

Int. No. 640-A

By Council Members Vallone, Jr., The Speaker (Council Member Quinn), Gennaro, McMahon, Yassky, Liu, Mark-Viverito, Gioia, de Blasio, The Public Advocate (Ms. Gotbaum) and Council Members Avella, Brewer, Felder, Fidler, Gentile, Gonzalez, James, Koppell, Lappin, Nelson, Recchia Jr., Sanders Jr., Weprin, Jackson, Arroyo, Garodnick and Sears

A Local Law to amend the administrative code of the city of New York, in relation to requiring a recycling program for plastic carryout bags and film plastic.

Be it enacted by the Council as follows:

Section 1. Title 16 of the administrative code of the city of New York is amended by adding a new chapter 4-B to read as follows:

CHAPTER 4-B

§ 16-450 Title.

§ 16-451 Declaration of policy.

§ 16-452 Definitions.

§ 16-453 Recycling program requirements.

§ 16-454 Manufacturer responsibilities.

§ 16-455 Penalties.

§ 16-450 Title. This chapter shall be known as and may be cited as the “New York City Plastic Carryout Bag and Film Plastic Recycling Law”.

§ 16-451 Declaration of policy. It is hereby declared to be the public policy of the city of New York to reduce environmental pollution, to reduce the toxicity of waste materials in the solid waste stream directed to resource recovery and sanitary landfill facilities, and to maximize the removal of plastic carryout bags and film plastic from the waste stream in order to recycle them. Plastic carryout bags and film plastic do not biodegrade, which means that such bags and film plastic ultimately break down into smaller pieces that enter the ecosystem. These pieces of plastic cause illness, injury and death to animal and marine life by entangling them or contaminating their food supplies. The production of plastic bags and film plastic worldwide uses over 12 million barrels of oil per year, which causes significant environmental impacts.

§ 16-452 Definitions. When used in this chapter: a. “Chain of stores” means five or more stores located within the city of New York that are engaged in the same general field of business and (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.

b. “Consumer” means any person who purchases a product from a store that is

placed in a plastic carryout bag at the time of sale.

c. "Film plastic" means uncontaminated non-rigid film plastic packaging products composed of plastic resins that include, but are not limited to, newspaper bags, dry cleaning bags and shrink-wrap.

d. "Food service establishment" means any establishment (1) where the primary business is providing food for individual portion service directly to the consumer, whether consumption of such food occurs on or off the premises or such service is provided in a premises or from a pushcart, stand or vehicle, and (2) that is subject to the permit requirement contained in section 81.05 of the New York city health code.

e. "Manufacturer" means every person, firm or corporation that: (1) produces plastic carryout bags that are sold or distributed within the city of New York, or (2) imports plastic carryout bags into the United States that are sold or distributed within the city of New York.

f. "Operator" means a person, firm or corporation that owns or is in control of, or has responsibility for, the daily operation of a store.

g. "Plastic carryout bag" means a plastic bag provided by a store to a consumer at the point of sale that is not a reusable bag.

h. "Reusable bag" means (1) a bag made of cloth or other machine washable fabric that has handles, or (2) a durable plastic bag, with handles, that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse.

i. "Store" means a retail or wholesale establishment, other than a food service establishment, that sells products and provides plastic carryout bags to consumers in which to place these products and (1) has over five thousand square feet of retail or wholesale space or (2) is one of a chain of stores.

§ 16-453 Recycling program requirements. a. Every operator shall establish an in-store recycling program that shall include, but need not be limited to, the following:

1. every plastic carryout bag provided by a store shall have printed or displayed on the outside face of the bag (i) the words "PLEASE REUSE OR RECYCLE AT A PARTICIPATING STORE" using letters at least one-half inch in height or (ii) a similar message encouraging the reuse or recycling of plastic carryout bags that is no less than one inch in height and uses letters at least one quarter inch in height; provided, however, that such store shall be allowed, for six months from the effective date of the local law that added this subdivision, to use its existing stock of plastic carryout bags and may apply to the commissioner for a waiver, based on economic hardship, to extend such six-month period;

2. a bin for the collection of plastic carryout bags and other film plastic shall be placed in a visible

location that is easily accessible to the consumer, and clearly marked as available for the purpose of collecting plastic carryout bags and other film plastic for recycling;

3. all plastic carryout bags and other film plastic returned to a store are to be collected, transported and recycled in a manner consistent with the provisions of this chapter or any rule promulgated pursuant to this chapter;

4. plastic carryout bags and other film plastic collected by a store that are free of foreign material shall not be disposed of in any solid waste or hazardous waste facility; and

5. the operator shall make available to consumers within a store at or near the place where plastic carryout bags are dispensed, reusable bags, which may be purchased and used in lieu of a plastic carryout bag or paper bag.

