

LOCAL LAW NO. "S" FOR 2016

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 COMPOSTABLE OR RECYCLABLE FOOD SERVICE WARE BY FOOD SERVICE ESTABLISHMENTS IN ALBANY COUNTY BY AMENDING LOCAL LAW A FOR 2012 AS ADOPTED NOVEMBER 12, 2013

Introduced: 9/12/16

By Messrs. Higgins, Bullock, Reinhardt, Domalewicz, Mss. Cunningham, Lekakis, Messrs. Fein, Clenahan and Ms. McLean Lane:

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 the prohibition of the use of polystyrene foam disposable food service ware in Albany County and requiring that all disposable food service ware be compostable or recyclable 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 and that there is no meaningful recycling of polystyrene foam food service ware.

The Legislature further finds and determines that alternative compostable and/or recyclable food service ware is readily available for numerous food service.

The Legislature further finds and determines that the use of compostable and/or recyclable food service ware will reduce the waste stream and reduce waste costs. Therefore, the purpose of this local law is to eliminate the use of polystyrene foam food service ware by Chain Food Service Establishments within Albany County.

Section 3. Definitions

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

"Compostable" – All materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner. When the products are designed to be composted, they should meet ASTM Standards D6400 (for Compostable Plastics) or ASTM D6868 (for Compostable Packaging). Products that meet the requirements in these two specifications will:

- Disintegrate Rapidly During the composting process (so that there are no large plastic fragments will wind up on the composters screens when the process is finished
- Not reduce the value or utility of the finished compost. The humus manufactured during the composting process will support plant life.
- Not contain high amounts of regulated metals.

"Customer(s)" – Any person(s) obtaining Prepared Food from a Chain Food Service Establishment.

"Disposable Food Service Ware" – All bowls, plates, cartons, cups, other containers, trays, or other items designed for one time use on or in which any Chain 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 Chain Food Service Establishments for consumption at a specific location.

"Food Service Establishment" – means a food service establishment or food service establishments permitted by the Albany County Department of Health and located in Albany County.

"Health Commissioner" – The Commissioner of Health for Albany County.

"Locally Recyclable Materials" are "Recyclable Materials" as defined below, that are commonly accepted by the municipal recycling programs that 60% or more of Albany County residents have access to (i.e. they are considered "mainstream recyclable materials" according to Federal Trade Commission Green Guides, 16 CFR Part 260).

"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 foam 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.

"Recyclable Materials" - Solid waste that may be separated, collected, processed, marketed and returned to the economy in the form of raw materials or products, including but not limited to, types of metal, glass, paper, plastic, required to be recycled pursuant to this chapter, solid waste collected for recycling or reuse through special events or programs promoted, operated or funded by the department, and solid waste accepted through non-department infrastructure for recycling or reuse.

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

Section 4. Disposable Food Service Ware

- A. No Food Service Establishment shall sell prepared food in any disposable food service ware that contains polystyrene foam.
- B. All Food Service Establishments using any disposable food service ware shall use a suitable, alternative product that is a compostable product, or made of locally recyclable materials such as aluminum or hard plastic.
- C. Food Service Establishments shall be responsible to provide proof to the Commissioner of Health or his designee that the disposable food service ware used is a suitable, alternative product that is a compostable or recyclable product.

Section 5. Health Commissioner’s Authority

The Health Commissioner is authorized to promulgate rules and regulations and take any and all other reasonable actions necessary to implement and enforce this local law. Any rules and regulations so promulgated shall be made available on the County of Albany website in a manner approved by the Health Commissioner.

Section 6. Waiver

1. The Albany County Department of Health may grant a waiver from the application of a specific provision of this article, provided that prior to the granting of any such waiver the applicant for a waiver shall establish that:

a. compliance with a specific provision of this local law would cause undue financial hardship; or

b. other factors exist which would render compliance unreasonable.

2. Every waiver granted shall be subject to such conditions or restrictions as may be necessary to minimize the adverse effects of the waiver upon persons subject to this local law and to ensure that the waiver is consistent with the general purpose of this article.

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 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 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 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. Reverse Preemption.

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

Section 9. 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 10. Effective Date and Applicability

This local law shall be effective six (6) months 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 Law and Health Committees – 9/12/16

Without Recommendation – Law Committee 2/27/17

Without Recommendation – Health Committee 3/1/17

On roll call vote the following voted in favor: Messrs. Bullock, Clenahan, Ms. Cunningham, Messrs. Dawson, Domalewicz, Feeney, Fein, Higgins, A. Joyce, R. Joyce, Ms. Lekakis, Mr. Mayo, Ms. McLean Lane, Messrs. O'Brien, Reinhardt and Simpson - 16

Those opposed: Mr. Burgdorf, Ms. Chapman, Messrs. Clay, Commisso Crouse, Drake, Duncan, Ethier, Grimm, Hogan, Ms. Lockart, Mr. Mauriello, Ms. McKnight, Messrs. Mendick, Signoracci, Smith, Stevens, Touchette, Tunny, Ward and Ms. Willingham - 21

Abstained: Mr. Miller

Local Law was defeated. 3/13/17