystyrene food service products to include all food service products made from polystyrene (both rigid and expanded forms).

As polystyrene #6 plastic products are not recyclable in Montgomery County and are a source of contamination in the recycling stream, this legislation prohibits the sale and use of all polystyrene disposable food service ware products and requires the use of recyclable or compostable food service ware products instead when non-durable items are used.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Revenues:

DEP estimates that the bill would generate minimal revenues from the issuance of citations against violators. Violation of the bill is a Class B violation, with fines of \$100 for initial offense and \$150 for each repeat offense, which may be levied each day that the repeat offense persists.

Expenditures:

The bill requires an education and outreach campaign to educate food service businesses about the ban on all #6 polystyrene food service products and for research and updates to businesses about available affordable recyclable and compostable options. Estimated implementation costs are \$75,000 because this is an expansion of the existing ban on expanded polystyrene food service products.

Ongoing outreach and education efforts are estimated at \$50,000, based upon a similar effort for Council Bill 41-14, the original expanded polystyrene ban.

Education efforts can be undertaken by existing staff.

Enforcement:

Even on a complaint-driven basis, investigation to determine whether a compliance issue exists, and gather evidence of violation of law requires staff resources. This legislation is introduced alongside Bill XX-XX – Solid Waste (Trash) – Reduction/Source Reduction; Single-Use Straws – Requirements, and existing staff resources are inadequate to take on this additional effort. The addition of one new Investigator position (Grade 21 Program Specialist II) is required to provide an adequate level of staffing resources to enforce both bills, at an estimated cost of \$61,297 in FY21 assuming it were filled in October, 2020, and \$91,084 per year thereafter.

To support the work of this Investigator position, a vehicle is also required, the purchase price of which is estimated to be \$25,000 with ongoing costs of \$5,000 annually.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The revenue generated under Bill XX-XX will be minimal.

The ban of all forms of polystyrene is estimated to cost \$161,297 in FY21 and \$146,084 per year in FY22-26.

	FY21	FY22	FY23	FY24	FY25	FY26
Outreach & Education	\$75,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
Program Specialist II	\$61,297	\$91,084	\$91,084	\$91,084	\$91,084	\$91,084
Vehicle	\$25,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Total	\$161,297	\$146,084	\$146,084	\$146,084	\$146,084	\$146,084

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable.

7. An estimate of the staff time needed to implement the bill.

DEP estimates 200 staff hours are required for outreach and education in implementation phase and an additional 100 hours per year thereafter for ongoing outreach and education. These education efforts may be absorbed by existing staff resources.

For enforcement, estimated staff hours based on 100 complaints/year would be 300 hours per fiscal year. The impact of Bill XX-XX Solid Waste (Trash) – Reduction/Source Reduction; Single-Use Straws – Requirements is an additional 300 complaints and 900 hours per year.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

This legislation adds new responsibilities to existing staff and can be absorbed with the addition of the new Program Specialist II position. This position would also be able to support the additional duties required under Bill XX-XX Solid Waste (Trash) – Reduction/Source Reduction; Single-Use Straws – Requirements

9. An estimate of costs when an additional appropriation is needed.

See responses for #3 and #7 above.

10. A description of any variable that could affect revenue and cost estimates.

Compliance with this mandate is difficult to project, therefore the range of revenues cannot be reliably estimated; however, any revenues generated by the bill are expected to be minimal.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Compliance with this mandate is difficult to project, therefore the range of revenues cannot be reliably estimated; however, any revenues generated by the bill are expected to be minimal.

12. If a bill is likely to have no fiscal impact, why that is the case.


Not applicable.


13. Other fiscal impacts or comments.

Not applicable

14. The following contributed to and concurred with this analysis:

Adam Ortiz, Department of Environmental Protection
Patrice Bubar, Department of Environmental Protection
Willie Wainer, Department of Environmental Protection
Eileen Kao, Department of Environmental Protection
Richard H. Harris, Office of Management and Budget


Richard S. Madaleno, Director
Office of Management and Budget


Date




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

MEMORANDUM

March 27, 2020

TO: Sidney Katz, Council President
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Montgomery County Code Chapter 48, Solid Waste (Trash) – Food Service Products–Packaging Materials–Requirements

This memorandum transmits the Department of Environmental Protection's (DEP) proposed legislation which would revise language in Montgomery County Code Chapter 48 and expand the existing ban on the use of expanded polystyrene (often referred to as the brand name Styrofoam®) food service products by food service businesses to include all forms of polystyrene #6 rigid plastics. This legislation would also prohibit the retail sale of all polystyrene (rigid and expanded) food service products.

Polystyrene products are thermoplastic petrochemical materials that come in two principle forms: a clear or colored rigid form; and an expanded or foam form. Since 2016, Montgomery County has banned the sale and use of expanded polystyrene food service ware and packaging materials. Furthermore, since 2017, Montgomery County has required all food service establishments to use food service ware that is either recyclable in Montgomery County or compostable.

Polystyrene in any form, rigid or expanded, is not recyclable in Montgomery County for a number of economic and logistical reasons. These include a lack of polystyrene recycling facilities in the region, the material's low density making it cost prohibitive to ship long distances for recycling, and an absence of entities (anyone, including manufacturers or brokers) seeking to purchase #6 bales for processing and use to make new products.

Further, we know from our ongoing efforts to market recyclable commodities that #6 rigid polystyrene is not considered valuable or desirable in mixed #3–#7 plastic bales. One reason for this is because there are not large quantities of #6 rigid polystyrene in the waste/recycling stream, which make it difficult to gather and consolidate the amounts of the material needed to make recycling cost effective.

Another reason is that the majority of #6 rigid polystyrene materials that are in the waste/recycling stream are colored plastics (e.g., red solo cups), which are difficult to recycle into other products because of the added color. In addition, a lot of the #6 rigid polystyrene items are used for food contact products, but they cannot be recycled and remanufactured into other food contact products due to FDA regulations. Finally, there are not many non-food contact grade uses for #6 rigid polystyrene, so there is little to no demand for recycled feedstock. For these reasons, it is typically easier and cheaper to produce new/virgin polystyrene than it is to collect, transport, and process used polystyrene materials for recycling.

