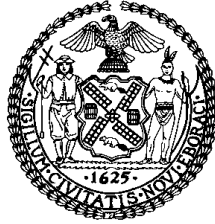


Committee on Consumer and Worker Protection

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THE COUNCIL OF THE CITY OF NEW YORK

COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION

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COMMITTEE ON CONSUMER AND WORKER PROTECTION

Hon. Marjorie Velázquez, Chair

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By Council Members Velázquez, Bottcher, Brannan, Cabán, Abreu, Brewer, Joseph, Hudson, Restler, Gennaro, Krishnan, Won, Avilés, Brooks-Powers, Ossé, Rivera, Nurse, Menin, Hanif, De La Rosa, Marte, Narcisse, Gutiérrez, Powers, Sanchez, Salamanca, Farías, Ayala, Feliz and Lee (in conjunction with the Brooklyn Borough President)

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to restricting eating utensils and extra eating containers, and clarifying the definition of third-party courier service

I. INTRODUCTION

On December 12, 2022, the Committee on Consumer and Worker Protection, chaired by Council Member Marjorie Velázquez, will hold a hearing on Introduction Number 559 (Int. 559), in relation to restricting eating utensils and extra eating containers, and clarifying the definition of third-party courier service. The Committee invited the Department of Consumer and Worker Protection (DCWP), business and trade organizations, environmental groups and other interested stakeholders to testify at the hearing.

II. BACKGROUND

a. Plastic Utensils

Low production costs, durability and broad functionality mean that plastics are a common feature of everyday life. Globally, more than 320 million tons of plastic are consumed each year and more plastic has been produced in the last decade than ever before.¹ Additionally, use of plastics is expected to double over the next two decades.² While plastics last for centuries before biodegrading,³ they are often only used once before being discarded. Ninety-five percent of plastic packaging, for example, is only used once, and only 14 percent is collected for recycling.⁴ This means that at least eight million tons of plastic leak into the ocean each year – a figure that is equivalent to dumping a garbage truck of trash into the ocean every minute.⁵ In the United States,

¹ Laurent Lebreton *et al* “Evidence that the Great Pacific Garbage Patch is rapidly accumulating plastic”, *Nature*, March 22, 2018, available at: <https://www.nature.com/articles/s41598-018-22939-w>.

² World Economic Forum “The new plastics economy: Rethinking the future of plastics”, January 2016, available at: http://www3.weforum.org/docs/WEF_The_New_Plastics_Economy.pdf, p. 6.

³ Laura Parker “A whopping 91% of plastic isn’t recycled”, *National Geographic*, December 20, 2018, available at: <https://news.nationalgeographic.com/2017/07/plastic-produced-recycling-waste-ocean-trash-debris-environment/>.

⁴ World Economic Forum “The new plastics economy: Rethinking the future of plastics”, January 2016, available at: http://www3.weforum.org/docs/WEF_The_New_Plastics_Economy.pdf, p. 7.

⁵ *Id.*

over 100 million plastic utensils are used daily,⁶ and some analysts estimate the U.S. wastes 40 billion plastic utensils per year.⁷

The fact that most plastics are less dense than seawater means that pieces of plastic float in the ocean and break down into smaller particles (microplastics)⁸ that are consumed by fish and aquatic birdlife.⁹ The Ocean Conservancy lists cutlery as among the “most deadly” items to sea turtles, birds and mammals.¹⁰ The ubiquity of plastics, its buoyancy, and the struggle to properly dispose of it means that there is now a land mass, known as the Great Pacific Garbage Patch, floating between the coasts of California and Hawaii. Ninety-nine percent of this patch, which is twice the size of Texas,¹¹ is made up of plastic.¹² The World Economic Forum predicts that, under a business-as-usual scenario, there will be more plastic in the ocean by weight than fish by 2050.¹³

Concerns about plastic waste are not limited to ocean leakage. Pervasive microplastics penetrate the atmosphere by fragmenting into particles so small they become airborne.¹⁴ Humans

⁶ Tik Root “Why carrying your own fork and spoon helps solve the plastic crisis”, *National Geographic*, June 28, 2019, available at: <https://www.nationalgeographic.com/environment/article/carrying-your-own-fork-spoon-help-plastic-crisis>

⁷ Laura Tenenbaum “Plastic Cutlery Is Terrible For The Environment And We Don't Need To Have It Delivered” *Forbes*, July 16, 2019, available at: <https://www.forbes.com/sites/lauratenenbaum/2019/07/16/plastic-cutlery-is-terrible-for-the-environment-and-we-dont-need-to-have-it-delivered/?sh=163679e74019>.

⁸ Laurent Lebreton *et al* “Evidence that the Great Pacific Garbage Patch is rapidly accumulating plastic”, *Nature*, March 22, 2018 available at: <https://www.nature.com/articles/s41598-018-22939-w>.

⁹ Laura Parker “Ocean life eats tons of plastic – here’s why that matters” *National Geographic*, August 16, 2017, available at: <https://news.nationalgeographic.com/2017/08/ocean-life-eats-plastic-larvaceans-anchovy-environment/>.

¹⁰ Ocean Conservancy, “Fighting for Trash Free Seas”, available at: <https://oceanconservancy.org/trash-free-seas/take-deep-dive/threat-rank-report/>.

¹¹ Doyle Rice “World’s largest collection of ocean garbage is twice the size of Texas”, *USA Today*, March 22, 2018, available at: <https://www.usatoday.com/story/tech/science/2018/03/22/great-pacific-garbage-patch-grows/446405002/>.

¹² Laurent Lebreton *et al* “Evidence that the Great Pacific Garbage Patch is rapidly accumulating plastic”, *Nature*, March 22, 2018 available at: <https://www.nature.com/articles/s41598-018-22939-w>.

¹³ World Economic Forum “The new plastics economy: Rethinking the future of plastics”, January 2016, available at: http://www3.weforum.org/docs/WEF_The_New_Plastics_Economy.pdf, p. 7.

¹⁴ Wijnand de Wit *et al* “No Plastic in Nature: Assessing Plastic Ingestion from Nature to People”, *WWF*, June 2019, available at: http://awsassets.panda.org/downloads/plastic_ingestion_press_singles.pdf

consume microplastics by inhaling airborne particles, ingesting certain foods and drinking water.¹⁵ Sources with the greatest number of plastic particles include drinking water, shellfish, beer and salt.¹⁶ The average person ingests approximately 50,000 microplastic particles per year, and inhales a comparable amount.¹⁷

Recent studies discovered traces of microplastics in the human bloodstream and buried throughout lungs.¹⁸ The complex combination of chemicals that make up plastics could have long-term health implications; however, the extent of the harm caused by ingesting microplastics is largely unknown.¹⁹ The World Health Organization recently reported on the dietary and inhalation exposure to microplastic particles on human beings.²⁰ The report found that the available data are insufficient to evaluate the risks of exposure to human health, but it recommends reducing exposure to microplastics to benefit humans and the environment.²¹

b. Waste and Recycling

According to a study published in 2020, “residents of the U.S. and the U.K. produce more plastic waste per person than any other nation, with Americans generating an average of 105kg (231lbs) of plastic per year. The British are close behind, throwing away almost 99kg (218lbs) annually.”²² Although many types of plastics can be recycled, this process has not been able to

¹⁵ Id.

¹⁶ Id.

¹⁷ Jordan Davidson “People Eat 50,000+ Microplastics Every Year, New Study Finds”, *SELF*, June 6, 2019, available at: <https://www.self.com/story/microplastics-in-humans-health>

¹⁸ Id.

