

STRICKEN AS OF 9/4/2014
AMENDED COPY AS OF 5/5/2014

Intro. Res. No. 1236-2014
Introduced by Legislator Hahn

Laid on Table 3/4/2014

**RESOLUTION NO. -2014, ADOPTING LOCAL LAW
NO. -2014, A LOCAL LAW TO REQUIRE THE USE OF
BIODEGRADABLE PRODUCTS BY CHAIN RESTAURANTS**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on March 4, 2014, a proposed local law entitled, "**A LOCAL LAW TO REQUIRE THE USE OF BIODEGRADABLE PRODUCTS BY CHAIN RESTAURANTS**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. -2014, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO REQUIRE THE USE OF BIODEGRADABLE
PRODUCTS BY CHAIN RESTAURANTS**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that the Environmental Protection Agency has determined that the polystyrene manufacturing process is the fifth largest creator of hazardous waste in the United States.

This Legislature also finds and determines that polystyrene foam is a common environmental pollutant and non-biodegradable substance commonly used as food service ware; there is no meaningful method of recycling polystyrene foam food service ware.

This Legislature finds that alternative biodegradable and/or compostable food service ware is readily available for most food service applications and these products are biodegradable and/or compostable.

This Legislature also finds that the use of biodegradable and/or compostable food service ware will reduce the waste stream and waste disposal costs.

This Legislature determines that the County should encourage the use of biodegradable food service containers by all food service businesses and should restrict the use of polystyrene containers by larger chain establishments.

Therefore, the purpose of this law is to eliminate the use of polystyrene foam food service ware by chain food service establishments within Suffolk County.

Section 2. Definitions.

As used in this law, the following terms shall have the meaning indicated:

“BIODEGRADABLE” shall mean a product or package that will completely breakdown and decompose into elements found in nature within a reasonably short time after proper disposal.

“CHAIN FOOD SERVICE ESTABLISHMENT” shall mean five or more food service establishments located within the County that (1) conduct business under the same business name or (2) operate under common ownership or management or pursuant to a franchise agreement with the same franchisor.

“COMMISSIONER” shall mean the Commissioner of the Department of Health Services.

“COMPOSTABLE” shall mean 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.

“CONCESSIONAIRE” shall mean any person or business who contracts to provide food or beverages at concession stands or cafeterias on property owned by the County of Suffolk.

“CUSTOMER(s)” shall mean any person(s) obtaining prepared food from a chain food service establishment.

“DISPOSABLE FOOD SERVICE WARE” shall mean 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 food and/or leftovers from partially consumed meals prepared at or by chain food service establishments for consumption at a specific location.

“POLYSTYRENE FOAM” shall mean 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” shall mean any food or beverage which is (1) served in Suffolk 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 Suffolk County. This definition shall not include any raw meat, poultry or seafood sold for the purpose of being cooked off premises.

Section 3. Disposable Food Service Ware.

- A. No concessionaire or chain food service establishment shall sell prepared food in any disposable food service ware that contains polystyrene foam.
- B. All concessionaire and chain food service establishments using any disposable food service ware shall use suitable alternative products that are compostable or biodegradable.
- C. Concessionaire or chain food service establishments shall be responsible to provide proof to the Commissioner of the Department of Health Services or his or her designee that the

disposable food service ware used is a suitable, alternative product that is a compostable or biodegradable product.

Section 4. Financial Hardship Waiver.

Any chain food service establishment that has a gross income under five hundred thousand dollars per location on their annual income tax filing for the most recent tax year may request from the Commissioner of the Department of Health Service, in a manner and form to be determined by the Commissioner, a financial hardship waiver of the requirements of this law.

Such waiver request may apply to one or more single service articles possessed, sold or offered for use by any such chain food service establishment. The commissioner shall grant such waiver if the chain food service establishment proves: (1) that there is no comparable alternative product not composed of polystyrene, and (2) that the purchase or use of an alternative product not composed of polystyrene would create an undue financial hardship. Such financial hardship waiver shall be valid for twelve months and shall be renewable upon application to the Commissioner of the Department of Health Services. A pending application for such financial hardship waiver shall be a defense to any notice of violation issued pursuant to this law to which such pending application relates and such notice of violation shall be dismissed.

Section 5. Rules and Regulations.

- A. The Commissioner of the Department of Health Services is hereby authorized to promulgate rules and regulations and take any and all other reasonable actions necessary to implement and enforce this local law.
- B. The Commissioner shall establish procedures for the hearing of violation cases and imposition of fines. No fine shall be imposed until after a hearing has been held before the Commissioner of the Department of Health Services, upon at least seven business days' notice to the person upon whom such fine is to be levied. Such notice shall be served either personally or by certified mail, return receipt requested, to the last known address of said person and shall state the date and place of the hearing as well as enumerate the grounds constituting the allegations against such person. Said person may be represented by counsel and may produce witnesses in his or her own behalf. A record of the hearing shall be taken and preserved. For purposes of such hearing, the Commissioner may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records or other documents deemed pertinent to the subject

Section 6. Penalties.

Violations of Section 3 of this local law shall be punishable as follows:

- 1. The first violation shall be punishable by a fine not to exceed \$500.
- 2. A second violation shall be punishable by a fine not to exceed \$1,000.
- 3. The third and any subsequent violations shall be punishable by a fine not to exceed \$2,500.

Section 7. Applicability.

- A. This law shall apply to all transactions at chain food service establishments occurring on or after the effective date of this law.
- B. This law shall apply to all contracts entered into by the County of Suffolk with concessionaires on or after the effective date of this law. All concession contracts entered into by the County of Suffolk on or after the effective date of this law shall contain a provision barring the concessionaire from using disposable food service ware that contain polystyrene foam.

Section 8. Department of Health Services Outreach.

On or after January 1, 2015, the Department of Health Services shall provide outreach and education on the topic of polystyrene packaging. If expanded polystyrene single service containers are not designated as a recyclable material, the Department, in consultation with the Department of Labor, Licensing and Consumer Affairs, shall conduct outreach and education to chain food service establishments and food service establishments to inform them of the provisions of this section and provide assistance with identifying replacement material, and such outreach and education shall be offered in multiple languages.

Section 9. Reverse Preemption.

This local law shall be null and void on the day that federal and 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 Suffolk. The County Legislature may determine via duly enacted resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purpose of triggering the provision of this section.

Section 10. 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 11. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 12. Effective Date.

This law shall take effect one year from its filing of this law in the Office of the Secretary of State.

DATED:

APPROVED BY:

County Executive of Suffolk County

Date: