

Proposed Local Law Number 5 Of 2019

County Of Ulster

A Local Law Amending The Code Of The County Of Ulster To Include Mandatory Food Scraps Composting By Large Generators

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

SECTION 1. Chapter 304 of the Code of the County of Ulster is hereby amended to include a new article, Article IV, which shall read as follows:

Article IV – Food Waste Prevention and Recovery

Section 304-45. SHORT TITLE.

This Local Law shall be known by and may be cited as “Food Waste Prevention and Recovery Act.”

Section 304-46. LEGISLATIVE INTENT AND FINDINGS.

The County of Ulster is dedicated to conserving resources and reducing greenhouse gas (GHG) emissions, waste, litter, and pollution.

The Ulster County Legislature has actively been considering and implementing laws aimed at sustainability and protecting our environment. In 2015, Ulster County established a sustainable green fleet policy to reduce emissions, decrease costs, and increase efficiency. Also in 2015, the County began regulating the use of polystyrene foam disposable food service ware by food service establishments in the County. On July 15, 2019, Ulster County will begin regulating the use of single use plastic carryout bags, another measure aimed at reducing the amount of plastic that can end up in our environment through litter, windblown debris, and over-flowing trash cans. Under current consideration in the Ulster County Legislature is a law requiring restaurants and fast food service establishments provide plastic beverage straws solely upon request.

Ulster County was one of the first county in New York State to receive Climate Smart certification, and continues making it a priority to increase awareness and provide education regarding environmental health.

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Food waste is a matter intrinsically linked with the growing challenges of food security, resource and environmental sustainability, and climate change. According to the U.S. Environmental Protection Agency, food scraps and yard waste together currently make up about 30 percent of what we throw away. The proposed composting law requires regulated entities to prioritize their diversion practices based on a clearly delineated hierarchy. A significant amount of waste in our landfills should have been composted leaving critical landfill space open for material that cannot be recycled or composted. Benefits to the County of composting include creation of nutrient rich soil for agriculture and landscaping uses, increased tilth and the ability of soil to retain water and to store greenhouse gases, and reduced erosion.

The Ulster County Legislature believes that banning disposal of food by large food waste generators aligns with Ulster County's sustainability initiatives and vision. Diverting food waste from disposal to programs for the purpose of providing nourishment to the food insecure, programs to supplement local farms with animal feed, composting to improve soil quality, and/or conversion to energy is key to a sustainable Ulster County by improving local health, and the county's environment, and further reduction of its carbon footprint. It will also reduce the waste stream the Ulster County Resource Recovery Agency is responsible for disposing of.

This law, commencing January 1, 2020, requires large food waste generators to separate such waste from the general waste stream and then either arrange for its reuse by the food insecure or for animal feed, to it on site, or to arrange for licensed services for the purpose of delivering it to a processing facility for composting or anaerobic digestion. The law will remove food waste generated on an annual basis from the waste stream incrementally from generators producing 2 tons per week to 0.5 tons per week by April 22, 2023.

The Ulster County Legislature has determined that Ulster County should increase food scrap recycling beyond the basic requirements in New York State's Food Donation and Food Scraps Recycling statute. This local law expands food scrap recycling requirements by regulating generators of smaller amounts of waste, by including schools and hospitals, and through other extensions beyond State law. The Legislature finds that Ulster County has a robust network of facilities ready to accept food scraps for the above mentioned purposes, and that maximizing the removal of food from the waste stream is essential to reducing the overall volume of waste in the County.

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The Ulster County Legislature believes education is a fundamental component of this legislation. The law will require the County to identify and recommend actions to address challenges, to encourage the continued viability of the County's organic waste processing and recycling infrastructure, and to foster partnerships with local municipalities, stakeholders, the Ulster County Resource Recovery Agency and other specified state and regional agencies. The law also would allow the County to cooperate with local jurisdictions and organizations to provide assistance for increasing the feasibility of food waste recycling and to identify certain financing mechanisms and state funding incentives.

The additional purpose of this legislation is to implement the food recovery hierarchy in Ulster County as set forth in US Environmental Protection Agency guidance and state legislation. While this law shall apply to large food waste generators, residential and small-quantity food waste generators are encouraged to reduce food waste and compost organic waste.

