

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 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 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 and further reduction of its carbon footprint.

This law, commencing April 22, 2020, requires large food waste generators to compost source-separated food waste on site or to arrange for licensed services for the purpose of delivering source-separated food waste 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. There are two alternatives to comply with this legislation:

- Removal of source separated food waste through a contractual agreement with a licensed waste recycling service to collect and recycle organics.
- Composting source separated food waste on site, or self-haul organics off site to a permitted or registered composting facility.

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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, and that maximizing the removal of food from the waste stream is essential to reducing the overall volume of waste in the County.

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 establish a food recovery hierarchy for food waste management in Ulster County. 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.

Section 304-47. STATEMENT OF POLICY.

The following hierarchy represents Ulster County's policy for prioritizing the reduction, reuse and recycling of food scraps. The hierarchy shall be used in 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 following 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.
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.

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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.

“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 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 who 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 the Ulster County Department of Health. 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, 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.

"PERSON" shall mean any business entity, partnership, company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation, public authority, firm, or organization.

"POST-CONSUMER FOOD SCRAPS" also known as plate waste, shall mean food that has served its intended use and has been diverted or recovered from waste destined for disposal.

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

"TRANSPORTER" shall mean any person 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 April 22, 2020, a large food scraps generator whose acts or processes produce more than 2 tons per week of food scraps;

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- (b) Beginning April 22, 2021, a large food scraps generator whose acts or processes produce more than 1 ton per week of food scraps;
- (c) Beginning April 22, 2022, a large food scraps generator whose acts or processes produce more than .75 ton per week of food scraps; and
- (d) Beginning April 22, 2023, a large food scraps generator whose acts or processes produce more than .5 ton per week of food scraps.

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.

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D. If transported, food scraps must be sent to a New York State permitted or registered organics recycler located in Ulster County. Upon written request, the Ulster County Department of Health may permit the use of a facility outside Ulster County, for reasons of proximity and/or capacity.

E. Large food scraps generators shall report the weight of food waste they discard, and other relevant information, on an annual basis, by February 1 of the following year, to the Ulster County Department of Health in a form prescribed by that department.

F. Waivers. The Ulster County Department of Health may waive the requirements of paragraph B with respect to post-consumer food scraps if the Department determines that a facility is not reasonably able to separate post-consumer food scraps without contamination. This provision shall not apply to entities regulated by New York State's food scrap recycling statute.

Section 304-52. TRAINING AND EDUCATION.

A. The Ulster County Department of Health, or department designated by the County Executive, shall provide collection and 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.

B. The department 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.

C. The department 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.

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Section 304-53. OVERSIGHT.

Based on the information received from the annual reports, the Ulster County Department of Health will meet with a representative from the Recycling Oversight Committee, the Energy and Environment Committee, and the Department of Environment on an annual basis, to make a recommendation to the Legislature on whether this law should be modified. By June 2021, the Department of Health should review the 2020 results and issue a recommendation on whether generators of 0.75 tons/week should become regulated in 2022. By June 2022, the Department of Health should review the 2021 results and issue a recommendation on whether generators of 0.5 tons/week should become regulated in 2023.

Section 304-54. ENFORCEMENT.

The County Executive shall designate a County department or departments to have primary responsibility for enforcement 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.

Section 304-55. PENALTIES FOR VIOLATIONS.

- A. If it is determined that a violation of this Chapter has occurred, a written warning notice will be issued to the operator of the large food scraps generator that a violation has occurred and the potential penalties that will apply for future violations.
- 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 an infraction.

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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.

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.