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Int. No. 1060-A

By Council Members Fidler, James, Gentile, Brewer, King, Koslowitz, Lander, Levin, Vann, Dromm, Ferreras, Gonzalez, Mendez, Richards, Rivera, Van Bramer, Chin, Nelson, Garodnick, Gennaro, Rodriguez, Koo, Vallone, Koppell and Lappin (in conjunction with the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to restrictions on the sale or use of certain expanded polystyrene items.

Be it enacted by the Council as follows:

Section 1. The opening paragraph of subdivision a of section 16-324 of the administrative code of the city of New York, as amended by local law number 77 for the year 2013, is amended to read as follows:

a. Subject to the provisions of subdivision b of this section, any person who violates this chapter, except subdivision g of section 16-308 of this chapter [or] , section 16-310.1 of this chapter or section 16-329 of this chapter , or any rule promulgated pursuant thereto, shall be liable for a civil penalty recoverable in a civil action brought in the name of the commissioner or in a proceeding returnable before the environmental control board, as follows:

§ 2. Subdivision d of section 16-324 of the administrative code of the city of New York, as amended by local law number 34 for the year 2010, is amended to read as follows:

d. Any notice of violation or notice of hearing for a violation issued to the owner, net lessee or person in charge of a premises or to a food service establishment, mobile food commissary, store, or manufacturer, as those terms are defined in section 16-329 of this chapter, at which or by whom a violation of this chapter or any rule promulgated pursuant thereto is alleged to have occurred or to have been committed shall be served by delivering a copy of the notice thereof at the address maintained in the records of the department of housing preservation and development [or] , the department of finance , or the department of

health and mental hygiene . The notice of violation or notice of hearing may be served by regular mail or in accordance with section one thousand forty-nine-a of the charter or, if such notice is served by an agency other than the department, in accordance with the rules of such agency.

§ 3. Section 16-324 of the administrative code of the city of New York is amended by adding a new subdivision f to read as follows:

f. Any person who violates section 16-329 of this chapter or any rule promulgated pursuant thereto shall be liable for a civil penalty recoverable in a civil action brought in the name of the commissioner, the commissioner of health and mental hygiene or the commissioner of consumer affairs, or in a proceeding before the environmental control board, the health tribunal at the office of administrative trials and hearings, or the administrative tribunal of the department of consumer affairs, in the amount of two hundred fifty dollars for the first violation, five hundred dollars for the second violation committed on a different day within a period of twelve months, and one thousand dollars for the third and each subsequent violation committed on different days within a period of twelve months, except that the department, the department of health and mental hygiene, and the department of consumer affairs shall not issue a notice of violation, but shall issue a warning and provide information on replacement material, for any violation that occurs before January first, two thousand sixteen.

§ 4. Chapter 3 of title 16 of the administrative code of the city of New York is amended by adding a new subchapter nine to read as follows:

SUBCHAPTER 9

RESTRICTIONS ON THE SALE OR USE OF CERTAIN EXPANDED POLYSTYRENE ITEMS

§16-329 Restrictions on the sale or use of certain expanded polystyrene items. a. Definitions. When used in this section:

"Chain food service establishment" means five or more food service establishments located

within the city 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.

"Chain store" means five or more stores located within the city 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.

"Economically feasible" means cost effective based on consideration of factors including, but not limited to, direct and avoided costs such as whether the material is capable of being collected by the department in the same truck as source separated metal, glass and plastic recyclable material, and shall include consideration of markets for recycled material.

"Environmentally effective" means not having negative environmental consequences including, but not limited to, having the capability to be recycled into new and marketable products without a significant amount of material accepted for recycling being delivered to landfills or incinerators.

"Expanded polystyrene" means blown polystyrene and expanded and extruded foams that 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 foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene). Such term shall not include rigid polystyrene.

"Food service establishment" means a premises or part of a premises where food is provided 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. Food service establishment shall include, but not be limited to, full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks or carts and cafeterias.

"Manufacturer" means every person, firm or corporation that:

1. produces expanded polystyrene or polystyrene loose fill packaging that is sold or distributed

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in the city; or

2. imports expanded polystyrene or polystyrene loose fill packaging that is sold or distributed in the city.

"Mobile food commissary" means any facility that:

1. disposes of solid waste generated by the operation of a food service establishment that is located in or is a pushcart, stand or vehicle; or

2. supplies potable water and food, whether pre-packaged or prepared at the mobile food commissary, and supplies non-food items.

"Polystyrene loose fill packaging," commonly known as packing peanuts, means a void-filling packaging product made of expanded polystyrene that is used as a packaging fill.

"Safe for employees" means that, among other factors, the collection and sorting of any source separated material does not pose a greater risk to the health and safety of persons involved in such collection and sorting than the risk associated with the collection and sorting of any other source separated recyclable material in the metal, glass and plastic recycling stream.

"Single service articles" means cups, containers, lids, closures, trays, plates, knives, spoons, stoppers, paddles, straws, place mats, napkins, doilies, wrapping materials, toothpicks and all similar articles that are intended by the manufacturer to be used once for eating or drinking or that are generally recognized by the public as items to be discarded after one use.

"Store" means a retail or wholesale establishment other than a food service establishment.

b. No later than January first, two thousand fifteen, the commissioner shall determine, after consulting with the department's designated recycling contractor for metal, glass and plastic materials, manufacturers and recyclers of expanded polystyrene, and, in the commissioner's discretion, any other person or group having expertise on expanded polystyrene, whether expanded polystyrene single service articles can

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be recycled at the designated recycling processing facility at the South Brooklyn Marine Terminal in a manner that is environmentally effective, economically feasible, and safe for employees. At such time, the commissioner shall report to the mayor and the council on such determination. If the commissioner determines that expanded polystyrene single service articles can be recycled in such manner, the commissioner shall adopt and implement rules designating expanded polystyrene single service articles and, as appropriate, other expanded polystyrene products, as a recyclable material and require the source separation of such expanded polystyrene for department-managed recycling.

c. If expanded polystyrene single service articles are not designated as a recyclable material pursuant to subdivision b of this section, then, on and after July first, two thousand fifteen, no food service establishment, mobile food commissary, or store shall possess, sell, or offer for use single service articles that consist of expanded polystyrene including, but not limited to, providing food in single service articles that consist of expanded polystyrene. This subdivision shall not apply to (1) expanded polystyrene containers used for prepackaged food that have been filled and sealed prior to receipt by the food service establishment, mobile food commissary, or store or (2) expanded polystyrene containers used to store raw meat, pork, fish, seafood or poultry sold from a butcher case or similar retail appliance.

d. If expanded polystyrene single service articles are not designated as a recyclable material pursuant to subdivision b of this section, then, on and after July first, two thousand fifteen, no manufacturer or store shall sell or offer for sale polystyrene loose fill packaging in the city.

e. Any not-for-profit corporation, regardless of its income, and any food service establishment, mobile food commissary, or store that had a gross income under five hundred thousand dollars per location on their annual income tax filing for the most recent tax year and is not part of a chain food service establishment or a chain store may request from the commissioner of small business services, in a manner and form established by such commissioner, a financial hardship waiver of the requirements of this section. Such waiver

request may apply to one or more single service articles possessed, sold, or offered for use by any such not-for-profit corporation, food service establishment, mobile food commissary, or store. The commissioner of small business services shall, after consultation with the commissioner, grant such waiver if such not-for-profit corporation, food service establishment, mobile food commissary, or store proves: (1) that there is no comparable alternative product not composed of expanded polystyrene that would cost the same as or less than the single service article composed of expanded polystyrene, and (2) that the purchase or use of an alternative product not composed of expanded 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 small business services. A pending application for such financial hardship waiver shall be a defense to any notice of violation issued pursuant to this section to which such pending application relates and such notice of violation shall be dismissed.

f. On and after January first, two thousand fifteen, the department shall provide outreach and education as follows:

(1) if expanded polystyrene single service articles are not designated as a recyclable material pursuant to subdivision b of this section, the department, in consultation with the department of health and mental hygiene and the department of consumer affairs, shall conduct outreach and education to food service establishments, mobile food commissaries, and stores 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; and

(2) if expanded polystyrene single service articles are designated as a recyclable material pursuant to subdivision b of this section, the department shall provide instruction and materials for residential building owners, net lessees or persons in charge of such buildings, and their employees and residents, for the purpose of improving compliance with such new recycling designation.

g. The department, the department of health and mental hygiene and the department of consumer

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affairs shall have the authority to enforce the provisions of this section.

§ 5. This local law shall take effect immediately.

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