

Duff on Hospitality Law

## WSLCB Allows Restaurants to Deliver Pre-Mixed Cocktails During Pandemic

By Emily Gant on 5.7.20 | Posted in COVID-19, Washington Liquor and Cannabis Board

Cocktail anyone?

Yesterday, the Washington State Liquor and Cannabis Board (the “WSLCB”) announced that spirits, beer and wine restaurant licensees (“SBW Restaurants”) may sell pre-mixed alcoholic beverages for off-premises consumption during the COVID-19 pandemic (the “[Bulletin](#)”). In other words, if you are a SBW Restaurant, you can sell cocktails to-go.

Before everyone starts stirring those martinis, please note that SBW Restaurants must meet specific guidelines before selling pre-mixed cocktails to-go:

- **Sale Must Include a Complete Meal.** The SBW Restaurant cannot sell cocktails unless the order includes a bona fide “complete meal” that was prepared on the SBW Restaurant’s premises. The regulations define “complete meals” as an entrée, plus the offering of at least one side dish. [WAC 314-02-035](#). Permissible “entrees” include fish, steak, chicken, pork, pasta, pizza, burgers, pho, sushi, street tacos, tikka masala, quiche and sandwiches. By way of example, then, it would not be permissible to sell a customer a margarita to-go if they only ordered chips and salsa, but it would be permissible if they ordered tacos and chips and salsa.
- **Container Must Have a Secure Lid or Cap.** The SBW Restaurant must use a container with a secure lid or cap, and in a manner designed to prevent consumption without removal of the lid or cap. The Bulletin specifically notes that lids with sipping holes or openings for straws, and Styrofoam and plastic cups are not permitted. The WSLCB included helpful examples of permissible and impermissible lids and caps, which can be found [here](#).
- **Keep Cocktails Out of Driver’s Reach.** The SBW Restaurant must place the cocktails in the trunk of the vehicle or otherwise beyond the driver’s immediate reach. Although this is not expressly stated in the Bulletin, this rule would feasibly apply to both curbside delivery – where the SBW Restaurant provides the cocktail and food directly to the customer – and home delivery – where the cocktails would need to be beyond the delivery driver’s immediate reach.

- **Appropriate Deliveries.** All deliveries must be made by persons aged 21 or over, holding [MAST permits](#), who are employed by the SBW Restaurant. The person delivering the alcoholic beverages must confirm that the person accepting the delivery is 21 or over.
- **Post Warning.** The SBW must “prominently post” the warning below, placing customers on notice of open container laws. The Bulletin states that “posting” means to “prominently display on the premises, post online, or present in whatever manner is necessary to ensure that the consumer purchasing, or delivery person transporting, such beverages is given notice of this warning.” To proceed conservatively, we suggest that SBW Restaurants 1) physically post the notice at a place easily seen by consumers, like the front door; 2) include the notice on their website, like a “pop-up” box when the customer orders the cocktail; 3) place a written flier in the customer’s order bag; 4) train staff on the rules, both front-of-house employees and those delivering alcohol; and 5) maintain complete records, including examples of all different formats of the posting (written, online, etc.).

Here is the precise wording for the warning:

#### **Customer Notice**

Pre-mixed alcoholic beverages that are packaged by this establishment may not be consumed in a motor vehicle or transported in a motor vehicle except in the vehicle’s trunk; or, if there is no trunk, in some other area of the vehicle not normally occupied by the driver or passengers (this does not include a utility compartment or glove compartment, but may include underneath a seat outside of the driver’s reach). [RCW 46.61.519](#).

- **Expiration.** The WSLCB is allowing these off-premises cocktail sales until 30 days after the county in which the SBW Restaurant is located enters [Phase 4 of Washington’s Safe Start plan](#). Given that counties may enter Phase 4 at different times, this means that the expiration date may be different for the various counties throughout the State.

Finally, a word of caution. It is critically important that your SBW Restaurant follow the letter and spirit of the Bulletin, that you train your staff on appropriate implementation, and that you maintain documentation of your efforts. Further, you may wish to speak with your insurance broker to ensure that your policies cover off-premises sales of alcoholic beverages. A creative plaintiff’s attorney could eat your company for lunch if your employees provide a customer with, say, a “roady” in a Solo cup with a straw, the customer consumes alcohol in the car, and then injures someone. As they say, an ounce of prevention is worth a pound of cure! So, train your staff and speak with your insurance broker now, to avoid unpleasant events down the line.

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Good luck and happy cocktail sales!

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**Tags:** alcohol, cocktails, curbside delivery, Governor Jay Inslee, restaurants, Washington state