To replace these banned single-use polystyrene food service products, DEP's Recycling and Resource Management Division (RRMD) has researched and identified numerous viable reusable, recyclable, and compostable alternative products on the market today. These alternative products include wood, bamboo, and paper products which are compostable, #1 pet thermoform and #5 polypropylene products which are recyclable, and several different types of plant-based compostable products. Per the existing requirements of Chapter 48, The Department of Environmental Protection maintains and updates a listing of these alternative products which is available on the County's website.

If you have any questions, please contact Adam Ortiz, Director, Department of Environmental Protection, at 240-777-7781. Thank you for your attention to this matter.

Attachments:

Proposed Legislation

Legislative Request Report

cc: Adam Ortiz, Director, DEP

Patty Bubar, Deputy Director, DEP

Economic Impact Statement

Office of Legislative Oversight

Bill 33-20

Solid Waste (Trash) – Food Service Products Packaging Materials – Requirements

SUMMARY

The Office of Legislative Oversight (OLO) expects the enactment of Bill 33-20 to create short run costs for food service businesses operating in the County. OLO cannot, however, determine whether these costs outweigh the overall economic benefits of reducing the use of polystyrene food service ware.

BACKGROUND

The goal of Bill 33-20 is to promote the use of recyclable or compostable food service ware products in the County.¹ If enacted into the law, the Bill would prohibit food service businesses from selling or providing food in polystyrene food service products (hereinafter, the “polystyrene ban”) and require these businesses, as well as the County, County contractors and lessees, to use compostable or recyclable food service ware.² Enacting Bill 33-20 would also prohibit persons from selling or offering for sale food in polystyrene food service products or polystyrene loose fill packaging.³ The prohibition on the use of these products would not take effect until “12 months after this Act becomes law, or on January 1, 2022, whichever comes first.”⁴

METHODOLOGIES, ASSUMPTIONS and UNCERTAINTIES

Due to uncertainties and data limitations, OLO has made the following assumptions in the analysis of the economic impacts of the plastic straw prohibition.

- Assumption 1: The per unit price of compostable and recyclable food service ware for local food service businesses is higher than the price of polystyrene food service ware.
- Assumption 2: The suppliers of food service ware products to local food service businesses are based primarily outside the County.
- Assumption 3: Local food service businesses are “price-takers.” That is, their demand for food service products does not affect market prices for food service ware products.

To assess the economic impacts of the polystyrene ban, OLO uses the Regional Input-Output Modeling System (RIMS II) “final-demand multipliers” for Montgomery County developed by the U.S. Bureau of Economic Analysis.⁵ The RIMS II final-demand

¹ Montgomery County Council, Bill 33-20, Solid Waste (Trash) – Food Service Products Packaging Materials – Requirements, Introduced on July 21, 2020, Montgomery County, Maryland, 5.

² Ibid, 1 and 3.

³ Ibid, 3 and 4.

⁴ Ibid, 4.

⁵ U.S. Bureau of Economic Analysis, *RIMS II: An Essential Tool for Regional Developers and Planners*, December 2013, https://apps.bea.gov/regional/rims/rimsii/rimsii_user_guide.pdf.

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multipliers capture how “an initial change in economic activity results in other rounds of spending.”⁶ In the case of Bill 33-20, the polystyrene ban would amount to a *negative* change in economic activity in the County, if local food service businesses pay more for compostable and recyclable food service ware to suppliers based outside the County (holding all else equal). This withdrawal from the local economy would reduce other rounds of spending.

As discussed in subsequent sections, this negative multiplier effect could occur through two channels:

1. Operating Cost Channel: Local food service businesses who experience net increases in operating costs, and/or
2. Household Expense Channel: County residents who experience net increases in household expenses due to local food service business owners passing the higher cost of food service ware onto their customers.

In both cases, the negative change in economic activity would reduce consumption of locally produced goods and services.

Using the final-demand multipliers, OLO estimates the economic impacts of the polystyrene ban in terms of three economic measures:

- Output (sales): total market value of industry output,
- Earnings: employee compensation plus net earnings of sole proprietors and partnerships, and
- Employment: number of full- and part-time employees.⁷

Due to lack of pricing data, OLO cannot project the total annual increase in operating costs for the food service sector. Instead, OLO illustrates the economic impact of a **hypothetical \$1,000,000 net decrease in local economic activity**. As shown below, the impact is sensitive to the channel through which the loss of economic activity occurs. Although the method produces single numbers for each measure, OLO cautions that these estimates are not precise forecasts. Rather, the estimates illustrate how the polystyrene ban may generate a negative multiplier effect and inform the discussion of the potential economic effects of the ban on County businesses and residents in reference to the Council’s priority indicators.⁸

Importantly, however, there are several uncertainties that could significantly influence the extent to which the polystyrene ban generates a negative multiplier effect (if at all) and whether these effects outweigh the overall economic benefits to County residents

⁶ Ibid, 1 – 1 and 1 – 2. In the case of positive changes in economic activity, spending diminishes over time due to “leakages” from the County economy, such as paying taxes, increasing savings, and purchasing goods and services produced outside the County.

⁷ Ibid, 3 – 3 and 3 – 4.

⁸ For the Council’s priority indicators, see Montgomery County Council, Bill 10-19 Legislative Branch – Economic Impact Statements – Amendments, Enacted on July 30, 2019, Montgomery County, Maryland, 3.

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and private organizations. While a more robust analysis of the economic impacts of Bill 33-20 would account for these uncertainties, doing so is beyond the scope of the analysis here. Instead, OLO identifies these uncertainties as potentially significant policymaking considerations.

First, there are several factors that could offset the potential economic costs of the polystyrene ban. OLO cannot predict the magnitude of these offsetting factors on food service businesses.