b. Each operator or its designee shall maintain records indicating the weight of the plastic carryout bags and film plastic that are collected by such operator's store and transported for recycling.

c. Each operator or its designee shall submit an annual report to the department covering the preceding calendar year, beginning with a report covering calendar year two thousand nine, which shall include for all stores that it operates within the city of New York the amount of carryout plastic bags and other film plastic by weight that is collected and transported for recycling, the costs to the operator of such efforts, and any other information the commissioner shall require by rule. Such annual report shall be submitted to the department no later than February twenty-eighth following the calendar year to which the annual report relates.

d. The commissioner shall, in consultation with operators, manufacturers and recyclers, develop a system to monitor and determine the weight of all plastic carryout bags and other film plastic collected under this chapter and shall analyze the information and report to the mayor and the council every two years beginning on December thirty-first, two thousand ten, regarding the implementation and enforcement of this chapter.

§ 16-454 Manufacturer responsibilities. a. A manufacturer whose plastic carryout bags are sold or distributed to a store subject to the provisions of this chapter shall make arrangements with the operator, upon the operator's request, for the collection, transport and recycling of all plastic carryout bags and other film plastic collected consistent with the provisions of this chapter. Such arrangements may include contracts or other agreements with third parties.

b. A manufacturer that arranges with an operator for the collection, transport and recycling of plastic carryout bags and other film plastic shall report annually to such operator the total amount by weight of

plastic carryout bags and other film plastic that has been collected from such operator. Such annual report shall cover the preceding calendar year, beginning with a report covering calendar year two thousand nine, and be submitted to such operator no later than January thirty-first following the calendar year to which the annual report relates.

c. A manufacturer whose plastic carryout bags are sold or distributed to a store subject to the provisions of this chapter shall make arrangements with the operator, upon the operator's request, to provide such operator, educational materials that encourage the reduction, reuse and recycling of plastic carryout bags.

§ 16-455 Penalties. a. Any operator who violates subdivision a of section 16-453 of this chapter shall be liable for a civil penalty recoverable in a proceeding before the environmental control board in the amount of three hundred dollars per day for each day that a recycling program meeting the requirements of such subdivision is not in effect. It shall be an affirmative defense to a violation of paragraph one or five of subdivision a of section 16-453 of this chapter that the operator used its best efforts to comply with such paragraph but was unable to because of circumstances beyond such operator's control.

b. Any operator who violates subdivision b of section 16-453 of this chapter shall be liable for a civil penalty recoverable in a proceeding before the environmental control board in the amount of: (1) one hundred dollars for the first violation; (2) seven hundred dollars for the second violation within a twelve-month period of the first violation; and (3) one thousand dollars for the third violation within such twelve-month period.

c. Any operator who violates subdivision c of section 16-453 of this chapter shall be liable for a civil penalty recoverable in a proceeding before the environmental control board in the amount of: (1) one hundred dollars for the first violation within twelve months of the date the report referred to in such subdivision is due; (2) seven hundred dollars for the second violation within such twelve-month period; and (3) one thousand dollars for the third violation within such twelve-month period.

d. Any manufacturer who violates subdivision a of section 16-454 of this chapter shall be liable for a civil penalty recoverable in a proceeding before the environmental control board in the amount of five hundred dollars per day for each day that such violation continues.

e. Any manufacturer who violates subdivision b of section 16-454 of this chapter shall be liable for a civil penalty recoverable in a proceeding before the environmental control board in the amount of: (1) one hundred dollars for the first violation within twelve months of the date the report referred to in such subdivision is due; (2) one thousand dollars for the second violation within such twelve-month period; and

(3) fifteen hundred dollars for the third violation within such twelve-month period.

f. Any manufacturer who violates subdivision c of section 16-454 of this chapter shall be liable for a civil penalty recoverable in a proceeding before the environmental control board in the amount of: (1) one hundred dollars for the first violation; (2) one thousand dollars for the second violation within a twelve-month period of the first violation; and (3) fifteen hundred dollars for the third violation within such twelve-month period.

g. The failure of an operator or manufacturer to provide the report or maintain the records, or of a manufacturer to provide educational materials requested by an operator, required by sections 16-453 and 16-454 of this chapter shall constitute a continuing violation that subjects such operator or manufacturer to up to three notices of violation within the twelve-month periods provided in subdivisions b, c, e and f of this section.

h. The department shall have the authority to enforce all provisions of this chapter. The department of consumer affairs also shall have the authority to enforce paragraphs one, two and five of subdivision a of section 16-453 of this chapter.

§ 2. This local law shall take effect six months after enactment, except that the commissioner of sanitation shall take such actions, including the promulgation of rules, as are necessary for the implementation of this local law prior to such effective date.