The law applies within the boundaries of Ulster County, NY to all food waste generators. This law is not intended to regulate large food waste generators otherwise regulated under New York State's Food Donation and Food Scraps Recycling Act, ECL Art. 27, Tit. 22, and specifically exempts such large food waste generators from the requirements hereunder. The Ulster County Legislature intends this law to supplement the benefits of New York State's Food Donation and Food Scraps Recycling rather than supersede or establish duplicative regulation with such state law.

Section 304-47. FOOD WASTE HIERARCHY.

The following hierarchy represents Ulster County's policy for prioritizing the reduction, reuse and recycling of food scraps. The hierarchy shall be a basis for the County's education and outreach programs, and all food scraps generators are encouraged to manage food scraps accordingly. Regulated large food scraps generators shall be required to implement the reuse and recycling tiers of the hierarchy, pursuant to the procedures specified in Sections 304-50 and 304-51.

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1. The first tier of the hierarchy is source reduction, reducing the volume of surplus food generated. Food scraps generators may follow federal, state or county guidelines or use other methods to reduce spoilage, monitor waste and make other adjustments to reduce food waste and save money.
2. The second tier is recovery, feeding wholesome food to hungry people. Facilities with excess edible food should distribute excess foods for the purpose of providing nourishment to the food insecure through the local network of pantries and soup kitchens and other food-reuse programs in accordance with New York State Sanitary Code Part 14 and Ulster County Sanitary Code Article II. Donations of food are covered under the Bill Emerson Good Samaritan Act of 1996, 42 U.S. Code § 1791.
3. Third is repurposing, feeding animals. Federal, state and municipal governments and entities regulate the use of food scraps in animal feed by setting requirements which govern the type of animals that may be fed food scraps and the kind of food scraps that may be fed to animals. When done responsibly and in conformity with applicable regulations, feeding food scraps to animals has many economic and environmental benefits.
4. Fourth is recycling, processing any leftover food such as by composting or anaerobic digestion to create a nutrient-rich soil amendment. The material that is left over from anaerobic digestion must be either composted or land applied. For the purpose of this law, pulverizers and other sink disposal systems are not acceptable alternatives for composting.

Section 304-48. STATUTORY AUTHORITY.

This article is adopted pursuant to Section 120-aa of the General Municipal Law and Section 10 of the Municipal Home Rule Law.

Section 304-49. DEFINITIONS.

“AEROBIC” shall mean involving the presence of oxygen.

“AGENCY” shall mean the Ulster County Resource Recovery Agency.

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“ANAEROBIC” shall mean relating to, involving, or requiring an absence of free oxygen.

“ANIMAL FEED” shall mean material, of an animal or vegetable origin, prepared as feed for domestic or farm animals.

“CONTAMINATION” shall mean the intermixing of non-compostable material into food waste, so as to render such food waste impossible to compost or to otherwise undermine the composting process.

“DIGESTION” shall mean treatment with heat, enzymes, or a solvent in order to promote decomposition or extract essential components.

"FOOD SCRAPS" shall mean inedible food, trimmings from the preparation of food, food-soiled paper, and edible food that is not donated. Food scraps shall not include used cooking oil, yellow grease or food from residential sources, or any food identified in regulations promulgated by the department in consultation with the department of agriculture and markets or any food which is subject to a recall or seizure due to the presence of pathogens, including but not limited to: *Listeria Monocytogenes*, confirmed *Clostridium Botulinum*, *E. coli* and all salmonella in ready-to-eat foods.

"LANDFILL" shall mean a facility where waste is intentionally placed and intended to remain and which is designed, constructed, operated and closed to minimize adverse environmental impacts.

"LARGE FOOD SCRAPS GENERATOR" shall mean a person, business, entity or institution that generates at a single location an annual average of one-half ton per week or more of food scraps based on a methodology developed by Ulster County. Large food scraps generators may include but are not limited to, supermarkets, food service businesses, hotels, correctional facilities, sports or entertainment venues, hospitals, nursing homes, schools and universities, caterers and food preparation and processing businesses. For a location with multiple independent food service businesses, such as a mall or college campus, the entity responsible for contracting for solid waste hauling services is responsible for managing food scraps from the independent businesses.

