

ALBANY COUNTY DEPARTMENT OF HEALTH

ALBANY COUNTY DEPARTMENT OF HEALTH RULES AND REGULATIONS REGARDING THE OFFERING OF PLASTIC STRAWS AND PLASTIC CUTLERY BY RESTAURANTS, BEVERAGE PROVIDERS AND VENDORS IN ALBANY COUNTY

SECTION 1: INTENT AND PURPOSE

Pursuant to Local Law No. 1 for 2019, these rules and regulations have been promulgated by the Commissioner of Health.

SECTION 2. OFFERING OF PLASTIC STRAWS AND PLASTIC CUTLERY BY RESTAURANTS, BEVERAGE PROVIDERS AND VENDORS

1. All restaurants, including fast food restaurants drive through windows of restaurants, beverage providers or vendors shall not offer to consumers any single use-straw or beverage stirrer made of plastic.
2. This prohibition shall not apply to pre-packaged drinks sold at commercial establishments, use by medical or dental facilities and use by individuals with a disability or other impairment requiring the use of plastic straws.
3. All restaurants, including fast food restaurants drive through windows of restaurants, beverage providers or vendors shall only offer plastic cutlery or straws upon request.
4. Employees of restaurants including drive through restaurants are not precluded from asking a customer if they need utensils or straws.
5. Restaurants, including fast food restaurants drive through windows of restaurants, beverage providers or vendors are not precluded from using or making non-plastic alternatives available to beverage consumers.
6. Stores that offer self-service stations that include straws, stirrers and plastic cutlery are not required to ask customers if they request a straw or plastic item.

SECTION 3: ENFORCEMENT AND PENALTIES

AUTHORITY: The Health Commissioner is authorized by Local Law 1 of 2019 to promulgate rules and regulations and take any and all other reasonable actions necessary to implement and enforce Local Law 1 for 2019. These rules and regulations shall be enforced by the Commissioner (or her designee).

PENALTIES: Restaurants, Beverage Providers and Vendors shall be subject to the following penalties for violation of Local Law No. 1 for 2019:

1. Civil Penalties:

A. First Offense – Any Restaurant, Beverage Provider or Vendor that commits a first offense shall be issued a written warning from the Commissioner (or her designee).

B. Second Offense – Any Restaurant, Beverage Provider or Vendor that commits a second offense shall be fined One Hundred (\$100) dollars.

C. Third and Subsequent Offense – Any Restaurant, Beverage Provider or Vendor that commits a third or subsequent offense shall be fined Two Hundred and Fifty (\$250) dollars.

Notice of Civil Penalty; Appeal Procedure.

The Department of Health shall, in its discretion, perform inspections of Restaurants, Beverage Providers or Vendors subject to Local Law No.1 for 2019 for compliance as well as respond to and investigate complaints of noncompliance. If the Department of Health determines that a Restaurant, Beverage Provider or Vendor has committed a First Offense, the Department of Health shall send via certified mail a written notice of its determination to the Restaurant, Beverage Provider or Vendor. The notice shall contain a concise statement of the facts constituting the violation. If the Department of Health determines that a Restaurant, Beverage Provider or Vendor has committed a Second or Subsequent Offense, the Department of Health shall send via certified mail a written notice of its determination to the Restaurant, Beverage Provider or Vendor. The notice shall contain a concise statement of the facts constituting the violation, the date of a pre-scheduled informal hearing, the amount of the fine assessed, where to send the payment and that the payment shall be made within thirty (30) days after the date of the notice.

The Restaurant, Beverage Provider or Vendor may waive its right to an informal hearing and consent to the entry of an order assessing the stated civil penalty by completing and returning the provided Waiver and Consent form with payment. The notice shall further contain a statement informing the Restaurant, Beverage Provider or Vendor that if, following attendance at an informal hearing, the violation is sustained, it may further have the right to appeal the civil penalty determination at a formal hearing.

The Commissioner of Health shall serve a notice of formal hearing by personal service or registered/certified mail upon the Restaurant, Beverage Provider or Vendor at least fifteen (15) days prior to the hearing date indicating the date, time and location of the formal appeals hearing. Within thirty (30) days after conducting the formal appeals hearing, the Commissioner of Health shall mail a written decision to the Restaurant, Beverage Provider or Vendor either sustaining or overturning the original violation determination.

If the Restaurant, Beverage Provider or Vendor fails to pay the civil penalty, the Commissioner of Health may refer the matter to the Office of the County Attorney to bring a special proceeding in New York State Supreme Court in the County of Albany to recover the civil penalty and to otherwise make effective its purposes by seeking appropriate judicial relief. Likewise, a Restaurant, Beverage Provider or Vendor who wishes to appeal the hearing decision may file a proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules in New York Supreme Court in the County of Albany.