¹⁹ Laura Parker “Microplastics are in our bodies. How much do they harm us?”, *National Geographic*, April 25, 2022, available at: <https://www.nationalgeographic.com/environment/article/microplastics-are-in-our-bodies-how-much-do-they-harm-us>

²⁰ Boobis *et al* “Dietary and inhalation exposure to nano- and microplastic particles and potential implications for human health”, *World Health Organization*, August 30, 2022, available at: <https://www.who.int/publications/i/item/9789240054608>

²¹ Id.

²² David Vetter “Guess which two countries produce the most plastic trash per person?”, *Forbes*, November 11, 2020, available at: <https://www.forbes.com/sites/davidvetter/2020/11/11/which-two-countries-produce-the-most-plastic-trash-per-person/?sh=35771c527187>.

keep pace with our steady production and disposal of plastic products. A global review of plastics revealed that since plastic production was commercialized in the 1950s, more than 8.3 billion tons of plastic was made²³ – more than a ton of plastic for every person on the planet.²⁴ However, only nine percent of this plastic waste has been recycled and 79 percent was simply left in landfills.²⁵ Compared to other countries and regions examined in the study, the quantity of plastics that the US recycles was far lower. Since 2012, the US rate of plastic recycling has been nine percent, which is well behind Europe (30 percent) and China (25 percent).²⁶ New York City residents, meanwhile, recycle only about 18 percent of residential waste and a quarter of commercial waste.²⁷

In order to facilitate the recycling and disposal of the high volume of plastics used in the country, the US previously shipped a high proportion to other countries. Prior to China issuing new, stricter regulations on the types of recyclables it would accept, the US was sending half of its plastic recycling to China and Hong Kong.²⁸ However, in 2017, China announced new restrictions, which went into effect on January 1, 2018, to stop the importation of waste from other countries by December 2020.²⁹ This has caused turmoil throughout the West, as countries struggled to find a way to deal with their waste. While the US has found other countries to ship more than one

²³ James Hataway “More than 8.3 billion tons of plastics made: Most has now been discarded”, *Science Daily*, July 19, 2017, available at: <https://www.sciencedaily.com/releases/2017/07/170719140939.htm>.

²⁴ Hannah Ritchie “FAQs on plastics”, *Our World in Data*, September 2, 2018, available at: <https://ourworldindata.org/faq-on-plastics#how-much-plastic-and-waste-do-we-produce>.

²⁵ Laura Parker “Ocean life eats tons of plastic – here’s why that matters” *National Geographic*, August 16, 2017, available at: <https://news.nationalgeographic.com/2017/08/ocean-life-eats-plastic-larvaceans-anchovy-environment/>.

²⁶ Id.

²⁷ Anne Barnard “7 reasons recycling isn’t working in New York City”, *New York Times*, January 29, 2020, available at: <https://www.nytimes.com/2020/01/29/nyregion/nyc-recycling.html>.

²⁸ Erin McCormick, *et al*, “Where does your plastic go? Global investigation reveals America’s dirty secret”, *The Guardian*, June 17, 2019, available at: <https://www.theguardian.com/us-news/2019/jun/17/recycled-plastic-america-global-crisis>.

²⁹ Kenneth Rapoza “China quits recycling U.S. trash as sustainable start-up makes strides”, *Forbes*, January 10, 2021, available at: <https://www.forbes.com/sites/kenrapoza/2021/01/10/china-quits-recycling-us-trash-as-sustainable-start-up-makes-strides/?sh=6be4f4105a56>.

million tons of plastic waste to, studies show that these countries are mismanaging most of their own plastic waste. Malaysia, which is now the biggest receiver of US waste, either dumped or inadequately disposed of 55 percent of its own waste. Indonesia and Vietnam, meanwhile, two countries that the US now regularly ships its plastics to, mismanaged 81 and 86 percent of their own waste, respectively.³⁰ This means that, while US residents are sorting and attempting to recycle their consumer goods, there is a high chance that these items will end up in landfills in countries across the globe.