Second, the COVID-19 pandemic is expected to continue adversely affecting business operations, supply chains, distribution systems, consumer demand and other facets of the local economy. Again, OLO is unable to predict the extent or nature of these impacts on food service businesses or how they would interact with the polystyrene ban.

Third, OLO is unable to quantify the extent to which food service businesses will substitute polystyrene food service ware with compostable alternatives. If so, then Bill 33-20 would reduce the indirect and unquantifiable economic costs associated with plastic pollution. (For more on the economic costs of plastic pollution, see the Economic Impact Statement for Bill 32-20.) However, if businesses substitute polystyrene food service ware with plastic alternatives that are recyclable in the County, then the Bill would not reduce the economic costs of plastic pollution.

Finally, the enactment of Bill 33-20 would likely reduce operating costs for recycling facilities in the County by reducing the amount of *non-recyclable* polystyrene food service ware that must be filtered out. OLO cannot estimate the economic impact of the alternative uses of these potential savings.

VARIABLES

Variables that could affect the economic impacts of enacting Bill 33-20 are the following:

- Difference in price between compostable or recyclable food service ware and polystyrene food service ware
 - Percentage of the price of food service ware passed onto customers
 - Business expenditures on food service ware
 - Percentage of customers of food service businesses who reside in the County
 - Duration of the COVID-19 pandemic and economic recession
 - Consumer demand for food service businesses
 - Net food service war pollution
 - Economic costs to private organizations and residents from polystyrene pollution
 - National demand for compostable food service ware
-

Economic Impact Statement

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IMPACTS

Businesses, Non-Profits, Other Private Organizations

Workforce, operating costs, property values, capital investment, taxation policy, economic development, competitiveness, etc.

If enacted into law, Bill 33-20 could negatively impact food service businesses in the County. On the assumption that the price of compostable and recyclable food service ware is higher than polystyrene food service ware, the ban on polystyrene food service ware would increase operating costs for these businesses (holding all else equal).⁹ Beyond operating costs, OLO sees no direct connection between enacting Bill 33-20 and property values, capital investment, taxation policy, economic development, or competitiveness.

OLO estimates that for every \$1,000,000 increase in annual operating costs, the local economy could lose between \$795,100 to \$1,542,050 in total output, \$158,700 to \$328,300 in earnings, and 4 to 11 jobs. The upper bound estimates reflect the “operating cost channel,” in which food service businesses incur the entire expense (i.e., 0% of the cost of food service ware is passed onto customers).¹⁰ The lower bound estimates reflect the “household expense channel,” in which customers incur the entire expense (i.e., 100% of the cost of food service ware is passed onto customers). These findings show that the negative multiplier effect increases the more local food service businesses bear the cost of the increase in the price of food service ware.¹¹

OLO expects the polystyrene ban to create short run costs to the local economy that will likely decrease over time. Indeed, there are several factors that could offset the net impact of the polystyrene ban on the operating costs of food service businesses. First, businesses could implement cost-cutting adaptations, for instance, reducing their use of disposable food service ware. Second, rising demand for compostable food service ware could create economies of scale which reduce the price differential between polystyrene and compostable food service ware.¹²

Moreover, OLO expects that the short-term costs of the polystyrene ban would more significantly impact local food service businesses, if Bill 33-20 takes effect during the COVID-19 pandemic and economic recession. These crises have left many small food service businesses financially fragile,¹³ which has made them more sensitive to increased

⁹ The net change in economic activity assumed here would be lower if *local* food ware suppliers provide a portion of non-polystyrene food service ware to food service businesses—in other words, if assumption 2 is violated.

¹⁰ To calculate the multipliers for the “food service sector,” OLO staff used the average multipliers for the food/beverage stores and food services/drinking places sector.

¹¹ It is worth noting that the lower bound estimates assume that all customers of these businesses reside in the County. The negative multiplier effect decreases the more the costs are passed onto *non-resident* customers of local food service businesses.

¹² Tonya Garcia, “Meet the Company Expected to Benefit from the War on Polystyrene food service ware,” *MarketWatch*, August 29, 2018, <https://www.marketwatch.com/story/brace-for-a-big-surge-in-demand-for-paper-food-service-ware-2018-08-21>; and Irina Ivanova, “States Declare War on Styrofoam – ‘People think it breaks down’,” CBS News, May 1, 2019, <https://www.cbsnews.com/news/styrofoam-ban-states-declare-war-people-think-it-breaks-down/>.

¹³ Stephen Roblin, “COVID-19 Recovery Outlook: Small Businesses,” Office of Legislative Oversight, Montgomery County Council, June 12, 2020, <https://www.montgomerycountymd.gov/OLO/Resources/Files/2020%20Reports/COVID-19Recovery-SmallBusinesses.pdf>.

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business expenses. Local food service businesses may also have difficulty adapting to cut costs while the indoor dining limitations due to the pandemic remain in place. These considerations, however, may not matter if the Bill is enacted, given that the polystyrene ban would not go into effect until a year after becoming law.

Residents

Workforce, property values, income, taxation policy, economic development, etc.

Enacting Bill 33-20 would likely have mixed results for County residents. On the one hand, customers of local food service businesses could pay higher prices for their goods and services. Paying higher prices would increase household expenses relative to incomes, assuming customers do not reduce their consumption from food service businesses. However, because the short-term increase cost of food service ware would be spread across thousands of customers, OLO expects the higher prices to have a marginal impact on *individual* households and, therefore, have little impact on consumer demand, even during the current recession. For instance, OLO does not expect a \$0.25 increase for a carry-out order to deter customers from patronizing food service businesses. Indeed, it is possible that customers who are environmentally conscious would gladly incur the cost to reduce polystyrene pollution.

On the other hand, County residents could benefit economically from the ban on polystyrene food service ware. As previously discussed, if food service businesses substitute polystyrene food service ware with compostable alternatives, then Bill 33-20 could reduce the economic costs associated with plastic pollution.

OLO sees no direct connection between Bill 33-20 and the Council's other priority indicators, namely workforce, property values, taxation policy, etc.