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"ORGANICS RECYCLER" shall mean a facility, permitted by the New York State Department of Environmental Conservation, that recycles food scraps through use as animal feed or a feed ingredient, rendering, land application, composting, aerobic digestion, anaerobic digestion, fermentation, or ethanol or biogas production. Animal scraps, food soiled paper, and post-consumer food scraps are prohibited for use as animal feed or as a feed ingredient. The proportion of the product created from food scraps by a composting or digestion facility, including a wastewater treatment plant that operates a digestion facility, or other treatment system, must be used in a beneficial manner as a soil amendment and shall not be disposed of or incinerated.

"POST-CONSUMER FOOD SCRAPS" also known as plate waste, shall mean food that has been served pursuant to its intended final consumer use.

"SINGLE LOCATION" shall mean contiguous property under common ownership, which may include one or more buildings.

"TRANSPORTER" shall mean any person or entity licensed by the New York State Department of Transportation and/or the Department of Health to engage in the business or activity of collecting, storing, and transporting organic waste.

"VECTOR" shall mean any insect, arthropod, rodent, or other animal capable of transmitting the causative agents of human disease, or disrupting the normal enjoyment of life by adversely affecting the public health and well-being.

Section 304-50. APPLICABILITY.

Large food scraps generators shall be subject to the requirements of Section 304-51 as of the following dates:

- (a) Beginning January 1, 2020, a large food scraps generator whose acts or processes produce more than 2 tons per week of food scraps;
- (b) Beginning January 1, 2021, a large food scraps generator whose acts or processes produce more than 1 ton per week of food scraps;
- (c) Beginning January 1, 2022, a large food scraps generator whose acts or processes produce more than .75 ton per week of food scraps; and
- (d) Beginning January 1, 2023, a large food scraps generator whose acts or processes produce more than .5 ton per week of food scraps.

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Section 304-51. REQUIREMENTS FOR LARGE FOOD SCRAPS GENERATORS.

A. A large food scraps generator shall separate excess edible food for donation for human consumption to the maximum extent practicable, and in accordance with applicable laws, rules and regulations related to food donation.

B. A large food scraps generator shall manage food scraps that cannot be donated for human consumption as follows:

- (1) separate its remaining food scraps from other solid waste;
- (2) ensure proper storage for food scraps on site which shall preclude such materials from becoming odorous or attracting vectors, such as a container that has a lid and a latch that keeps the lid closed and is resistant to tampering by rodents or other wildlife and has sufficient capacity;
- (3) have information available and provide training for employees concerning the proper methods to separate and store food scraps;
- (4) divert food scraps for consumption by animals, to the maximum extent practicable; and
- (5) for food scraps that cannot be used as animal feed, either
 - (a) obtain a transporter that will deliver food scraps to an organics recycler,
 - (b) self-haul its food scraps to an organics recycler, or
 - (c) provide for organics recycling on-site via in vessel composting, aerobic or anaerobic digestion or any other method of processing organic waste approved by the New York State Department of Environmental Conservation, for some or all of the food waste it generates on its premises, provided that the remainder is delivered to an organics recycler.

C. If transported, food scraps must be sent to a New York State permitted or registered organics recycler. If the food scraps are transported to an organics recycler outside Ulster County, the large food scraps generator shall inform Ulster County of the destination.

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D. Beginning on January 1, 2022, the requirements of paragraph B of this section shall not apply to any designated food scraps generator regulated under section 27-2203 of the Environmental Conservation Law. It shall apply to persons, businesses, institutions and entities not subject to regulation under section 27-2203 of the Environmental Conservation Law.

E. Large food scraps generators shall report the amount of food waste they cause to be reused, composted or otherwise beneficially repurposed under this section, and other relevant information specified by Ulster County, on an annual basis, by February 1 of the following year, to Ulster County and the Agency in a form prescribed by the County.

F. Waivers. Ulster County may waive the requirements of paragraph B with respect to post-consumer food scraps if the County determines that a facility is not reasonably able to separate post-consumer food scraps without contamination, or that compliance with the requirements of paragraph B would result in extraordinary financial hardship to the large food scraps generator, or other unique circumstances. Any waiver granted hereunder shall be for a maximum period of one year and shall include a requirement that the large food scraps generator participate in an education program designed to achieve compliance with this section. Waivers under this paragraph shall not be available to any designated food scraps generator regulated under section 27-2203 of the Environmental Conservation Law.

