

102-19
new

CLERK ITEM NUMBER 102-19

Introduced by: Alternate Deputy Presiding Officer Denise Ford, Legislator Laura Schaefer and Legislator Debra Mulé

LOCAL LAW -2019

A LOCAL LAW TO PROHIBIT THE USE OF POLYSTYRENE FOAM CONTAINERS IN NASSAU COUNTY AND TO CREATE A SPECIAL REVENUE FUND FOR ENVIRONMENTAL INVESTIGATION AND CLEANUP OF NASSAU COUNTY PROPERTIES

APPROVED AS TO FORM



Majority Counsel

RECEIVED
NASSAU COUNTY
CLERK OF THE LEGISLATURE
2019 MAY -2 P 12:01

WHEREAS, polystyrene foam is a petroleum-based plastic made from a styrene monomer, which has been classified as a probable human carcinogen by the International Agency for Research on cancer (IARC), a non-governmental body of the World Health Organization and a potential human carcinogen by the United States Department of Health and Human Services; and

WHEREAS, the Environmental Protection Agency has determined that the polystyrene manufacturing process is the fifth largest creator of hazardous waste in the United States; and

WHEREAS, polystyrene foam is a common environmental pollutant and non-biodegradable substance commonly used in food service items, and there exists no practical method to recycle polystyrene and incineration of polystyrene releases toxic fumes; and

WHEREAS, alternative biodegradable food service items are readily available to meet the vast majority of food service needs; and

WHEREAS, the use of biodegradable and/or compostable food service products will reduce the waste stream in Nassau County and provide a commensurate reduction in waste disposal costs; and

WHEREAS, Nassau County should encourage the use of biodegradable food service containers by all food service businesses and should restrict the use of polystyrene containers; and

WHEREAS, polystyrene foam is also used frequently in packaging that is being transported in order to protect fragile items; and

WHEREAS, there are many environmentally friendly alternatives that can be used when shipping delicate items; and

WHEREAS, to further protect the County from polystyrene pollution, certain types of polystyrene items should be banned from use; and

WHEREAS, the purpose of this law is to ban the use of certain polystyrene items in Nassau County; now, therefore

BE IT ENACTED by the County Legislature of the County of Nassau as follows:

Section 1. Title 85 is added to the Miscellaneous Laws of Nassau County as follows:

Title 85

POLYSTYRENE FOAM CONTAINER BAN

Section 1. Definition. As used in this local law, the following terms shall have the meanings indicated:

- a. Disposable Food Service Item: Cups, containers, lids, closures, trays, plates, knives, forks, spoons, stoppers, paddles, straws, place mats, napkins, doilies, wrapping materials, tooth picks, and all similar articles that are intended by the manufacturer to be used once for the purposes of eating or drinking or that are generally recognized by the public as items to be discarded after one use.
- b. Food Service Establishment: A premises or part of a premises where food is prepared and served or given directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle. This definition shall include, but not be limited to, full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks, vending carts and cafeterias.
- c. Manufacturer: Any natural person, firm or corporation that produces or imports either polystyrene foam or loose fill packaging.
- d. Mobile Food Commissary: Any facility which provides services to food service establishments that are located in or is a pushcart, stand or vehicle, including, but not limited to access to potable water, waste water and refuse disposal, the provision of supplies for food service, storage for food and supplies, or commercial cooking facilities.
- e. Polystyrene Foam: Any blown polystyrene foam, including expanded or extruded foams (commonly referred to as Styrofoam) which are thermoplastic petrochemical materials which utilize a styrene monomer and are 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. This definition shall not include products composed of rigid polystyrene.

- f. Polystyrene Loose Fill Packaging: A void-filling packaging product made of expanded polystyrene foam that is used as a packaging fill, commonly referred to as packing peanuts.
- g. Rigid Polystyrene: Thermoplastic petrochemical materials which utilize a styrene monomer but are not blown polystyrene foam.
- h. Store: A retail or wholesale establishment other than a food service establishment.

§ 2. Prohibition

- a. No food service establishment, mobile food commissary or store shall sell or offer for use any disposable food service item that consists of polystyrene foam. This prohibition shall not apply to packaging that is used for prepackaged foods that have been filled and sealed prior to receipt by the food service establishment, mobile food commissary, or store or to containers used to store uncooked eggs, raw meat, pork, fish, seafood or poultry sold from a butcher case or similar retail use.
- b. No manufacturer or store shall sell or offer for sale polystyrene loose fill packaging. This prohibition shall not apply to the retail sale of electronics that are packaged in polystyrene loose fill packaging prior to entering the store.

§ 3. Enforcement

- a. This law shall be enforced by the Nassau County Department of Consumer Affairs.
- b. Enforcement shall be done upon inspection by the Nassau County Department of Consumer Affairs, where applicable, or upon complaint.

§ 4. Penalties

- a. Violation of this law shall be punishable by a civil fine. First offenses shall be punishable by a fine of up to \$500. Second offenses shall be punishable by a fine of up to \$1,000. Third and subsequent offenses shall be punishable by a fine of up to \$2,500. Each violation of this law shall be considered a separate and distinct offense.
- b. No fine shall be imposed until an alleged violator has had a hearing and opportunity to be heard by the Commissioner of the Nassau County Department of Consumer Affairs, or his or her designee.
- c. A special revenue fund is hereby established, to commence concurrently with the implementation of this Local Law to which all fines collected pursuant to this Local Law shall be deposited.
- d. All funds collected pursuant to this Local Law shall be utilized solely to provide supplemental funding for contracts, approved by the Nassau County Legislature, for the environmental investigation and cleanup of Nassau county properties.

§ 4. Rules and Regulation

The Commissioner of the Department of Consumer Affairs is hereby authorized to promulgate rules and regulations necessary to implement and enforce this local law.

§ 2. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person 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 hereof, 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 or

circumstance directly involved in the controversy in which such order or judgment shall be rendered.

§ 3. SEQRA Determination

It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L., section 0101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and section 1611 of the County Government Law of Nassau County, that the adoption of this local law is a “Type II” Action within the meaning of Section 617.5(c)(20) and (27) of 6 N.Y.C.R.R., and, accordingly, is of a class of actions which do not have a significant effect on the environment; and no further review is required.

§ 4. Effective Date

This local law shall take effect on January 1, 2020.

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