c. Current Restrictions

To reduce the amount of plastic utilized and disposed of, numerous towns, cities and even countries are implementing bans and restrictions on certain plastic products. In 2019, then-Mayor de Blasio issued Executive Order 42, which requires all City agencies to develop a plan to eliminate the purchasing of single-use plastic foodware, such as cups, plates, utensils and straws.³¹ Instead, agencies are required to purchase reusable, recyclable or compostable alternatives. The goal of the Executive Order was to eliminate the estimated 500 tons of plastic, disposable foodware that the City bought each year.³² That same year, New York City began enforcing its ban on disposable polystyrene containers. The law, which was originally enacted in 2013, was previously halted from implementation by a series of lawsuits.³³ This Committee also recently passed Local

³⁰ Erin McCormick *et al* "Where does your plastic go? Global investigation reveals America's dirty secret", *The Guardian*, June 17, 2019, available at: <https://www.theguardian.com/us-news/2019/jun/17/recycled-plastic-america-global-crisis>.

³¹ Office of the Mayor, Executive Order 42, April 11, 2019, available at: <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2019/eo-42.pdf>.

³² Office of the Mayor, Executive Order 42, April 11, 2019, available at: <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2019/eo-42.pdf>.

³³ Claire Lampen "NYC ban on some single-use foam products goes into effect January 1st", *Gothamist*, November 23, 2018, available at: <https://gothamist.com/food/nyc-ban-on-some-single-use-foam-products-goes-into-effect-january-1st>.

Law 64 of 2021, which prohibits food-service establishments from providing single-use plastic straws and beverage stirrers except upon request.³⁴

At the state level, legislators aim to place the burdens of plastic waste on its producers. In New York, a recently introduced bill would require plastic manufacturers to bear the cost of the cleanup, disposal, recycling and handling of their discarded plastic waste.³⁵ Assembly Bill A.10185 would establish an extended producer responsibility program and a packaging responsibility fund, which would improve recycling practices and require producers to pay fees based on the amount of packaging material sold.³⁶

California recently passed landmark legislation to reduce plastic waste. Signed into law on June 30, 2022, SB 54 creates the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which requires certain types of packaging be recyclable or compostable by 2032, cuts plastic packaging by 25 percent in 10 years, and requires all single-use plastic packaging be recycled in the same 10-year period.³⁷ The legislation creates a producer responsibility organization (PRO) to run a statewide recycling program, and requires that the PRO send \$500 million each year, for ten years, to the state to fund plastic pollution mitigation.³⁸ A majority of that contribution will benefit low-income communities that have been disproportionately impacted by plastic waste.³⁹

³⁴ New York City Council, Int.0936-2018, available at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3509897&GUID=6CF1706B-A393-407E-B0A6-78D253222450&Options=ID|Text|&Search=936>.

³⁵ Joseph Winters “2 new bills aim to reduce plastic pollution in New York state”, *Grist*, May 26, 2022, available at: [2 new bills aim to reduce plastic pollution in New York state | Grist](https://grist.org/news/2-new-bills-aim-to-reduce-plastic-pollution-in-new-york-state/)

³⁶ Id.

³⁷ James Bruggers “California Passed a Landmark Law About Plastic Pollution. Why Are Some Environmentalists Still Concerned?” *Inside Climate News*, October 12, 2022, available at: <https://insideclimatenews.org/news/12102022/california-plastics-pollution-bill/#:~:text=Among%20its%20provisions%2C%20the%20law,recycled%20in%20the%20same%20timeframe.>

³⁸ Id.

³⁹ Id.

