

ALBANY COUNTY DEPARTMENT OF HEALTH

RULES AND REGULATIONS REGARDING THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE AND THE USE OF ACCEPTABLE ALTERNATIVES BY CHAIN FOOD SERVICE ESTABLISHMENTS IN ALBANY COUNTY

SECTION 1: INTENT AND PURPOSE

Pursuant to Local Law No. 4 for 2013, these rules and regulations have been promulgated by the Commissioner of Health.

SECTION 2: ADDITIONAL DEFINITION

Recyclable: any material that is accepted by recycling programs in the County of Albany.

SECTION 3: DISPOSABLE FOOD SERVICE WARE AND ACCEPTABLE ALTERNATIVES

1. Disposable food service ware means single-use disposable products in which the Chain Food Service Establishment directly places and or packages ready-to-consume food or beverages for serving or transporting. This includes, but is not limited to, plates, cups, bowls, trays and hinged containers, also known as clamshells. This DOES NOT include straws, utensils or cup lids.
2. No Chain Food Service Establishment shall sell prepared food in any disposable food service ware that contains polystyrene foam.
3. Alternative disposable food service ware is any product that is compostable or biodegradable made from materials from renewable resources such as paper, cardboard, corn starch, potato starch and/or sugarcane. Also, alternative disposable food service ware includes any product made of a hard plastic that is locally recyclable and/or any acceptable alternative as soon as it is commercially available.
4. The Chain Food Service Establishment shall provide proof to the Commissioner of Health or his designee that the alternative disposable food service ware is a suitable product as referenced in paragraph 3 of this Section that is compostable, biodegradable or locally recyclable and such alternative must be approved for use by the Albany County Department of Health.

SECTION 4: EXEMPTIONS

Retail food stores are exempt from this local law which are regulated pursuant to New York State Agriculture and Markets Law and Regulations.

SECTION 5: ENFORCEMENT AND PENALTIES

I. Penalties:

Chain Food Service Establishments shall be subject to the following penalties for violation of Local Law No. 4 for 2013:

Civil Penalties:

- A. First Offense – Any Chain Food Service Establishment that commits a first offense shall be fined in an amount not to exceed two hundred and fifty (\$250) dollars.
- B. Second Offense – Any Chain Food Service Establishment that commits a second offense shall be fined in an amount not to exceed five hundred (\$500) dollars.

Criminal Penalties:

- C. Third and Subsequent Offense – Any Chain Food Service Establishment that commits a third or subsequent offense shall be guilty of a Class A Misdemeanor pursuant to New York State Penal Law §55.10(2)(b) and shall be fined in an amount not to exceed one thousand (\$1,000) dollars.

II. Definitions of Offenses:

- A. First Offense – The selling of prepared food in any disposable food service ware, as defined in Section 3 of these Rules and Regulations, which contains polystyrene foam by a Chain Food Service Establishment.
- B. Second Offense – The selling of prepared food in any disposable food service ware, as defined in Section 3 of these Rules and Regulations, which contains polystyrene foam by a Chain Food Service Establishment. A Second Offense may include, but not be limited to, the failure of a Chain Food Service Establishment to become compliant within forty-five (45) days of an issuance of a first violation determination by the Department of Health.
- C. Third Offense – The selling of prepared food in any disposable food service ware, as defined in Section 3 of these Rules and Regulations, which contains polystyrene foam by a Chain Food Service Establishment. A Third Offense may include, but not be limited to, the failure of a Chain Food Service Establishment to become compliant within thirty (30) days of an issuance of a second violation determination by the Department of Health.

III. Notice of Civil Penalty; Appeal Procedure; Criminal Penalty Procedure:

The Department of Health shall, in its discretion, perform inspections of Chain Food Service Establishments subject to Local Law No. 4 for 2013 for compliance as well as respond to and investigate complaints of noncompliance. If the Department of Health determines a Chain Food Service Establishment has committed a First or Second Offense, as defined in paragraph II of this Section, the Department of Health shall send via certified mail a written notice of its determination to the Chain Food Service Establishment. The notice shall contain a concise statement of the facts constituting the violation, the date of a pre-scheduled informal hearing, the amount of the fine assessed, where to send the payment and that the payment shall be made within thirty (30) days after the date of the notice. The Chain Food Service Establishment may waive its right to an informal hearing and consent to the entry of an order assessing the stated civil penalty by completing and returning the provided Waiver and Consent form with payment. The notice shall further contain a statement informing the Chain Food Service Establishment that if, following attendance at an informal hearing, the violation is sustained, it may further have the right to appeal the civil penalty determination at a formal hearing.

The Commissioner of Health shall serve a notice of formal hearing by personal service or registered/certified mail upon the Chain Food Service Establishment at least fifteen (15) days prior to the hearing date indicating the date, time and location of the formal appeals hearing. Within thirty (30) days after conducting the formal appeals hearing, the Commissioner of Health shall mail a written decision to the Chain Food Service Establishment either sustaining or overturning the original violation determination.

If the Chain Food Service Establishment fails to pay the civil penalty, the Commissioner of Health may refer the matter to the Office of the County Attorney to bring a special proceeding in New York State Supreme Court in the County of Albany to recover the civil penalty and to otherwise make effective its purposes by seeking appropriate judicial relief. Likewise, a Chain Food Service Establishment who wishes to appeal the hearing decision may file a proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules in New York Supreme Court in the County of Albany.

If the Department of Health determines a Chain Food Service Establishment has committed a Third or Subsequent Offense, as defined in paragraph II of this Section, the Department of Health shall file a complaint with the local police agency in which the alleged violation occurred. The police agency shall refer the matter to the Office of the District Attorney in Albany County for criminal prosecution as appropriate.