

# Proposed Local Law Number 19 Of 2018

## County Of Ulster

### **A Local Law Amending Local Law 4 of 2015 (A Local Law Regulating The Use Of Polystyrene Foam Disposable Food Service Ware By Food Service Establishments In Ulster County), To Amend Penalties And Provide Certain Exemptions**

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

#### **SECTION 1. LEGISLATIVE INTENT AND FINDINGS.**

The Ulster County Legislature finds that small businesses, especially food service establishments, in Ulster County are the very backbone of our economy. Offering services and experiences needed to support our rapidly growing tourism industry, and providing job opportunities to thousands of our residents, small businesses fill critical needs in our communities.

The Ulster County Legislature further finds that government regulations have a sizable impact on free enterprise which disproportionately impact small businesses. In addition, the valuable services which nonprofit and volunteer organizations provide can be unintentionally affected and compromised by these same regulations.

The Ulster County Legislature hereby finds and determines that the County of Ulster enacted Local Law No. 4 of 2015, codified as Article II of Chapter 205 of the Code of the County of Ulster, enacting the Food Service Waste Reduction Act.

The Ulster County Legislature further finds and determines that the amendments to the Local Law seeks to provide relief to small businesses, nonprofit and volunteer organizations while maintaining a reasonable balance between responsible environmental stewardship and providing opportunities for economic development and sustainability.

Therefore, the Legislature finds amendments to Local Law No. 4 of 2015 are in keeping with the spirit of the law while promoting a business friendly climate and support nonprofit and volunteer organizations.

**SECTION 2.** Section 3. of Local Law No. 4 of 2015 is hereby amended to add an additional definition to read as follows:

#### **SECTION 3. DEFINITIONS**

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

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“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.

**“NonProfit Organization” Any organization qualifying for tax exempt status pursuant to Sections 501(c)3 and 501(c)4 of the IRS Tax Code, including but not limited to churches, religious organizations, fire companies and social welfare organizations.**

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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. Prepared food does not include raw meats, poultry and/or seafood sold for the purpose of cooking off premises.

**SECTION 3.** Section 5. of Local Law No. 4 of 2015 is hereby amended to read as follows:

**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.

- 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. **If a Chain Food Service Establishment or Food Service Establishment utilizes specific branding, and such establishment can demonstrate that no branded polystyrene foam disposable food service ware alternative is available, the establishment shall qualify for a “unique packaging hardship.”**

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- 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. Within thirty (30) days of receiving a completed application and supporting documentation, if any, the Commissioner must either grant or deny the applicant’s request for an exemption and must notify the applicant of his or her determination. 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.
- D. NonProfit Organizations shall be exempt from this Local Law.**

**SECTION 4.** Section 7. of Local Law No. 4 of 2015 is hereby amended to read as follows:

**SECTION 7. PENALTIES**

Violations of this local law shall be enforced as follows:

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- 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)~~ **one hundred (\$100)** 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)~~ **two hundred and fifty (\$250)** dollars.
  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)~~ **five hundred (\$500)** 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.

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**SECTION 5. 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 6. 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 7. EFFECTIVE DATE AND APPLICABILITY.**

This local law shall take effect immediately upon filing with the New York State Secretary of State.