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Montgomery County Council. Bill 33-20, Solid Waste (Trash) – Food Service Products Packaging Materials – Requirements. Introduced on July 21, 2020. Montgomery County, Maryland.

Economic Impact Statement

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CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent the OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) drafted this economic impact statement.

Testimony on behalf of the County Executive Marc Elrich on Bill 33-20 - Solid Waste (Trash) - Food Service Products Packaging Materials – Requirements

September 15, 2020

Good afternoon. My name is Adam Ortiz, Director of the Montgomery County Department of Environmental Protection.

Bill 33-20 is a clarification of the requirements of the County's existing ban on the use and sale of expanded polystyrene (commonly referred to as Styrofoam®) food service ware, which further stated that only recyclable or compostable food service ware be used or sold instead. This in fact means that all #6 plastic rigid polystyrene food service ware items were banned from use or sale because these items are not recyclable in Montgomery County.

#6 plastic rigid polystyrene food service ware items can look like or mimic items that are made from recyclable plastics such as #1 PET, #2 HDPE, and #5 polypropylene plastic which are recyclable in the County. In fact, many of the #6 plastics also have the familiar recycling arrows imprinted on them which is misleading. It's understandable that this brings about a level of confusion on the part of food service businesses, including restaurants, coffee shops, cafeterias, grocery stores, and food trucks, as well as consumers.

Consumers often end up wanting to do the right thing, and put their cups, lids, clamshell containers, bakery domes and more into their recycling bins when they're done using them. This is great and correct if the items are made from a recyclable plastic. Unfortunately, when these items are made from #6 polystyrene plastic, it is detrimental and harms all of our recycling efforts. Because the #6 plastic is not recyclable in Montgomery County and often looks and feels like one of the types of plastics that are acceptable, it is a contaminant in our recycling program that must be separated and removed from the good recyclable items and material. This contamination needs to be separated from the good recyclable materials and processed as waste and disposed. All of this comes at a cost – the good intentions and efforts of residents that sadly don't result in boosting recycling; costs for the County to collect and transport materials that are not recyclable; costs for the County to separate and remove the contaminants from the other good recyclable materials to preserve the quality of our recyclables and potential revenues; and costs for disposal of non-recyclable materials as trash.

There are numerous high-quality recyclable and compostable alternatives available, many of which are comparably priced and cost competitive with #6 polystyrene plastic counterparts. Recyclable and compostable alternatives are already successfully in use by food service businesses in the County, so this will clarify the existing requirements and ensure that all food service businesses are in compliance. The primary benefit of replacing non-recyclable #6 plastics with recyclable alternatives is reducing waste and increasing recycling in the County. In addition, we research and provide resource information about recyclable and compostable alternatives on our website to further assist any food service businesses having difficulties in looking for these alternative options.

For all of these reasons, especially to clear up any confusion, we propose Bill 33-20 to explicitly ban the use and sale of #6 plastic rigid polystyrene food service items and ask for your support of this bill.

October 5, 2020

Dear Montgomery County Council,

On behalf of Clean Water Action's over 10,000 members within Montgomery County, we urge you to support and pass Council Bills 32-20 and 33-20. Together, these pieces of legislation will help Montgomery County fulfill its existing mandate to eliminate unrecyclable plastics; following this step so that actually recyclable or reusable materials can be used is a common-sense solution that will reduce plastic waste and save the county money.

Polystyrene (#6) plastics cannot be recycled in Montgomery County's facility, and plastic straws' small size means that they slip through the cracks at the facility and don't carry labels to say what kind of plastic they're made of. Well-meaning residents and businesses use and recycle #6 plastics and straws, but once in the recycling stream either county employees have to spend time separating it out again, or it remains and contaminates the recycling stream, reducing or even negating its value. If properly disposed of in the trash or separated at the recycling facility, these plastics are then burned at the trash incinerator in Dickerson, essentially acting as a fossil fuel since they are oil-based. Eliminating plastic straws, as Bill 32-20 does, and #6 plastics, as Bill #33-20 does, are meaningful steps forward.

At the September 15 public hearing on Bills 32-20 and 33-20, several groups raised concerns and suggested alternatives to the straw and #6 plastics ban. We would like to respond to several of these suggestions with additional information and context for the Council.

In regards to Bill 33-20, banning #6 plastics, the American Chemistry Council testified in opposition and suggested that it might work with the County to set up a recycling facility via its Foam Recycling Coalition Grant. While the grant could theoretically provide the necessary funds to set up a recycling facility, one of the requirements to be eligible for the grant is that the community in question cannot currently have a foam ban.¹ In 2016, the county council passed Bill 41-14, banning EPS foam containers and making

¹ <https://www.recyclefoam.org/grants>. See Eligible Entities: "If there is a foam ban currently in existence in your community, you are not eligible to apply."

Montgomery County ineligible for the grant. Even were the county eligible, it would be a waste for the county to invest in the additional costs necessary to implement this theoretical recycling program, simply in order to keep using a product that harms the environment. Much better to move away from these unrecyclable materials entirely toward reusable, compostable, or actually recyclable materials instead.

In regards to Bill 32-20, eliminating plastic straws, the Montgomery County Chamber of Commerce urged the Council to not move forward with this bill but to create an education campaign first: more outreach to inform county residents like you that #6 plastics can't be recycled. The Last Straw Campaign was cited at the hearing as a successful model for educational campaigns about the problems with plastics, with the implication that with programs like this in place, legislation would not be necessary. However, the Our Last Straw Campaign Manager, Julie Sharkey, stated in her own testimony in support of this bill that effectively limiting the amount of single-use plastic straws used "cannot be completed without the legislation to support it." ² As currently written, 32-20 requires a outreach campaign and creation of educational materials to inform restaurants and consumers of the plastic straw ban. This precedes the implementation of the straw ban and allows businesses to make the necessary adjustments. Education measures alone cannot solve the core problem of these unrecyclable plastics. If enough County residents know to carefully inspect their plastic waste and put #6 plastics in the trash, it will save money and time taking them out at the recycling facility, but it will just mean that those plastics go to the Dickerson trash incinerator: being burned as a fossil fuel, adding to local air and water pollution and climate change.

