

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2013**

No. 146

Introduced by Council Members James, Brewer, Chin, Fidler, Gentile, Koo, Rodriguez, Van Bramer, Mark-Viverito, Gennaro, Koppell, Lappin and Ulrich (by request of the Mayor).
Passed under a Message of Necessity from the Mayor.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to commercial organic waste.

Be it enacted by the Council as follows:

Section 1. Subchapter 2 of chapter 3 of title 16 of the administrative code of the city of New York is amended by adding a new section 16-306.1 to read as follows:

§ 16-306.1 Organic waste. a. When used in this section or section 16-324 of this chapter:

“Arena” means an establishment or facility that hosts live sporting or entertainment events.

“Capacity” means the combined capacity of facilities that are capable of accepting and processing, consistent with the terms of this section and exceeding a nominal amount, organic waste expected to be generated by and collected from designated covered establishments.

“Catering establishment” shall have the same meaning as set forth in section 20-359 of this code.

“Covered establishment” means:

1. any location at which a food manufacturer has a floor area of at least twenty-five thousand square feet;

2. any location at which a food wholesaler has a floor area of at least twenty thousand square feet;

3. any location at which a retail food store has a floor area of at least ten thousand square feet, or any retail food store that is part of a chain of three or more retail food stores that have a combined floor area space of at least ten thousand square feet and that operate under common ownership or control and receive waste collection from the same private carter;

4. arenas or stadiums having a seating capacity of at least fifteen thousand persons;

5. any food service establishment that is part of a chain of two or more food service establishments that have a combined floor area of at least eight thousand square feet and that: (i) operate under common ownership or control; (ii) are individually franchised outlets of a parent business; or (iii) do business under the same corporate name, provided that the requirements of subparagraph (i) of paragraph 1 of subdivision c of this section shall not apply to any such food service establishment when the building or premises in which such food service establishment is located is in compliance with such requirement pursuant to paragraph seven of this definition;

6. any location at which a food service establishment has a floor area of at least seven thousand square feet, provided that the requirements of subparagraph (i) of paragraph 1 of subdivision c of this section shall not apply to any such location when the building or premises containing such location is in compliance with such requirement pursuant to paragraph seven of this definition;

7. any building or premises where food service establishments having a total combined floor area of at least eight thousand square feet are located and where the owner of the building or premises, or its agent, arranges or contracts with a private carter for the removal of waste from food service establishments having no less than eight thousand square feet of such building or

premises, provided that any such food service establishments shall comply with the requirements of subparagraphs (ii), (iii) and (iv) of paragraph 1 of subdivision c of this section, but such requirements shall not apply to the owner or agent of any such building or premises;

8. any location at which a food preparation establishment has a floor area of at least six thousand square feet;

9. any catering establishment that is required to provide for the removal of waste pursuant to section 16-116 of this code whenever the anticipated attendance for any particular event is greater than one hundred persons;

10. any food service establishments located within and providing food to one or more hotels totaling at least one hundred sleeping rooms; and

11. sponsors of a temporary public event.

“Designated area” means within a one hundred mile radius of the city.

“Food manufacturer” means any establishment that processes or fabricates food products from raw materials for commercial purposes, provided that it shall not include any establishment engaged solely in the warehousing, distribution or retail sale of product.

“Food preparation establishment” means a business that is primarily engaged in providing food or food services for a temporary, fixed time, or based on contractual arrangements for a specified period of time at locations other than such establishment’s permanent place of business.

“Food service establishment” means any premises or part of a premises that is required to provide for the removal of waste pursuant to section 16-116 of this code 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. Food service establishment shall include, but not be

limited to, full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, and business, institutional or government agency cafeterias, but shall not include retail food stores, convenience stores, pharmacies, and mobile food vending units, as such term is defined in section 89.03 of the health code. Food service establishment shall also not include any premises or place of business where the sole or primary source of food is a refreshment counter where the available food is limited to items such as beverages, prepackaged items, and snacks.

“Food wholesaler” means any establishment primarily engaged in the wholesale distribution of groceries and related products including, but not limited to, packaged frozen food, dairy products, poultry products, confectioneries, fish and seafood, meat products, and fresh fruits and vegetables but shall not apply to establishments that handle only pre-packaged, non-perishable foods.