Various local governments across California have also issued bans or restrictions on single-use plastics. Oakland, for example, passed Ordinance Number 12747 in 2006, which prohibits foodware made from polystyrene and requires all disposable foodware to be biodegradable or compostable, so long as it is not cost prohibitive to do so.⁴⁰ Although the City of Oakland had already limited the availability of plastic straws under this 2006 foodware ordinance, the Council found that single-use straws were not being recycled. Therefore, in 2018, the Oakland City Council passed Ordinance Number 13488, which prohibited food establishments from providing single-use straws to dine-in customers, unless specifically requested.⁴¹ Numerous localities across the Country have implemented similar plastic straw bans.⁴² California law also strictly regulates the use of terms such as “biodegradable” or “compostable” in marketing.⁴³ The California legislature found that terms like these tend to confuse consumers and can act as a form of ‘greenwashing’ products that may not actually be of benefit to the environment. As such, any company employing the terms must only do so if they meet a strict scientific definition, and the State has pursued settlements against deceptive claims regarding biodegradability.⁴⁴

⁴⁰ City of Oakland, Ordinance Number 12747, 2006, available at:

<http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak025366.pdf>.

⁴¹ City of Oakland, Ordinance Number 13488, 2018, available at:

<https://oakland.legistar.com/View.ashx?M=F&ID=6260766&GUID=95B1AF7C-54A7-47E9-838E-6FA54E8F141F>.

⁴² For more information see: Melissa Locker “Here are the U.S. cities that have banned plastic straws so far”, *Fast Company*, June 1, 2018, available at: <https://www.fastcompany.com/40580132/here-are-the-u-s-cities-that-have-banned-plastic-straws-so-far>.

⁴³ Public resources Code, Chapter 5.7, available at:

http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=30.&title=&part=3.&chapter=5.7.&article=.

⁴⁴ See for example: Sheila Millar and JC Walker “23 California Das obtain \$1.5 million settlement for deceptive biodegradable claims”, *Consumer Protection Connection*, August 9, 2018, available at:

<https://www.consumerprotectioncnx.com/2018/08/23-california-das-obtain-1-5-million-settlement-for-deceptive-biodegradable-claims/>.

In 2019, the Canadian Prime Minister Justin Trudeau announced that Canada will ban single-use plastics, such as plastic bags, straws, cutlery, plates and stirrers.⁴⁵ The manufacture and import for sale in Canada of these items are banned as soon as December 20, 2022, and additional regulations will be staggered over the next three years.⁴⁶ Similarly, the European Commission has proposed European Union-wide rules that would ban plastic straws, as well as plastic cotton buds, cutlery, plates, drink stirrers and sticks for balloons,⁴⁷ and Taiwan is planning to ban all single-use plastic items by 2030.⁴⁸ Various companies have also implemented policies to reduce their reliance on plastic. Over 400 major companies have signed on to the New Plastics Economy Global Commitment, established by the Ellen MacArthur foundation in collaboration with UN Environment. By signing on, these companies have illustrated that they are willing to be guided by reporting requirements and various targets that ultimately aim to see no plastic become waste.⁴⁹

III. BILL ANALYSIS

Int. 559

Section 1 of the bill would add a new section 16-402 to chapter four of title 16 of the Administrative Code. Such section would be entitled “Restrictions on providing eating utensils and extra eating containers.” Subdivision a sets forth definitions for section 16-402. “Condiment packet” would be defined as an individual single-service container, sealed by the manufacturer,

⁴⁵ Jennifer Ferreira “Canada’s ban on single-use plastic items delayed until 2022”, *CTV News*, November 30, 2021, available at: <https://www.ctvnews.ca/climate-and-environment/canada-s-ban-on-single-use-plastic-items-delayed-until-2022-1.5687626>.

⁴⁶ Environment and Climate Change Canada “Single-Use Plastics Prohibition Regulations- Overview”, October 19, 2022, available at: <https://www.canada.ca/en/environment-climate-change/services/managing-reducing-waste/reduce-plastic-waste/single-use-plastic-overview.html#toc3>

⁴⁷ European Union “Single-use plastics: New EU rules to reduce marine litter”, May 28, 2018, available at: http://europa.eu/rapid/press-release_IP-18-3927_en.htm.

