

Warrant Article 25: Amend the Town’s General By-Laws to ban single use plastics

Recommendation: Favorable Action on the amended main motion by a vote of 22 in favor, 0 opposed and 2 abstaining.

Executive Summary:	Warrant Article 25 was filed to restrict the sale of certain plastic products that contain harmful chemicals in the Town of Brookline, for the purpose of reducing the risk of exposure to people and the environment. The proposed by-law would restrict the sale of: (1) plastic ear swabs, (2) single-use floss picks with plastic handles, (3) over-the-counter cosmetic and health and beauty aid products that contain microbeads or plastic glitter, (4) plastic wet wipes, (5) plastic balloon sticks, and (6) alcoholic beverages in plastic bottles 100 ml or less in volume. The by-law specifically excludes service businesses such as restaurants, medical and dental offices, and hair and nail salons. It also does not regulate prescription products or microbeads covered by any state or federal law. The Advisory Committee made several amendments to the article: (1) to remove over-the-counter cosmetics containing microbeads and all references to microbeads in the article; (2) to remove single-use floss picks; and (3) to remove plastic wet wipes. The amended article passed by a vote of 22 in favor, 0 opposed and 2 abstentions.
Voting Yes will...	Voting Yes will reduce the volume of non-biodegradable plastic products sold in Town, but will add another category of enforcement to the Department of Health and Human Services, which currently has a single, part-time (19 hour/week) health specialist who enforces the plastic, polystyrene and other bans passed by TM some years ago. It assigns the role of promulgating regulations to the Select Board and enforcement
Voting No will...	Voting No will have no impact on Town operations.
Financial impact	Enactment of this by-law may have a financial impact on the Town if there is a need for additional staffing for enforcement. It may also have a financial impact on retailers who will need to find alternative products that may be more costly and who will not be able to sell their existing inventory beyond the effective date, July 1, 2023.
Legal implications	It is unclear if there are any legal implications.

Introduction

Warrant Article 25 proposes a new by-law to Section 8 of the Town’s General By-Laws – Public Health and Safety. The by-law would ban the sale or distribution of certain plastic products containing toxic chemicals sold in retail stores such as supermarkets, drug, liquor and package

stores. The products are: (1) plastic ear swabs, (2) single-use floss picks with plastic handles, (3) over-the-counter cosmetic and health and beauty aid products that contain microbeads or plastic glitter, (4) plastic wet wipes, (5) plastic balloon sticks, and (6) alcoholic beverages in plastic bottles 100 ml or less in volume. The Town has already enacted legislation that bans plastic bags and polystyrene for environmental reasons.

This by-law would move the Town further along the goal of reducing plastic products that are harmful to human health and the environment. The Town's Department of Health and Human Services currently employs a part-time health specialist (19 hours/week) to enforce the by-laws that have been passed by Town Meeting that require the enforcement by the Health Department. It is unclear whether that employee will have the capacity to also enforce this by-law; it might require hiring additional staff or converting the part-time position which is not benefit-eligible to one that is. There are also potential negative financial impacts to the affected retail establishments.

Evaluation Methodology/Research

- Letter from the Massachusetts Sierra Club received April 5, 2022 in support of WA25, notes "In the last ten years, more than 150 communities across the state from Williamstown to the Cape have passed local single-use plastic pollution laws."
- Letter from the Brookline Chamber of Commerce dated March 31, 2022 in opposition to WA 22, WA25 and WA30.
- Letters from residents in support of WA25.
- Two warrant articles passed by Town Meeting in November 2012 that ban polystyrene and plastic bags. See Section 8.32 Sustainable Food Containers and Packaging (effective dates 1/1/2019 and 1/1/2020); and Section 8.33 Sustainable Bags (effective date 7/1/2017 with up to a 1-year waiver).

A warrant article passed by Town Meeting in May 2015 that regulated the sale of bottled water.
<https://www.brooklinema.gov/DocumentCenter/View/25283/Brookline-Town-By-Laws>

- H.869 An Act to Reduce Single-Use Plastics from the Environment, which has 29 sponsors including Reps. Vitolo, Elugardo and Balsler. Currently in committee.

<https://malegislature.gov/Bills/192/H869/BillHistory>

- The European Parliament bill passed and went into effect in 2021 that bans single-use plastics, including many of the products that Brookline has already banned and those that would be banned upon passage of WA25.

<https://www.wastedive.com/news/european-parliament-approves-2021-single-use-plastics-ban/551552/>

Discussion

Plastic products contain toxic petrochemicals, often undisclosed, which negatively impact human and environmental health. The petitioners filed WA25 to further the goals of reducing plastic exposures that began in Brookline in 2012 with the passage of two warrant articles – one

restricting plastic bags, one restricting polystyrene—at the November Special Town Meeting. Single-use plastics are typically unrecyclable, high-volume products that often end up as litter. The number 1 most-littered item is nip bottles; floss picks are number 2. Newton has already banned all nip bottles; Brookline seeks to ban only plastic ones. Wet wipes, defined as nonwoven sheets, are often plastics which, despite warnings on the label, are flushed down the toilet clogging and polluting our wastewater system.

