

**RCW 70A.245.080 Optional serviceware—Penalty.** (1) Beginning January 1, 2022:

(a) Except as provided in (b) of this subsection, a food service business may provide the following single use food service products only after affirming that the customer wants the item or items:

- (i) Utensils;
- (ii) Straws;
- (iii) Condiment packaging; and
- (iv) Beverage cup lids.

(b) A food service business may provide beverage cup lids without customer affirmation for:

- (i) Hot beverages;
- (ii) Beverages provided through delivery service or curbside pickup; and
- (iii) Beverages served to customers via a drive through or at large, permanent, venues that are designed for professional sport or music events and that have a fixed-seat capacity of at least 2,500 customers and are enclosed or are surrounded by a perimeter fence.

(c) The requirements of this section do not apply to food service products provided to a patient, resident, or customer in:

- (i) A health care facility or a health care provider as defined in RCW 70.02.010;
- (ii) Long-term care facilities identified in RCW 18.51.010, 18.20.020, 70.128.010, 70.97.010, or 18.390.010;
- (iii) Senior nutrition programs authorized under 45 C.F.R. Sec. 1321, and home delivered meals offered under chapters 74.39 and 74.39A RCW;
- (iv) Services to individuals with developmental disabilities under Title 71A RCW and chapter 74.39A RCW; and
- (v) State hospitals as defined in RCW 72.23.010.

(d) The requirements of this subsection (1) apply to the activities of the department of corrections and the department of children, youth, and families only to the extent operationally feasible and practicable.

(2) (a) Nothing in this section prohibits a food service business from making utensils, straws, condiments, and beverage cup lids available to customers using cylinders, bins, dispensers, containers, or other means of allowing for single-use utensils, straws, condiments, and beverage cup lids to be obtained at the affirmative volition of the customer.

(b) Utensils provided by a food service business for use by customers may not be bundled or packaged in plastic in such a way that a customer is unable to take only the type of single-use utensil or utensils desired without also taking a different type or types of utensil.

(3) (a) The department may issue a civil penalty of no less than \$150 per day and no more than \$2,000 per day to the owner or operator of a food service business for each day single-use food service products are provided in violation of this section.

(b) The department must issue at least two notices of violation by certified mail prior to assessing a penalty.

(c) Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180.

(d) A food service business may appeal penalties assessed under this subsection to the pollution control hearings board within 30 days of assessment.

(4) All food service businesses are encouraged, but not required, to take actions in addition to the requirements of this section that support a goal of reducing the use of and waste generated by single-use food service products.

(5) Beginning July 1, 2021, a city, town, county, or municipal corporation may not enact an ordinance to reduce pollution from single-use food service products by requiring affirmation that a customer wants single-use food service products from the customer of the food service business or other retail establishment. [2021 c 313 § 11.]

**Finding—Intent—2021 c 313:** See note following RCW 70A.245.010.