⁴⁸ *Channel News Asia* “Taiwan to ban plastic straws, cups by 2030”, 22 February, 2018 available at: <https://www.channelnewsasia.com/news/asia/taiwan-to-ban-plastic-straws-cups-by-2030-9981998>.

⁴⁹ New Plastics Economy “New Plastics Economy global commitment: June 2019 report”, June, 2019, available at: <https://www.newplasticseconomy.org/assets/doc/GC-Report-June19.pdf>.

containing a sauce or other substance used to enhance the flavor of food, which may include, but need not be limited to, mustard, ketchup, mayonnaise, soy sauce, hot sauce and salad dressing. “Eating container” would be defined as a tool used for holding food or beverage, including but not limited to, a plate, bowl, cup, or lid, but does not include a beverage splash stick as defined in section 16-401. “Eating utensil” would be defined as a tool used for eating and drinking, including but not limited to, a knife, fork, spoon or chopsticks, but does not include a beverage stirrer or beverage straw as defined in section 16-401. “Extra eating container” would be defined as an empty eating container that is not used to hold a customer’s food or beverage. “Food service establishment” would be defined the same way as it is defined in section 16-401. “Napkin” would be defined as a piece of cloth or paper used to wipe a person’s hands or face or protect garments while eating. “Take-away” would mean food or beverage provided by a food service establishment to be consumed off the premises of such food service establishment. “Third-party courier service” would be defined in the same way as it is defined in section 2 of the bill, which is a service that: (i) facilitates the same-day delivery or same-day pickup of food, beverages, or other goods from a food service establishment on behalf of such food service establishment or a third-party food delivery service; (ii) is owned and operated by a person other than the person who owns such food service establishment, and (iii) is not a third-party food delivery service. “Third-party food delivery service” would be defined in the same way as it is defined in Local Law 114 of 2021, and would mean any website, mobile application or other internet service that: (i) offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from, a food service establishment; and (ii) that is owned and operated by a person other than the person who owns such food service establishment.

Subdivision b prohibits food service establishments from providing eating utensils, condiment packets, napkins or extra eating containers to take-away customers, whether directly or through a third-party courier service or third-party food delivery service, unless such items are requested by the customer. This bill would not prohibit food service establishments from making self-service stations available from which customers may choose to take these items, as customers serving themselves are implicitly requesting the item. Further, the bill does not prohibit food service establishments from asking the customer if they would like to receive one or more of these items and, if the customer answers in the affirmative, the food service establishment may provide the customer with the item or items they have requested.

Subdivision c places certain requirements on third-party food delivery services and third-party courier services. Paragraph one of such subdivision requires third-party food delivery services to provide their customers with the ability to request eating utensils, condiment packets, napkins and extra eating containers when submitting an order by any method, including but not limited to telephone, internet or mobile phone application orders. The default option provided to customers must be that no eating utensils, condiment packets or napkins are requested. Paragraph two prohibits third-party courier services and third-party food delivery services from providing eating utensils, condiment packets, napkins and extra eating containers unless requested by the customer or already packaged with the food or beverage by the food service establishment for delivery when picked up by the third-party courier service or third-party food delivery service.

Paragraph three provides that if a food service establishment is filling an order placed through a third-party food delivery service, the food service establishment may rely on the information provided by the third-party food delivery service as it concerns the provision of these items, pursuant to paragraph one. For the purposes of civil penalties, such reliance would be a

complete defense and a copy or screenshot of a communication from the third-party food delivery service communicating the customer's preference would constitute prima facie evidence for the purposes of the food service establishment's defense. Third-party food delivery services would be required to provide a written communication of the customer's preference to a food service establishment within 72 hours of such food service establishment requesting it.

Subdivision d would grant enforcement authority to the Department of Sanitation (DSNY), the Department of Health and Mental Hygiene, and DCWP.