Finally, restaurants and their advocates raised concerns about HIPAA and ADA laws when eliminating the use of plastic straws. We want to bring your attention to San Francisco's existing legislation banning plastic straws, which explicitly states:

(c) Nothing in this Chapter 16 shall conflict, or be construed to conflict, with the Americans with Disabilities Act, the Unruh Act, the Disabled Persons Act, or other applicable laws concerning the rights of individuals with disabilities. In particular, nothing in this Chapter shall restrict, or be construed to restrict, the availability of single use plastic straws to individuals who may require and request the use of single-use plastic straws.

2. <https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/col/2020/20200915/testimony/item6-JulieSharkey.pdf>

(i) It shall not be a violation of this Chapter for any place of public accommodation to provide single-use plastic straws to individuals who request such plastic straws.

(ii) Nothing in this Chapter shall restrict, or be construed to restrict, the ability of places of public accommodation to purchase or otherwise acquire single-use plastic straws in sufficient numbers to meet the needs of individuals who request such plastic straws.

*(d) In addition, nothing in this Chapter shall restrict, or be construed to restrict, the availability of single-use plastic straws to individuals who may require use of plastic straws in relation to medical circumstances.*³

Likewise, Bill 32-20 requires no proof of need and does not violate HIPAA or ADA.

We hope that this additional information is of use to you in considering Bills 32-20 and 33-20, and we urge you to support these measures to make Montgomery County a more sustainable and healthy place.

Sincerely,

Jennifer Kunze
Maryland Program Manager
Clean Water Action

Gustavo Ballesteros
Wheaton High School Class of 2021
Clean Water Action Maryland Intern

³ <https://sfbos.org/sites/default/files/o0294-18.pdf>, see pages 9 and 10.



September 15, 2020

Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

Bill 33-20, Solid Waste – Food Service Products Packaging Materials – Requirements

Dear Councilmembers:

Sierra Club Montgomery County Group is pleased to support Bill, 33-20, which would be a significant step forward in plastic waste reduction.

Montgomery County was in the forefront of banning the sale of expanded polystyrene (foam) food containers in 2015, and the state legislature followed suit with its ban in 2019. We strongly support the effort to extend the county’s existing ban on expanded polystyrene (EPS) food-ware enacted in 2015, to include *all* #6 polystyrene food-ware.

Number 6 polystyrene products are not recyclable at the County’s Materials Recycling Facility, mainly because there is no market for this material. When many residents see the #6 “chasing arrows” sign on the bottom of a container, they mistakenly believe that the products are recyclable, and toss them into their blue bins. These products contaminate the rest of the valuable recycling materials, and must be removed manually by county employees and ultimately be sent to the county’s incinerator in Dickerson. The most common examples of #6 plastics are the ubiquitous “Solo Cups,” many types of cups and bowls purchased for parties, and the tops of containers that cover aluminum bottoms that some restaurants in the county continue to mistakenly purchase.

There are ample affordable alternatives to #6 plastics that are either recyclable or compostable. This bill would ensure that no product with a #6 “chasing arrows” label could be sold in Montgomery County or used by food service businesses. **We encourage the Council to take this opportunity to amend the bill to eliminate the exemption for EPS and all #6 products that are packaged before reaching the food service businesses, such as egg cartons. In addition, we would like the ban to be extended to include materials used to package raw, uncooked, or butchered meat, fish, poultry or seafood for off-premises consumption.**

Plastic production and associated waste and litter are an ongoing threat to our climate, our public health, water quality, and wildlife. Thank you for giving us an opportunity to share our views on this important bill with you today.

Shruti Bhatnagar, Chair
Sierra Club Montgomery County Group
Shruti.bhatnagar@mdsierra.org

Amy Maron, Zero Waste Lead
Sierra Club Montgomery County Group
Amy.maron@mdsierra.org

Sierra Club Montgomery County, P.O. Box 4024, Rockville, MD 20849



September 14, 2020

Dear Members of the Montgomery County Council,

I am part of a local citizens group in Takoma Park who have studied the causes of global warming, and *ways to reverse it*, ever since our group participated in a Drawdown Workshop last fall. Though I am concerned about all kinds of waste, from food to every form of plastic, I will address my comments to the subjects of the two Bills—32-20 and 33-20—about which you are seeking public comment.

In short, I support the purposes of the two bills: to ban plastic straws, ban Styrofoam of any kind, and ban #6 plastic, or polystyrene from all food packaging and products, and to replace those plastic materials with environmentally sustainable alternatives. I endorse the County's focus on Waste Reduction and Source Reduction of Single-Use Straws, Styrofoam and other #6 Polystyrene Food Service Packaging and Products. Indeed, in light of current climate and environmental crises, I would like to see you go further, which I address below.

Many years ago, the town of Takoma Park had a living mascot, Roscoe the Rooster. Roscoe used to strut around the streets of downtown and greet the dawn with his distinctive rooster call to "Wake up!" Though Roscoe the Rooster is no longer with us physically, his spirit lives on to inspire us. Our group has adopted a set of actions, which we call *Roscoe's Rules*, to mobilize and encourage our community to take the necessary steps to achieve Zero Waste. Of particular concern is the menace that doesn't die, plastic pollution.

Roscoe's Rules include: 1) first and foremost, REFUSE to buy any new plastic products (or anything we don't really need). If we refused to buy, say, any new plastic bags, the effect would be to make the plastic bags we already have more valuable. We would be forced to wash, dry, and store them so we could reuse them over and over. Then we might seek out alternative materials that work just as well. Soon we might learn that we don't really need plastic bags in the first place.

Toward this end, **I recommend that the Council study ways in which the producers and manufacturers of petroleum-based plastic products can be held accountable to assume the**

cost of and responsibility for their effective recycling and safe disposal. If recycling is not possible or feasible for these products, the industry should not produce them in the first place.

