

LOCAL LAW NO. "I" FOR 2011

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK REGULATING THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE AND REQUIRING THE USE OF BIODEGRADABLE OR COMPOSTABLE FOOD SERVICE WARE BY ALL FOOD VENDORS AND FOOD PROVIDERS AT ALL COUNTY FACILITIES AND FOOD SERVICE ESTABLISHMENTS IN ALBANY COUNTY

Introduced: 9/12/11

By Messrs. Higgins and Bullock:

BE IT ENACTED by the Albany County Legislature as follows:

Section 1. Title

This local law shall be known as "Food Service Waste Reduction Act."

Section 2. Legislative Intent

The Legislature hereby finds and determines that prohibition of the use of polystyrene foam disposable food service ware in Albany County and requiring that all disposable food service ware be biodegradable or compostable is in the best interests of the citizens of Albany County.

The Legislature further finds and determines that the Environmental Protection Agency has found that the polystyrene manufacturing process is the fifth largest creator of hazardous waste in the United States.

The Legislature further finds and determines that polystyrene foam is a common environmental pollutant and non-biodegradable substance commonly used as food service ware by food vendors and that there is no meaningful recycling of polystyrene foam food service ware.

The Legislature further finds and determines that alternative biodegradable and/or compostable food service ware is readily available for numerous food service applications including, but not limited to, cold cups, plates, and hinge food containers and that these products are biodegradable and/or compostable.

The Legislature further finds and determines that the use of biodegradable and/or compostable food service ware can reduce the waste stream and reduce waste costs when the natural compost product from these products is used as fertilizer for farms and gardens. Therefore the purpose of this local law is to eliminate the use of polystyrene foam food service ware where practical.

Section 3. Definitions

As used in this local law, the following terms shall have the meanings indicated:

“ASTM Standard” – The standard set by the American Society for Testing and Materials (ASTM) International Standards D6400 and D6868 for biodegradable and compostable plastics.

“Biodegradable” – A product or package that will completely breakdown and decompose into elements found in nature within a reasonably short time after proper disposal.

“County Contractor” - Any person, corporation, association, limited liability company or other legal entity recognized by the State of New York that has a contract to provide services to the County of Albany.

“County Department” – Any department, branch, or agency of Albany County government.

“County Facilities” – Any building, structure, vehicle, or other property owned and/or operated by the County of Albany, its agents, departments or franchisees.

“County Lessee” – Any person, corporation, association, limited liability company or other legal entity recognized by the State of New York that leases property owned by the County of Albany.

“Customer(s)” – Any person(s) obtaining Prepared Food from a restaurant or other Retail Food Vendor.

“Disposable Food Service Ware” – All bowls, plates, cartons, cups, other containers, trays, lids, straws, forks, spoons, or other items designed for one time use on or in which any Food Service Establishment directly places and/or packages food or provides same to Customer(s) to place and/or package food or which are used by Customer(s) to consume food. This includes, but is not limited to, service ware for takeout Prepared Food and/or leftovers from partially consumed meals prepared at or by Food Service Establishments for consumption at a specific location.

“Food Provider” – Any County Contractor or other person, corporation, association, limited liability company or other legal entity recognized by the State of New York that provides food for consumption at County Facilities.

“Food Service Establishment” – Any restaurant or business, including mobile food carts, which provides Prepared Food for consumption by the public and over

which the Albany County Department of Health has jurisdiction pursuant to state and local sanitary codes.

“Health Commissioner” – The Commissioner of Health for Albany County.

“Polystyrene Foam” – Any blown polystyrene, expanded, and extruded foams (commonly referred to as Styrofoam, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques, including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion blow molding (extruded from polystyrene). Polystyrene is generally used to make cups, bowls, plates, trays, meat trays and egg cartons.

“Prepared Food” – Any food or beverage which is (1) served in Albany County or (2) which is packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared on the premises of a Food Service Establishment within Albany County.

“Restaurant” – Any Food Service Establishment that sells Prepared Food for consumption on or off the premises for consumption by Customer(s).

“Retail Food Vendor” – Any mobile food cart, store, shop, sales outlet, or other business establishment, including a grocery store or delicatessen, other than Restaurant, that sells Prepared Food.

Section 4. Prohibited Food Service Ware

- A. No Retail Food Vendor or Food Service Establishment shall sell Prepared Food in any Disposable Food Service Ware that contains Polystyrene Foam.
- B. County Facilities shall not purchase or otherwise receive or acquire any prepared food in Disposable Food Service Ware that contains Polystyrene Foam.
- C. No County Department shall purchase, acquire, or use Disposable Food Service Ware that contains Polystyrene Foam.
- D. No County Contractor or County Lessee shall use Disposable Food Service Ware that contains Polystyrene Foam in County Facilities and/or while performing services under a municipal contract or lease.