Article 25 states that no retailer shall sell or distribute the following:

1. Plastic ear swabs
2. Single-use floss picks with plastic handles
3. Over-the-counter cosmetic or health and beauty aid products containing microbeads or plastic glitter
4. Plastic wet wipes (with an exemption for those designed and marketed for medical use)
5. Plastic balloon sticks
6. Alcoholic beverages in plastic bottles (nips) 100 ml or less in volume.

The Advisory Committee received many letters in support of Article 25, noting that there are non-plastic alternatives available. The letters also state that the enforcement of this article will not cost the town additional monies because the Department of Health and Human Services has a staff person already tasked with enforcement. Health Director Sigalle Reiss, spoke to the Committee and noted that there is currently one 19-hour a week health specialist available for enforcement, and expressed concern about the ability of the department to do the additional enforcement Articles 22 and 25 would require. She reported that the Advisory Council on Public Health had just met and was not supporting these articles.

A letter received from the Brookline Chamber of Commerce raised additional concerns about the impacts on Brookline businesses “still reeling from the pandemic, supply chain shortages, and hiring challenges.” Among those concerns are the options for substitution, the availability and the expense of alternatives. The Chamber supports eliminating plastic products outlined in both articles as a state mandate, but also stated that it puts Brookline businesses at a competitive disadvantage to do so only at the local level.

A letter received from the Massachusetts Chapter of the Sierra Club is strongly supportive of the proposed articles and has been active in efforts to reduce the use of plastics at the state and local levels. The letter notes that “[i]n the last ten years, more than 150 communities across the state from Williamstown to the Cape have passed local single-use plastic pollution laws.” The letter further states that the by-laws proposed are partly based on proposed state laws, such as H.869, An Act to Reduce Single-Use Plastics from the Environment, which is currently in committee. That Act has 29 endorsers, including local Reps. Vitolo, Elugardo and Balsler. The Single-Use Plastics legislation seeks to reduce plastic bags, polystyrene, plastic straws and plastic water bottles, which are already regulated in Brookline. Additionally, it includes helium balloons, alcohol nips 100 ml or less, plastic-containing wipes and hotel toiletry bottles.

The Advisory Committee discussed each of the six proposed single-use plastic products separately, considering availability, enforceability, and meeting the needs of diverse consumers. Plastic ear swabs and plastic balloon sticks have an easily available alternative (wood); plastic glitter is easy to identify in beauty products, and plastic nip bottles (100 ml or less in volume) were all seen as having available substitutes and easy to enforce. Microbeads were felt to be problematic for retailers to be able to identify, single-use floss sticks have no equally good alternative for those with physical disabilities, for example, and plastic wet wipes, so important during the pandemic, were seen as having no easily available consumer substitutes. The petitioners noted that such wipes could have a medical exemption.

The petitioners met with Health Director Reiss and agreed to change the effective date of both Articles 22 and 25 from January 1, 2023 to July 1, 2023. Section 4 of the proposed by-law reads: “The Brookline Department of Public Health shall be responsible for enforcement and any regulation.” Section 2 of the proposed by-law states that the Select Board is the body that promulgates regulations after holding a public hearing. The Advisory Committee accepted a recommendation to end Section 4 after the word “enforcement” to make it clearer that the Select Board promulgates regulations and the Health Department enforces the regulations.

Recommendation

The Advisory Committee took the following votes:

- (1) By a vote of 22 in favor, 1 opposed and 1 abstention to amend Article 25 by removing all references to microbeads
- (2) By a vote of 16 in favor, 6 opposed and two abstentions to amend Article 25 by removing single-use floss picks
- (3) By a vote of 17 in favor, 6 opposed and 1 abstention to amend Article 25 by removing plastic wet wipes

The Advisory Committee recommends FAVORABLE ACTION on the following amended motion under Warrant Article 25 by a vote of 22 in favor, 0 opposed and 2 abstentions.

VOTED: That the Town amend the General Bylaws by adding the following Article:

ARTICLE 8.X SINGLE-USE PLASTIC PRODUCTS

ARTICLE 8.X.1 DEFINITIONS

Glitter: decorative particles that are shiny or reflective and less than six (6) millimeters along the longest dimension.

Single-use plastic (SUPs) products: plastic products or primary packaging that are generally used only once.

