

ALBANY COUNTY DEPARTMENT OF HEALTH

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

SECTION 1: INTENT AND PURPOSE

Pursuant to Local Law No. 4 for 2018, these rules and regulations have been promulgated by the Commissioner of Health.

SECTION 2: ADDITIONAL DEFINITIONS

Compostable: All materials in the product or package will breakdown into, or otherwise become part of, usable compost (e.g. organic soil conditioning material or mulch) in a safe and timely manner. When the products are designed to be composted, they should meet ASTM Standards D6400 (for compostable plastics) or ASTM D6868 (for compostable packaging).

Restaurant: Any food service establishment that sells prepared food for customer consumption on or off the premises.

Locally Recyclable Materials: Recyclable Materials that are commonly accepted by municipal recycling programs or waste haulers and are considered “mainstream recyclable materials” according to Federal Trade Commission Green Guides, 16 CFR Part 260.

Disposable Food Service Ware: single-use disposable products in which the 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.

SECTION 3: DISPOSABLE FOOD SERVICE WARE AND ACCEPTABLE ALTERNATIVES

1. No Food Service Establishment shall sell prepared food in any disposable food service ware that contains polystyrene foam.
2. All food service establishments using any disposable food service ware shall use a suitable, alternative product that is a compostable product or made of locally recyclable material such as aluminum or hard plastic.

SECTION 4: ENFORCEMENT AND PENALTIES

AUTHORITY: The Health Commissioner is authorized by Local 4 of 2018 to promulgate rules and regulations and take any and all other reasonable actions necessary to implement and enforce Local 4 for 2018. These rules and regulations shall be enforced by the Commissioner (or her designee).

ENFORCEMENT: Food service establishments shall be responsible to provide proof to the Commissioner for Health or her designee that the disposable food service ware used is a suitable product that is compostable or recyclable.

PENALTIES: Food Service Establishments shall be subject to the following penalties for violation of Local Law No. 4 for 2018: Civil Penalties:

A. First Offense – Any 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 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 Food Service Establishment that commits a third or subsequent offense shall be guilty of a misdemeanor and shall be fined in an amount not to exceed one thousand (\$1,000) dollars.

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

The Department of Health shall, in its discretion, perform inspections of Food Service Establishments subject to Local Law No.4 for 2018 for compliance as well as respond to and investigate complaints of noncompliance. If the Department of Health determines a 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 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 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 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 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 Food Service Establishment either sustaining or overturning the original violation determination.

If the 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 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 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.

SECTION 5: WAIVER

A two month grace period will be in effect between March 27th and May 27th for expanded foam food service articles purchased prior to the rules and regulations being made available on February 26th.

The Albany County Department of Health may grant a twelve-month waiver from this ban provided the applicant has demonstrated sufficient cause in accordance with Rules and Regulations established by the Commissioner of Health.

The Department may grant waivers in part or in full on a case-by-case basis. Such waivers shall not be unreasonably denied. The Department of Health shall establish an appeal process to be used in the event that an application for waiver is denied. The waiver application form and eligibility criteria may be accessed on the Albany County Department of Health website or by contacting the Department of Health.

An applicant wishing to appeal a denial of their application for a waiver must mail a notice of appeal to the Health Department within 30 days of the determination denying the waiver. The Commissioner of Health or her designee shall serve a notice of formal hearing by personal service or registered/certified mail upon the 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 or designee shall mail a written decision to the Food Service Establishment either sustaining or overturning the original determination. Likewise, a 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.

Every waiver granted shall be subject to such conditions or restrictions as may be necessary to minimize the adverse effects of the waiver to ensure that the waiver is consistent with the general purpose of the Local Law.

For the first year, approved exemptions will expire on the date that the establishment's current food service permit expires. Food operators wishing to renew their exemption must submit a new exemption application at least 30 days prior to the expiration of their food service permit renewal date.