Section 5. Required Disposable Food Service Ware

- A. Not later than ninety (90) days after the effective date of this local law, the Health Commissioner shall adopt a list of available suitable, alternative compostable, biodegradable, and/or recyclable alternatives for each Disposable Food Service Ware type and shall regularly update the list and distribute it to all Food Service Establishments in Albany County.
- B. All Food Service Establishments using any Disposable Food Service Ware shall use a suitable, affordable, alternative product unless there is no suitable and affordable compostable, biodegradable, and/or recyclable product available as determined by the County of Albany as set forth in this local law.
- C. All Food Providers to County Facilities and/or any County Department using any Disposable Food Service Ware shall use compostable, biodegradable, and/or recyclable Disposable Food Service Ware unless there is no affordable product available as determined by the Health Commissioner in accordance with this local law.
- D. County Contractors and County Lessees using any Disposable Food Service Ware shall use compostable, biodegradable, and/or recyclable Disposable Food Service Ware in County Facilities unless there is no affordable product available as determined by the Health Commissioner in accordance with this local law.

Section 6. Powers of the County

- A. The Health Commissioner may promulgate regulations and take any and all other reasonable actions necessary to implement and enforce this law. Any regulations so promulgated shall be made available on the County of Albany website.
- B. Any Food Service Establishment, Retail Food Vendor, or Food Provider may seek a waiver from the requirements of this local law by filing a request on a form to be provided by the Health Commissioner.
- C. The Health Commissioner, consistent with this local law, may waive any specific requirement of this local law for a period of one (1) year if the Food Service Establishment, Retail Food Vendor, or Food Provider seeking the waiver has demonstrated that strict application of the requirement would create undue hardship or practical difficulty not generally applicable to others in similar circumstances. The

Commissioner's decision to grant or deny such a waiver shall be in writing and shall be final.

- D. All contracts and leases of the County of Albany, where relevant, shall contain the following language:

“Contractor agrees to comply fully and be bound by all of the provisions of the Food Service Waste Reduction Act, including the remedies provided therein and such rules, regulations, and guidelines promulgated in furtherance thereof. The provisions of said local law and any amendments thereto are incorporated herein by reference and are made a part of this Agreement as though fully set forth and are a material term of this Agreement. The contractor acknowledges and agrees that if any provision of the Food Service Waste Reduction Act so incorporated is breached, the County of Albany will suffer damages that will be impractical and/or difficult to determine; and contractor further agrees that the sum of two hundred fifty (\$250) dollars liquidated damages for the first breach, five hundred (\$500) dollars for the second breach in the same year, and one thousand (\$1,000) dollars liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage. Such amounts shall not be considered a penalty and are separate and distinct from any penalty that may be imposed by the provisions of the Food Service Waste Reduction Act, rather agreed monetary damages sustained by the County of Albany because of contractor's failure to comply with the Food Service Waste Reduction Act.

Section 7. Penalties

Any violation of Section 4 or 5 of this local law shall be punishable as follows:

- A. First Offense. Any Food Service Establishment, Retail Food Vendor, or other Food Provider guilty of a first offense shall be guilty of a violation and shall be fined an amount not to exceed two hundred and fifty (\$250) dollars.
- B. Second Offense. Any Food Service Establishment, Retail Food Vendor, or other Food Provider guilty of a second offense shall be guilty of a violation and shall be fined an amount not to exceed five hundred (\$500) dollars.
- C. Third and Subsequent Offense. Any Food Service Establishment, Retail Food Vendor, or other Food Provider guilty of a third or subsequent offense shall be guilty of a misdemeanor and shall be fined an amount not to exceed one thousand (\$1,000) dollars.

Section 8. Severability

If any clause, sentence, paragraph, section, subdivision, or other part of this local law or its application shall be inconsistent with any federal or state statute, law, regulation or rule then the federal or state statute, law, regulation, or rule shall prevail. If any clause, sentence, paragraph, section, subdivision, or other part of this local law or its application shall be adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder of the local law which shall remain in full force and effect except as limited by such order or judgment.

Section 9. Effective Date and Applicability

This local law shall be effective ninety (90) days subsequent to filing in the Office of the Secretary of State and shall apply to all transactions occurring on or after the effective date of this local law.

Referred to Health Committee. 9/12/11

Referred to Audit and Finance and Health Committees. 9/12/11