

Proposed Local Law Number 12 Of 2014

County Of Ulster

A Local Law Regulating The Use Of Polystyrene Foam Disposable Food Service Ware By Food Service Establishments In Ulster County

BE IT ENACTED, by the County Legislature of the County of Ulster, New York, as follows:

SECTION 1. TITLE.

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

SECTION 2. LEGISLATIVE INTENT AND FINDINGS.

The Legislature 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 or reuse of polystyrene foam food service ware.

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 evidence suggests that a component of polystyrene foam, styrene, is a carcinogen and neurotoxin. According to EPA studies, styrene is now detectable in the fat tissue of every man, woman and child in the United States.

The Legislature further finds and determines that alternative cost-effective biodegradable, compostable and/or reusable food service ware is readily available. Such alternatives are less toxic and more environmentally friendly than polystyrene foam.

The Legislature further finds and determines that the use of biodegradable, compostable food, and/or reusable 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 Food Service Establishments within Ulster County.

Therefore, the Legislature hereby finds and determines that the prohibition of the use of polystyrene foam disposable food service ware in Ulster County is in the best interests of the citizens of Ulster County.

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SECTION 3. DEFINITIONS.

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

“Chain Food Service Establishment” – means a food service establishment or food service establishments operating in Ulster County that is or are part of a group of fifteen or more food service establishment locations nationally, doing business under the same trade name, offering predominantly the same types of meals, foods or menus regardless of the type of ownership of the individual food service establishment locations.

“County” – The County of Ulster.

“Customer(s)” – Any person(s) obtaining Prepared Food from any 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 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 or transport 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. This does not include single-use disposable items such as straws, cup lids, or utensils.

"Food Service Establishment" means any establishment, located or providing food within the County of Ulster, which sells or otherwise provides prepared food and/or beverages for public consumption on or off its premises and includes, but is not limited to, any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, super market, delicatessen, catering truck, mobile food truck, cart or vehicle, or any other person who provides prepared food; and any organization, group or individual which regularly provides food as a part of its services.

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

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“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, clamshell containers, meat trays and egg cartons.

“Prepared Food” – Any food or beverage which is (1) served in Ulster County or (2) which is packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared on the premises of a Chain Food Service Establishment within Ulster County. Prepared food does not include raw meats, poultry and/or seafood sold for the purpose of cooking off premises.

SECTION 4. PROHIBITION ON THE USE OF DISPOSABLE POLYSTYRENE FOAM FOOD SERVICE WARE.

A. No Chain Food Service Establishment shall sell or otherwise provide prepared food in any disposable food service ware that contains polystyrene foam.

B. No Food Service Establishment shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware.

C. No County facilities, County managed concessions, County sponsored events or County permitted events shall distribute or utilize disposable food service containers containing expanded polystyrene or non-recyclable plastic.

SECTION 5. EXEMPTIONS TO THE POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE PROHIBITION.

A Chain Food Service Establishment or Food Service Establishment may seek an exemption from the prohibition under Section 5 due to a “unique packaging hardship” under Subsection A of this Section or a “financial hardship” under Subsection B of this Section.

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- A. The Chain Food Service Establishment or Food Service Establishment must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a “unique packaging hardship” exemption.
- B. The Chain Food Service Establishment or Food Service Establishment must demonstrate both of the following to qualify for a “financial hardship” exemption: (1) a gross income under \$300,000 on their annual income tax filing for the most recent tax year, and (2) with respect to each specific and necessary polystyrene foam disposable food service ware, that there is no feasible alternative that would cost the same or less than the polystyrene foam disposable food service ware.
- C. The Chain Food Service Establishment or Food Service Establishment may submit a written application for an exemption on a form provided by the Department of Health. The Commission of Health or designee (“Commissioner”) may require the applicant to submit additional information or documentation to make a determination regarding the exemption request. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to twelve (12) months. The Chain Food Service Establishment or Food Service Establishment must apply for a new exemption period no later than sixty (60) days prior to the expiration of the then current exemption period to preserve a continuous exemption status. Each application shall be reviewed anew and will be based on the most current information available. The determination of the Commissioner shall be final and is not subject to appeal.

SECTION 6. ENFORCEMENT AND NOTICE OF VIOLATION.

- A. The Commissioner of Health or designee shall have responsibility for notification and enforcement of this local law. The Commissioner of Health or designee 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

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on the County of Ulster website in a manner approved by the Commissioner of Health.

- B. Anyone violating or failing to comply with any of the requirements of this Chapter or of any regulation or administrative procedure authorized by it shall be guilty of an infraction.
- C. The County Attorney may seek legal, injunctive, or any other relief to enforce this Chapter and any regulation or administrative procedure authorized by it.
- D. The remedies and penalties provided in this Chapter are cumulative and not exclusive of one another.

SECTION 7. PENALTIES.

Violations of this local law shall be enforced as follows:

- A. For the first violation, the Commissioner of Health, or designee, upon determination that a violation of this local law has occurred, shall issue a written warning notice to the Chain Food Service Establishment or Food Service Establishment which will specify the violation and the appropriate penalties in the event of future violations.
- B. Thereafter, the following penalties shall apply:
 - 1. First Offense. Any Chain Food Service Establishment or 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.
 - 2. Second Offense. Any Chain Food Service Establishment or 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.

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3. Third and Subsequent Offense. Any Chain Food Service Establishment or Food Service Establishment guilty of a third or subsequent offense shall be guilty of a violation and shall be fined an amount not to exceed one thousand (\$1,000) dollars.
4. Fines are cumulative and each day that a violation occurs shall constitute a separate violation.

For the purpose of this section, each physical location or establishment shall be treated individually, and offenses and fines for separate locations shall be considered individually.

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 Ulster. 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.

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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 for Chain Food Service Establishments, County facilities, County managed concessions, County sponsored events and County permitted events, and one (1) year subsequent to filing in the Office of the Secretary of State for Food Service Establishments. The local law shall apply to all transactions occurring on or after the effective dates referenced above.