Subdivision e would require DSNY, in consultation with other city agencies, to conduct outreach and education about the requirements of section 16-402.

Subdivision f provides that any person who violates section 16-402 would be subject to civil penalties of \$100 for a first violation, \$200 for a second violation committed on a different day within a 12-month period, and \$300 for a third or any subsequent violation committed on different days within a 12-month period. However, any violation committed before July 1, 2023 would receive only a warning with no monetary penalty.

Subdivision g would require DSNY, where practicable, to assess the presence of single-use items in the waste stream and any change in the amount of items compared to previous studies. This information would be included in DSNY's Waste Characterization Study, which is currently required by section 16-316.1 (b) of the Code. Such study is submitted to the Council and the Mayor.

Section two of this bill would clarify the definition of "third-party courier service" in Local Law 114 of 2021.

This bill would take effect 180 days after it becomes law, except that section two of the bill would take effect immediately.

By Council Members Velázquez, Bottcher, Brannan, Cabán, Abreu, Brewer, Joseph, Hudson, Restler, Gennaro, Krishnan, Won, Avilés, Brooks-Powers, Ossé, Rivera, Nurse, Menin, Hanif, De La Rosa, Marte, Narcisse, Gutiérrez, Powers, Sanchez, Salamanca, Farías, Ayala, Feliz and Lee (in conjunction with the Brooklyn Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to restricting eating utensils and extra eating containers, and clarifying the definition of third-party courier service

Be it enacted by the Council as follows:

1 Section 1. Chapter 4 of title 16 of the administrative code of the city of New York is
2 amended by adding a new section 16-402 to read as follows:

3 § 16-402 Restrictions on providing eating utensils and extra eating containers. a.

4 Definitions. For purposes of this section:

5 Condiment packet. The term "condiment packet" means an individual single-service
6 container, sealed by the manufacturer, containing a sauce or other substance used to enhance the
7 flavor of food, which may include, but need not be limited to, mustard, ketchup, mayonnaise, soy
8 sauce, hot sauce and salad dressing.

9 Eating container. The term "eating container" means a tool used for holding food or
10 beverage, including but not limited to, a plate, bowl, cup, or lid, but does not include a beverage
11 splash stick as defined in section 16-401.

12 Eating utensil. The term "eating utensil" means a tool used for eating and drinking,
13 including, but not limited to, a knife, fork, spoon, or chopsticks, but does not include a beverage
14 stirrer or beverage straw as defined in section 16-401.

15 Extra eating container. The term "extra eating container" means an empty eating container
16 that is not used to hold a customer's food or beverage.

1 Food service establishment. The term “food service establishment” has the same meaning
2 as set forth in section 16-401.

3 Napkin. The term “napkin” means a piece of cloth or paper used to wipe a person’s hands
4 or face or protect garments while eating.

5 Take-away. The term “take-away” means food or beverage provided by a food service
6 establishment to be consumed off the premises of such food service establishment.

7 Third-party courier service. The term "third-party courier service" means a service that: (i)
8 facilitates the same-day delivery or same-day pickup of food, beverages, or other goods from a
9 food service establishment on behalf of such food service establishment or a third-party food
10 delivery service; (ii) is owned and operated by a person other than the person who owns such food
11 service establishment, and (iii) is not a third-party food delivery service.

12 Third-party food delivery service. The term “third-party food delivery service” means any
13 website, mobile application or other internet service that: (i) offers or arranges for the sale of food
14 and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages
15 from, a food service establishment; and (ii) that is owned and operated by a person other than the
16 person who owns such food service establishment.

17 b. No food service establishment shall provide eating utensils, condiment packets, napkins,
18 or extra eating containers to a take-away customer, whether directly to such customer or through
19 a third-party courier service or third-party food delivery service, unless such customer requests
20 eating utensils, condiment packets, napkins, or extra eating containers.

