

LOCAL LAW INTRO. NO. - 2022

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

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

Section 1. A new Chapter 541 is hereby added to the Laws of Westchester to read as follows:

CHAPTER 541

Single-use Foodware Law

Sec. 541.01. Short title.

Sec. 541.11. Definitions.

Sec. 541.21. Restrictions.

Sec. 541.31. Ordering Option Requirements.

Sec. 541.41. Posting of Signs.

Sec. 541.51. Exemptions.

Sec. 541.61. Enforcement and penalties.

Sec. 541.71. Construction.

Sec. 541.81. Reverse Preemption.

Sec. 541.91. Severability.

Sec. 541.01. Short title.

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

Sec. 541.11. Definitions.

1. “Beverage splash stick” shall mean a device primarily intended to be used to keep heat and liquid from escaping a lidded cup.
2. “Beverage stirrer” shall mean a device primarily intended to be used by a person for the purpose of stirring beverages.
3. “Condiment packet” shall mean an individual single-use container, sealed by the manufacturer or a food service establishment, containing a sauce or other substance used to enhance the flavor of food, which may include, but need not be limited to, mustard, ketchup, mayonnaise, soy sauce, hot sauce, salt, pepper, and salad dressing.
4. “Dine-in” shall mean food or beverage provided by a food service establishment to be consumed on the premises of such food service establishment.
5. “Electronic orders” shall mean food or beverage orders made through the website, mobile phone application, or other digital platform of a food service establishment or third-party food delivery service.
6. “Food service establishment” shall have the same meaning as provided in Section 873.420.1(1)(c) of the Laws of Westchester County.
7. “Plastic” shall mean a synthetic material made from organic polymers, including, but not limited to, polypropylene and polystyrene, that can be molded into shape while soft, and then set into a rigid or slightly elastic form.

8. “Self-serve station” shall mean a designated area or mechanical dispenser in a food service establishment where customers may help themselves to single-use foodware or condiment packets.
9. “Single-use foodware” shall mean any eating utensil or other item used as part of food or beverage service that is designed and intended by the manufacturer for only one use before being discarded, including, but not limited to, forks, spoons, sporks, knives, chopsticks, beverage straws, cocktail sticks, toothpicks, napkins, wet-wipes, cup sleeves, beverage trays, beverage lids, empty plates, empty bowls, and empty cups. For the purposes of this Chapter, “single-use foodware” exempts, and shall not include: (a) a beverage stirrer or beverage splash stick, as defined in this Section; or (b) containers actively holding food or beverages for dine-in or take-away customers, such as plates, bowls, and cups.
10. “Take-away” shall mean food or beverage provided by a food service establishment to be consumed off the premises of such food service establishment, including same-day delivery or same-day pickup of food and beverages from food service establishments.
11. “Third-party food delivery service” shall have the same meaning as provided in Section 685.01(6).

Sec. 541.21. Restrictions.

1. No food service establishment shall provide single-use foodware or condiment packets to any dine-in or take-away customer, whether directly to such customer or through a third-party food delivery service, unless the customer requests such single-use foodware or condiment packets.

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

Sec. 541.31. Ordering Option Requirements.

1. Food service establishments shall provide options to allow a customer to affirmatively request applicable single-use foodware or condiment packets when ordering dine-in or take-out food and beverages across all ordering or point of sale platforms, including through in-person, telephone, and electronic orders.
2. The food service establishment shall coordinate with any third-party food delivery service as necessary to prompt the customer to affirmatively request single-use foodware or condiment packets as applicable. The default selected option for electronic orders shall be that no single-use foodware or condiment packets are requested.

Sec. 541.41. Posting of Signs.

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

Sec. 541.51. Exemptions.

The following situations are permitted under this Chapter and shall not constitute a violation of the Sec. 541.21 restrictions:

1. Food service establishments with counter service may allow customers to access a self-service station for single-use foodware and/or condiment packets.

2. For take-away orders, food service establishments and/or third-party food delivery services may choose to include specific single-use foodware, such as beverage lids and beverage trays, in order to prevent spills and ensure safety.
3. Food service establishments may provide single-use foodware or condiment packets that are prepackaged with or attached to any food or beverage products by the manufacturer prior to receipt by the food service establishment (for example, plastic straws attached to juice boxes, or a separate plastic container of dressing included within a larger salad container).
4. Food service establishments may provide single-use foodware or condiment packets with free or reduced-price meals as part of a charitable program or donation, including, without limitation, free or reduced-price meals provided by school systems, homeless shelters, and programs that deliver meals to the elderly.
5. Food service establishments may provide single-use foodware items or condiment packets pursuant to a public health emergency declared by the New York State Governor, New York State Commissioner of Health, County Executive, County Board of Health, or any other authorized federal, state, or local official.

Sec. 541.61. Enforcement and Penalties.

1. The Westchester County Board of Health is authorized to enforce the provisions of this Chapter in accordance with the enforcement provisions of Chapter 873 of the Laws of Westchester County (i.e., the Westchester County Sanitary Code).
2. Any food establishment that violates any provision of Section 541.21, 541.31, or 541.41 of this Chapter may be subject to a civil penalty. Such penalty shall be in the amount of

one hundred dollars (\$100) for the first violation, two hundred dollars (\$200) for the second violation committed on a different day within a period of twelve (12) months, and four hundred dollars (\$400) for the third and each subsequent violation committed on different days within a period of twelve (12) months, except that the Westchester County Board of Health shall not issue a notice of violation, but shall issue a warning and provide a copy of this Local Law, for any violation that occurs within the first six months of the effective date of this Local Law.

3. No civil penalty shall be imposed as provided for herein unless the alleged violator has received notice of the violation and has had an opportunity to be heard.

Sec. 541.71. Construction.

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

Sec. 541.81. Reverse Preemption.

This Local Law shall be null and void on the day that statewide or federal legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this Local Law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Westchester. The County Board of Legislators may determine via resolution whether or not identical or substantially similar legislation has been enacted for the purposes of triggering this provision.

Sec. 541.91. Severability.

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

Section 2.

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