Such a move would require that virgin plastic be priced to reflect its true costs to the consumer due to the everlasting harm it causes the environment. This would allow the consumer to see the real cost of buying new plastic and make better more informed decisions about what they buy. Such actions would support Roscoe's other Rules: 2) REUSE (again and again) what we already have, 3) REPURPOSE existing plastic products, and 4) continue to innovate and improve ways to RECYCLE the plastic once it is no longer useful.

I believe plastic producers should own up to the burden their products create for society. Perhaps we should bundle up and deliver all our truckloads of plastic waste to the headquarters of oil and gas companies and their Washington lobbyists and ask them to dispose of it! They would then have to confront, and take responsibility for, the waste problem they created and are maintaining.

As consumer demand for petroleum declines—and electric vehicles and green technology begin to be more sustainable—the oil industry continues to flood the market with petroleum-based plastics. Oil industry's current "pivot to plastics" is an attempt to prop up the demand for oil and gas in the face of individual and community efforts to reduce it. But plastics—bags, food containers, lids, bottles, toys, you name it—have nowhere to go. They simply keep piling up in our landfills.

Meanwhile, we—individuals, towns, counties, states, and nations—seek to take actions and promote policies to resolve the climate crisis, reduce plastic pollution, reduce the size of landfills, and improve the quality of our recycled material. According to an article in the WP, below, it is estimated that "almost 80% of the plastic ever produced is entombed in landfills." What can we do? We can **Refuse** to buy it; we can **Reuse** or **Repurpose** what we already have; and we can **Recycle** it. If markets for recycled plastic are diminishing, it is in no small part because the petroleum industry continues to produce "virgin plastic" at lower prices.

It is time we insist that plastic producers and manufacturers bear the cost and the responsibility of environmentally responsible disposal of these products. Plastic does not go away. Even if it degrades into microscopically smaller pieces, those pieces remain a threat to the health of our wildlife. And when they are ingested by land and sea animals, they also become a threat to the health of the humans who consume those animals. As we learn to use less plastic and to recycle it more effectively, we can undercut this pernicious strategy.

Sincerely,

A handwritten signature in cursive script that reads "Janet Baldwin Anderson".

Janet Baldwin

Sources:

1. **How Big Oil Misled The Public Into Believing Plastic Would Be Recycled**

An NPR and PBS Frontline investigation reveals how the oil and gas industry used the promise of recycling to sell more plastic, even when they knew it would never work on a large scale.

Read in NPR: <https://apple.news/A46YAci01SJivBn-YCaBgUg>

2. **The Climate Crisis**, *The New Yorker* Newsletter of September 10, 2020. Bill McKibben.

3. **All My Takeout Has Delivered a Mountain of Trash**. Tom Sietsma, *Washington Post*, September 14, 2020. https://www.washingtonpost.com/news/voraciously/wp/2020/09/14/all-my-takeout-has-delivered-a-mountain-of-trash-so-i-asked-experts-how-to-minimize-it/?tid=pm_food_pop

Dear Montgomery County Council,

I am writing to urge you to support Bill 32-20, Solid Waste - Waste Reduction / Source Reduction and Single Use Straws, and Bill 33-20, Solid Waste - Food Service Products Packaging Materials - Requirements. These two measures will help Montgomery County become a more sustainable community, ease the burden on our waste stream, and help us fight climate change.

Bill 32-20 creates a needed framework for reducing waste in Montgomery County by empowering the County Executive to implement the County's waste reduction hierarchy in real policies. As the waste and recycling markets change in the years ahead, continually adjusting to these conditions will be necessary to reducing our waste stream. It would be valuable to require annual public reports on progress toward these goals, as well.

Bill 33-20 is the logical next step to what Montgomery County has already accomplished by passing the ban on expanded polystyrene foam containers in 2017. The county took this step in part because expanded polystyrene foam is unfeasible to recycle; now, all polystyrene cannot be recycled in the county's recycling facility. It only makes sense to eliminate products that we cannot recycle in favor of those that we can. Banning #6 plastic, as this bill does, is a common-sense solution to the current challenges in the recycling market; amendments to the bill to eliminate exceptions and strengthen this bill are also valuable.

Eliminating these unrecyclable plastics, a step that simply clarifies and implements existing Montgomery County policy, is the right step. While education campaigns are worthy endeavors, they keep the burden of dealing with the plastic industry's unrecyclable products on the County and its residents - and even properly disposed of in the trash, unrecyclable plastics become fossil fuels when burned at the Dickerson trash incinerator, contributing to air and water pollution and climate change. A much more sensible step is to move forward with eliminating these burdensome products from the County's waste stream entirely.

Please support these two bills with amendments to strengthen their impact so Montgomery County can continue to lead on plastic reduction.

Sincerely,
Jo Ann Jablon
7814 Conwell Rd
Glenside, PA 19038

MARYLAND RETAILERS ASSOCIATION

The Voice of Retailing in Maryland



September 14, 2020

Bills 32-20 and 33-20 OPPOSE

Council President Katz and Honorable Members of the Montgomery County Delegation,

MRA would like to share our concerns with Bill 32-20 pertaining to a straw ban and granting authority of the County Executive to prohibit the use, distribution or sale of any product as well as Bill 33-20 banning all polystyrene products for sale and use.

Bill 32-20

STRAWS:

“48-62. Source reduction of specific materials - Straws.

39 (a) A food service business must post information that plastic straws will no

40 longer be provided to a customer, except where necessary to
41 accommodate a medical or disability-related need of that
customer.

42 (b) Except as provided in subsection (c), a food service business must not

43 provide a plastic straw to a customer. Straws provided to customers must

44 be reusable or compostable. Reusable or compostable straws include

45 straws made of paper, polylactic acid (PLA), bamboo, silicone, or
46 stainless steel.

47 (c) Upon request, a food service business must provide a plastic straw to a

48 customer where it is necessary to accommodate a medical or disability

49 related need of that customer.”