ARTICLE 8.X.2 RESTRICTIONS

(a) No retailer shall sell or distribute:

- (1) plastic ear swabs,
- (2) over-the-counter cosmetic or health and beauty aid products that contain plastic glitter,
- (3) plastic balloon sticks,
- (4) alcoholic beverages in plastic bottles that are 100 ml or less in volume.

(b) No retailer shall sell or distribute single-use plastic products as may be identified in regulations promulgated by the Select Board to further the purposes of this Bylaw, following a duly noticed public hearing.

ARTICLE 8.X.3 EXCLUSIONS

(a) This by-law does not regulate prescription products.

(b) This by-law does not apply to businesses that are primarily service businesses such as restaurants, medical and dental offices, and hair and nail salons.

ARTICLE 8.X.4 ENFORCEMENT

The Brookline Department of Public Health shall be responsible for enforcement and any regulation.

This by-law shall not be enforced prior to January 1, 2023.

ARTICLE 8.X.5 SEVERABILITY

If any provision(s) of this article is held to be invalid, such provision(s) shall be severable and the remaining sections shall be valid.

And amend section 10.2 PROSECUTIONS AND ENFORCEMENT as follows:

DIRECTOR OF HEALTH & HUMAN SERVICES

Part VIII-Public Health & Safety

Articles 8.1, 8.2, 8.3,

8.4, 8.6, 8.7,

8.8, 8.9,

8.10,8.11,

8.12,8.13,

8.14, 8.15,

8.16, 8.22,

8.23, 8.32,

8.37, 8.38

By adding this article number to the list of Articles following “8.38”.

And amend section 10.3 NON-CRIMINAL DISPOSITION to include the following enforcement schedule:

ARTICLE 8.X SINGLE-USE PLASTIC PRODUCTS BY-LAW

Per product:

Initial Violation	Warning
First Offense	\$50.00
Second and Subsequent	\$100.00

ARTICLE 25 ADVISORY COMMITTEE VOTES

Article Description	Restricting certain plastic sales, as amended
AC recommendation (Favorable Action unless indicated)	22-0-2
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	A
Katherine Florio	Y
Harry Friedman *	
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O’Neal, Sr.	A
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	Y
Dennis Doughty	
* Chairperson does not vote except to break a tie	

APPENDIX

Warrant Article showing Advisory Committee amendments.
Additions Underlined. Deletions ~~Strikethrough Italics~~

To see if the Town will amend the General Bylaws by adding the following Article:

ARTICLE 8.X SINGLE-USE PLASTIC PRODUCTS

ARTICLE 8.X.1 DEFINITIONS

Glitter: decorative particles that are shiny or reflective and less than six (6) millimeters along the longest dimension.

~~Microbeads: Microbeads are a type of microplastic or tiny particles of plastic less than one millimeter in diameter. These plastics are most often polyethylene, but can also be made of other petrochemical plastics such as nylon, polypropylene, polystyrene, acrylic, and polyethylene terephthalate (PET).~~

Single-use plastic (SUPs) products: plastic products or primary packaging that are generally used only once.

ARTICLE 8.X.2 RESTRICTIONS

(a) No retailer shall sell or distribute:

- (1) plastic ear swabs,
- ~~(2) single-use floss picks with plastic handles,~~
- ~~(23) over-the-counter cosmetic or health and beauty aid products that contain microbeads or plastic glitter,~~
- ~~(4) plastic wet wipes other than those designed and marketed for medical applications,~~
- (35) plastic balloon sticks,
- (46) alcoholic beverages in plastic bottles that are 100 ml or less in volume.

(b) No retailer shall sell or distribute single-use plastic products as may be identified in regulations promulgated by the Select Board to further the purposes of this Bylaw, following a duly noticed public hearing.

ARTICLE 8.X.3 EXCLUSIONS

(a) This by-law does not regulate prescription products.

~~(b) This by-law does not regulate microbeads that are covered by any preemption provision of the federal [Microbead-Free Waters Act of 2015](#) or any other state or federal law.~~

(b~~e~~) This by-law does not apply to businesses that are primarily service businesses such as restaurants, medical and dental offices, and hair and nail salons.

ARTICLE 8.X.4 ENFORCEMENT

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This by-law shall not be enforced prior to January 1, 2023.

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DIRECTOR OF HEALTH & HUMAN SERVICES

Part VIII-Public Health & Safety

Articles 8.1, 8.2, 8.3,

8.4, 8.6, 8.7,

8.8, 8.9,

8.10,8.11,

8.12,8.13,

8.14, 8.15,

8.16, 8.22,

8.23, 8.32,

8.37, 8.38

By adding this article number to the list of Articles following “8.38”.

And amend section 10.3 NON-CRIMINAL DISPOSITION to include the following enforcement schedule:

ARTICLE 8.X SINGLE-USE PLASTIC PRODUCTS BY-LAW

Per product:

Initial Violation	Warning
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