LOCAL LAW NO. 4 FOR 2013

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 BIODEGRADABLE OR COMPOSTABLE FOOD SERVICE WARE BY CHAIN FOOD SERVICE ESTABLISHMENTS IN ALBANY COUNTY

Introduced: 2/13/12
By Messrs. Bullock, Clenahan, Higgins, Joyce, Mss. Kinsch and 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 biodegradable or compostable 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 biodegradable and/or compostable food service ware is readily available for numerous food service applications and that these products are biodegradable and/or compostable.

The Legislature further finds and determines that the use of biodegradable and/or compostable 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 breakdown into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner.

"Biodegradable" – A product or package that will completely breakdown and decompose into elements found in nature within a reasonably short time after proper disposal.

"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.

"Chain Food Service Establishment" – means a food service establishment or food service establishments operating in Albany 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.

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

"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" – Except for raw meats, poultry and seafood sold for the purpose of cooking off premises, 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 Chain Food Service Establishment within Albany County.

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

Section 4. Disposable Food Service Ware

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

B. All Chain Food Service Establishments using any disposable food service ware shall use a suitable, alternative product that is a compostable or biodegradable product.

C. Chain 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 biodegradable 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. Penalties

Any violation of Section 4 or 5 of this local law shall be punishable as follows:

A. First Offense. Any Chain 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 Chain 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 Chain 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. 7. 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 8. 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 9. 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.

STATE OF NEW YORK)
COUNTY OF ALBANY) ss

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND COMPLETE TRANSCRIPT OF RESOLUTION [illegible] COUNTY LEGISLATURE) OF [illegible] 12TH DAY OF NOVEMBER 2013. [illegible] THEREOF

[illegible]

CLERK OF THE COUNTY LEGISLATURE