MRA’s members cannot be put in a position to verify the accommodation of a need as it would be a violation of the Americans with Disabilities Act and sets our members up for legal issues. The bill, should merely say upon request as the majority of the country and localities have



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WWW.MDRA.ORG



enacted. Consumers would also still be able to easily purchase straws online creating a competitive disadvantage with brick and mortar.

GRANTING UNILATERAL AUTHORITY TO THE COUNTY EXECUTIVE:

MRA believes the democratic process by which the Council and then the County Executive vote on, sign into law, or veto legislation is a necessary process to vet issues impacting businesses and residents. Removing the Council and public hearing process is highly concerning and we are outright in opposition to such overreaching authority. Checks and balances as well as public discussion and hearings should be in place on such important topics.

Bill 33-20

No locality or state in the country has banned polystyrene beyond EPS. In addition to the bill not addressing the ability of residents to still go online to purchase these products, there is a demand for these items like Solo Cups and many polystyrene products are used in the country from products with medical uses to building construction. Although Montgomery County has not invested in polystyrene recycling infrastructure, other localities in the country have and are recycling polystyrene. It continues to have one of the highest yields in the market and unfortunately, consumers will move to another product that may not be recycled as well. All packaging leaves an environmental footprint regardless of the material type, however some leave more than others. For example, polystyrene foodservice packaging uses less energy and resources to manufacture than comparable paper-based products, leaving a lighter footprint.^[1] A polystyrene foam cup requires about 50% less energy to produce – and creates significantly fewer greenhouse gas emissions – than a similar coated paper-based cup with a corrugated sleeve.^[2]

It is also important to note that most compostable foodservice containers only “degrade” in a controlled composting environment – essentially a large industrial facility where temperatures can exceed 140 degrees.^[3] In fact, the Oregon Department of Environmental Quality has found that compostable foodservice ware often has a larger (life time) environmental footprint than non-compostable items.^[4] For example, compostable materials may require more fossil energy to make and release more greenhouse gases than their non-compostable counterparts.^[5]

Instead, we suggest the county should work with the State to look into advanced recycling technologies. Advanced recycling offers a promising solution for recycled content use in food-grade and other applications. Advanced recycling complements existing mechanical recycling





and both types of processes are needed to meet ambitious recycling and waste reduction targets.

The benefits of advanced recycling include:

- Value to otherwise unused plastic waste. Today only limited types and suitably sorted plastics may be mechanically recycled. This means that a large quantity of plastic waste, the kind that is contaminated or mixed, is still being landfilled or exported. Advanced recycling enables recycling of contaminated and/or mixed plastic waste that cannot be recycled through mechanical recycling.
- Produces plastic with equivalent quality to that of virgin feedstock. With advanced recycling, post-use plastics are recycled back into the production of feedstocks, new chemicals and plastics with an equivalent quality to those produced from virgin feedstock. This recycled plastic can therefore be used in high-quality applications such as food contact and food packaging.
- Reduces the use of fossil feedstock to produce plastics, since chemically recycled plastics can be re-used as feedstock for new plastics.
- Reduction of carbon emissions. Advanced recycling can eliminate certain emissions associated with combustion and energy recovery^[6].

There are several examples of localities and companies utilizing advanced recycling. For one, companies like Oregon-based Agilyx^[7] are turning polystyrene – both rigid and foam packaging - back into its original styrene molecules that can then be used to make new packaging. Utah-based Renewlogy^[8] was recently awarded a new contract with the City of Phoenix^[9] to divert Number 3 – 7 plastics that previously would be exported to China. Phoenix Mayor Kate Gallego noted "During a time when cities are giving up on recycling, Phoenix is again leading the way in setting the gold standard for innovation and creativity."

Unfortunately, we were waitlisted for today's hearing, but welcome the opportunity to continue conversations with you all. Thank you for your time and consideration.





Plastics Food Service
Packaging Group

Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

September 14, 2020

RE: Oppose Bill 33-20, Solid Waste (Trash) - Food Service Products Packaging Materials - Requirements

Dear Council President Katz and Honorable Members of the Montgomery County Delegation,

The Plastics Foodservice Packaging Group (PFPG) of the American Chemistry Council (ACC) represents the leading suppliers of plastic foodservice and packaging products, including polystyrene food and beverage containers. County council staff authored a memo and bill proposing to expand the existing polystyrene ban to encompass rigid polystyrene foodservice packaging. PFPG and ACC respectfully oppose any proposed ordinance that would restrict the use of rigid polystyrene foodservice packaging.

ACC and its members take seriously the issue of litter and marine debris. To that end, ACC is working domestically and internationally with government officials, retailers, anti-litter groups and consumers to develop solutions to prevent litter and marine debris.

A Ban Will Not Stop Littering, Only Change the Material

Expanding the polystyrene ban won't stop littering, but will only change what is littered. In fact, litter studies conducted following the enactment of bans have shown an increase in the litter of alternative materials that is greater than the decline in the banned material. This was a primary reason why the California Water Board rejected the use of bans as a compliance mechanism for waterborne trash reduction¹. Furthermore the City Auditor of Honolulu, HI stated in a December 2018 audit to the city council, "Polystyrene food containers are a small portion of litter and banning them would not meaningfully reduce the volume of litter or trash."²

The Alliance to End Plastic Waste Is Investing in Solutions to End Plastic Waste

On January 16, 2019, global companies in the plastics value chain, from manufacture to disposal, including many ACC members, announced the creation of the Alliance to End Plastic Waste. This new non-profit organization will invest \$1.5 billion over 5 years, focusing on ending plastic waste by providing solutions to the largest sources of plastic in our ocean. One of those sources is "High Leakage" countries where waste collection and management have not kept pace with growing populations and economies. Science Magazine estimates almost 60% of plastic waste going into our oceans comes from five countries, primarily in Southeast Asia. **In the U.S., ACC and its members have committed to reusing, recycling, or recovering all plastic packaging by 2040 and making all plastic packaging reusable, recyclable, or recoverable by 2030.**