21 c. 1. Third-party food delivery services shall provide options to allow a customer to request
22 eating utensils, condiment packets, napkins, and extra eating containers upon submission of an
23 order. Such options shall be available for all methods of ordering, including but not limited to

1 phone, internet, or mobile phone application orders. The default selected option shall be that no
2 eating utensils, condiment packets, napkins, or extra eating containers are requested.

3 2. No third-party courier service or third-party food delivery service shall provide eating
4 utensils, condiment packets, napkins, or extra eating containers to a customer, unless such eating
5 utensils, condiment packets, napkins, or extra eating containers are requested by such customer,
6 or such eating utensils, condiment packets, napkins or extra eating containers are in the food or
7 beverage packaged by the food service establishment for delivery when such third-party courier
8 service or third-party food delivery service picks up such food or beverage.

9 3. If a food service establishment fills an order placed through a third-party food delivery
10 service, such food service establishment may rely on the information provided by such third-party
11 food delivery service regarding whether the customer has requested eating utensils, condiment
12 packets, napkins, or extra eating containers pursuant to paragraph 1 of this subdivision. In a
13 proceeding to collect a civil penalty pursuant to subdivision f of this section, it shall be a complete
14 defense for a respondent food service establishment to establish that such food service
15 establishment relied on the information provided to it by the third-party food delivery service
16 regarding the customer's choice pursuant to paragraph 1 of this subdivision. A copy or screenshot
17 of a communication by the third-party food delivery service to the food service establishment
18 regarding the customer's choice pursuant to paragraph 1 of this subdivision shall constitute prima
19 facie evidence that the food service establishment relied on the information provided to it by the
20 third-party food delivery service. Each third-party food delivery service shall provide such
21 communication in writing to a food service establishment within 72 hours of such food service
22 establishment's request for such communication.

1 d. The department, the department of health and mental hygiene and the department of
2 consumer and worker protection shall have the authority to enforce the provisions of this section.

3 e. In consultation with other city agencies, the department shall conduct outreach and
4 education about the requirements of this section.

5 f. Any person who violates this section or any rule promulgated pursuant thereto shall be
6 liable for a civil penalty recoverable in a civil action brought in the name of the commissioner, the
7 commissioner of health and mental hygiene or the commissioner of consumer and worker
8 protection, or in a proceeding before the office of administrative trials and hearings pursuant to
9 section 1049-a of the charter, or in the case of a food service establishment within the jurisdiction
10 of the commissioner of health and mental hygiene or the commissioner of consumer and worker
11 protection, in a proceeding before the office of administrative trials and hearings pursuant to
12 section 1048 of the charter. Such penalties shall be in the amount of \$100 for the first violation,
13 \$200 for the second violation committed on a different day within a period of 12 months, and \$300
14 for the third and each subsequent violation committed on different days within a period of 12
15 months, except that any agency enforcing the provisions of this section shall not issue a notice of
16 violation, but shall issue a warning and provide information on the provisions of this section, for
17 any violation that occurs before July 1, 2023.

18 g. The department, as part of the waste characterization study required pursuant to
19 subdivision b of section 16-316.1, shall, where practicable, assess the amount of single-use items
20 in the waste stream and the change in such amount from any previous studies. The department
21 shall include such information in such study submitted to the council and the mayor.

22 § 2. Section 20-1501 of the administrative code of the city of New York, as added by local
23 law number 114 for the year 2021, is amended to read as follows:

1 Third-party courier service. The term "third-party courier service" means a service that (i)
2 facilitates the same-day delivery or same-day pickup of food, beverages, or other goods from a
3 food service establishment on behalf of such food service establishment or a third-party food
4 delivery service; [and] (ii) that is owned and operated by a person other than the person who owns
5 such food service establishment; and (iii) and is not a third-party food delivery service.

6 § 3. This local law takes effect 180 days after it becomes law, except that section two of
7 this local law takes effect immediately.

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