Section 304-52. NOTIFICATION, TRAINING, AND EDUCATION.

A. Ulster County or the Agency pursuant to an agreement with the County shall provide educational resources, including periodic guidance, training, updates, signage, and flyers, for any existing food scraps generator for the purposes of teaching and retaining effective procedures for sorting materials for organics. The County may enter into an agreement with the Agency to provide any portion of the training pursuant to this section.

B. The County or Agency shall promote best practices for covered large food scraps generators to comply with the requirements of this law, and for all entities and the public to manage excess food, food scraps, and organic waste in a similar manner.

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C. The County or Agency may collect and report information to promote improved management of excess food, food scraps and organic waste, including information on practices by covered large food waste generators, other entities and the public, or lists of entities and resources providing assistance for reducing such materials, facilities accepting such materials, or financing mechanisms and incentives available for recovery.

D. Ulster County shall notify large food scraps generators that they are subject to the requirements of section 304-51 at least one month prior to the applicable date of such requirements to the individual large food scraps generator under section 304-50.

Section 304-53. OVERSIGHT.

Based on the information received from the annual reports, Ulster County and the Recycling Oversight Committee shall on an annual basis until 2025, consider the prior year's experience under the law, and in particular, the effectiveness and costs of the implementation of the requirements of Section 304-51 and make a recommendation to the Legislature on whether this law should be modified. At their discretion, these agencies may also consider the statewide experience in implementing New York State's Food Donation and Food Scraps Recycling Act, ECL Art. 27, Tit. 22, and any regulations promulgated by the Department of Environmental Conservation thereunder.

Section 304-54. IMPLEMENTATION AND ENFORCEMENT.

The County Executive shall designate a County department or departments to have responsibility for implementation and enforcement of the requirements of this Chapter. The Director of the designated Department(s) is authorized to promulgate rules and regulations and to take any other action reasonable and necessary to implement and enforce this Chapter, including, but not limited to, investigating violations, issuing fines and entering the premises of any large waste food generator during business hours. A copy of the rules and regulations will be provided to the Clerk of the Legislature before they are publicly disseminated. After April 22, 2020, the Director(s) shall begin efforts to enforce the requirements of section 304-51.

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Section 304-55. PENALTIES FOR VIOLATIONS.

A. If it is determined that a large food scraps generator has failed to comply with any requirement of this Chapter, a written warning notice will be issued to the operator of the large food scraps generator including the potential penalties that will apply for future violations. The County may provide educational services to assist in compliance with the requirements of this chapter.

B. Any large food scraps generator that violates or fails to comply with any of the requirements of this Chapter after a written warning notice has been issued for that violation shall be guilty of a violation.

C. If a large food scraps generator has subsequent violations of this Chapter that are similar in kind to the violation addressed in a written warning notice, the following penalties will be imposed and shall be payable by the operator of the large food waste generator:

- (1) A fine not exceeding one hundred dollars (\$100.00) for the first violation after the written warning notice is given;
- (2) A fine not exceeding two hundred fifty dollars (\$250.00) for the second violation after the written warning notice is given; or
- (3) A fine not exceeding five hundred dollars (\$500.00) for the third and any subsequent violations after the written warning notice is given.

D. A fine shall be imposed for each day a violation occurs or is allowed to continue.

E. All fines collected pursuant to this Chapter shall be used to assist the County with its costs of implementing and enforcing the requirements of this Chapter and/or for public education and outreach.

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Section 304-56. DISPUTE OF STATUS AS LARGE FOOD SCRAPS GENERATOR.

Any person, business, entity or institution at any time, including after receipt of a warning notice pursuant to section 304-55, may submit a waste audit to Ulster County indicating that the amount of food scraps that it generates is not sufficient to subject it to the requirements of paragraph 304-51. Ulster County shall publish guidance on the information required to be included in such waste audits. Submittal of such waste audit to Ulster County under this paragraph shall suspend the application of this chapter to such person, business, entity or institution pending the County's evaluation of such information and transmittal of a written finding and response.

SECTION 2. SEVERABILITY.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

SECTION 3. EFFECTIVE DATE.

This law shall be effective upon filing in the Office of the Secretary of State.