¹ http://www.waterboards.ca.gov/water_issues/programs/trash_control/docs/trash_sr_040715.pdf

² http://www.honolulu.gov/rep/site/oca/oca_docs/PS_Ban_Study_Final_Report.pdf

Alternatives Are Not Necessarily Better for the Environment

All packaging leaves an environmental footprint regardless of the material type, however some leave more than others. For example, polystyrene foodservice packaging uses less energy and resources to manufacture than comparable paper-based products, leaving a lighter footprint.³ A polystyrene foam cup requires about 50 percent less energy to produce – and creates significantly fewer greenhouse gas emissions – than a similar coated paper-based cup with a corrugated sleeve.⁴

It is also important to note most compostable foodservice containers only “degrade” in a controlled composting environment – essentially a large industrial facility where temperatures can exceed 140 degrees.⁵ In fact, the Oregon Department of Environmental Quality has found that compostable foodservice ware often has a larger (life time) environmental footprint than non-compostable items.⁶ For example, compostable materials may require more fossil energy to make and release more greenhouse gases than their non-compostable counterparts.⁷

A Different Approach Is Needed

Instead of banning one material and not having an impact, the Plastics Foodservice Packaging Group suggests the county consider alternatives such as:

- Working with the state to research and adopt advanced recycling technologies.
- Conducting a full life-cycle analysis of the environmental impacts of alternatives.
- Increasing curb-side or drop-off recycling systems and infrastructure.
- Adopting a Sustainable Materials Management approach to manage and recover post-use resources.
- Educating constituents about proper recycling.

Reducing landfill disposal, marine debris, and litter requires the implementation of a variety of tools. In addition to efforts that seek to increase recycling and improve solid waste collection infrastructure, opportunities to recover non-recycled plastics may be an option as well. An emerging set of technologies is allowing governments and businesses to convert non-recycled plastics into energy, fuels, and feed stocks, or raw materials for new manufacturing. We urge the county to consider some of these suggestions rather than a ban of a low-cost material which can be recycled, reused, and recovered.

We would oppose an expansion of the polystyrene foam ban to encompass rigid polystyrene, however, we wish to work with the county to institute positive, economically viable, and environmentally-friendly solutions.

³ https://www.plasticfoodservicefacts.com/wp-content/uploads/2017/12/Peer_Reviewed_Foodservice_LCA_Study-2011.pdf

⁴ [Id.](#)

⁵ <https://bioplasticsnews.com/biodegradable-plastics/>

⁶ See <https://www.oregon.gov/deq/FilterDocs/compostable.pdf>

⁷ See <https://www.oregon.gov/deq/FilterDocs/compostable.pdf>



Plastics Food Service
Packaging Group

Best Regards,

Omar Terrie
Director, Plastics Foodservice Packaging Group
American Chemistry Council

ADDENDUM

T&E ITEM 2
October 12, 2020
Worksession

M E M O R A N D U M

October 8, 2020

TO: Transportation and Environment Committee

FROM: Amanda Mihill, Legislative Attorney

SUBJECT: Bill 33-20, Solid Waste (Trash) – Food Service Products Packaging Materials - Requirements¹

PURPOSE: Worksession – Committee to make recommendations on Bill

After the original staff report was distributed, Council staff received the following comments from DEP staff regarding the suggestion by some opposition testimony that Bill 33-20 should not be enacted, but additional recycling investments were warranted:

DEP Comments

We offer the following response to the American Chemistry Council/Mr. Terri's comments for the packet, and if this issue comes up during the session Monday, we're happy to add more to the discussion.

DEP's perspective and experience with respect to #6 polystyrene plastic is as follows:

- Polystyrene in its rigid and expanded foam forms are not and have never been recyclable in Montgomery County. The primary reason for this is that no markets exist in this region for this material. There are no polystyrene recycling facilities in our region, and the material's low density make it cost prohibitive to transport the materials long distances.
- DEP does not know of any other recycling centers in this region that are separating and baling #6 rigid polystyrene (PS) individually for sale or of any entities (anyone, including manufacturers or brokers) seeking to purchase #6 bales for processing. Further, we know

¹#FoodPackaging
Polystyrene, recycling, environment

that #6 rigid PS is not considered valuable/desirable in mixed #3 – #7 plastic bales.

There are several reasons for this:

- There are not large quantities of #6 rigid PS in the waste/recycling stream, so it would be difficult to gather/consolidate the amounts of the material needed to make recycling cost effective.
- The majority of #6 rigid PS materials that are in the waste/recycling stream are colored plastics (e.g., red Solo® cups), which are difficult to recycle into other products because of the added color.
- A lot of the #6 rigid PS are coming from products that are in direct contact with food; they cannot be recycled and remanufactured into other food contact products due to FDA regulations.
- There are not many non-food contact/grade uses for #6 rigid PS, so there is little to no demand for recycled feedstock.

(Source: Melissa Filiaggi, Maryland Environmental Service, who markets for sale our recyclables at our MRF)

- Existing Chapter 48 requirements (per County Council Bill 41-14) already requires food service businesses to use “compostable or recyclable food service ware” when using disposable food service items. “Recyclable” is defined in the regulations as recyclable in Montgomery County. As stated above, #6 rigid polystyrene is not, and has never been, recyclable in Montgomery County. Due to these requirements, food service businesses are already prohibited from using #6 rigid polystyrene food service ware. Bill 32-30 Bill 33-20 is simply a clarification and explicit restatement of the intent and existing requirements of Chapter 48 per Bill 41-14. Montgomery County food service businesses are already complying with this regulation, and therefore should not be adversely impacted by this new bill.
- Litter reduction and marine debris reduction are welcome potential additional benefits of this bill. However, the intent of 33-20 is to clarify that #6 rigid plastics are unacceptable in the effort to reduce the use of plastics that are not recyclable in Montgomery County and to replace these products with recyclable or compostable alternatives.