“Hotel” shall have the same meaning as set forth in section 27-2004 of the housing maintenance code.

“In vessel composting” means a process in which organic waste is enclosed in a drum, silo, bin, tunnel, reactor, or other container for the purpose of producing compost, maintained under controlled conditions of temperature and moisture and where air-borne emissions are controlled.

“Organic waste” shall have the same meaning as set forth in section 16-303 of this title, except that for purposes of this section, organic waste shall not include food that is donated to a third party, food that is sold to farmers for feedstock, and meat by-products that are sold to a rendering company.

“Private carter” means a business licensed by the business integrity commission pursuant to title 16-A of this code.

“Retail food store” means any establishment or section of an establishment where food and food products offered to the consumer are intended for off-premises consumption, but shall exclude convenience stores, pharmacies, greenmarkets or farmers’ markets and food service establishments.

“Sponsor of a temporary public event” means the applicant for a street activity permit pursuant to chapter 1 of title 50 of the rules of the city of New York, or any successor provision, for any activity on a public street, street curb lane, sidewalk or pedestrian island or plaza with an anticipated attendance of greater than five hundred persons per day where the activity will interfere with or obstruct the regular use of the location by pedestrian or vehicular traffic. Such term shall not include activities conducted pursuant to a valid film permit, demonstrations, parades or block parties.

“Stadium” means an establishment or facility that hosts live sporting or entertainment events.

b. The commissioner shall, on a regular basis and no less than annually, evaluate the capacity of all facilities within the designated area and the cost of processing organic waste by composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule. If the commissioner determines that there is sufficient capacity and that the cost of processing organic waste consistent with this section is competitive with the cost of disposing of organic waste by landfill or incineration, he or she shall designate by rule all covered establishments or a subset of covered establishments, based on any criteria, among such covered establishments, that generate a quantity of organic waste that would not exceed the evaluated capacity. All such designated covered establishments shall comply with the requirements of subdivision c of this section beginning no later than six months following such

designation. In addition, the commissioner shall include in his or her evaluation the capacity of any facilities outside of the designated area that have arrangements or contracts with transfer stations or private carters to accept and process organic waste generated by and collected from covered establishments.

c. 1. Each designated covered establishment shall:

i. either (A) ensure collection by a private carter of all organic waste generated by such establishment for purposes of composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule, (B) transport its own organic waste to a facility that provides for composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule, provided that the covered establishment first obtains a registration issued by the business integrity commission pursuant to subdivision b of section 16-505 of this code, or (C) provide for on-site in vessel composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule for some or all of the organic waste it generates on its premises, provided that it arranges for the collection or transport of the remainder of such organic waste, if any, in accordance with clause (A) or (B) of this subparagraph;

ii. post a sign, which shall be in addition to any other sign required to be posted pursuant to this code, that states clearly and legibly the trade or business name, address, and telephone number of, and the day and time of pickup by, the private carter that collects the covered establishment's organic waste, that such covered establishment transports its own organic waste, or that such covered establishment provides for on-site processing for all of the organic waste it generates on its premises, provided that:

(A) such sign shall be prominently displayed by affixing it to a window near the principal entrance to the covered establishment so as to be easily visible from outside the building or, if this is not possible, prominently displayed inside the covered establishment near the principal entrance;

(B) catering establishments shall not be required to display on such sign the day and time of the pickup by the private carter that collects the establishment's organic waste; and

(C) this paragraph shall not apply to sponsors of temporary public events;

iii. provide separate bins for the disposal of organic waste in any area where such organic waste is generated and disposed of; and

iv. post instructions on the proper separation of organic waste where such instructions will be visible to persons who are disposing of organic waste, provided that this subparagraph shall not apply to sponsors of temporary public events.

2. Any covered establishment that arranges for the collection by a private carter of its organic waste pursuant to this subdivision shall not commingle such organic waste with other designated and non-designated recyclable material or solid waste, and shall place such organic waste out for collection by a private carter in a container or containers that (i) has a lid and a latch that keeps the lid closed and is resistant to tampering by rodents or other wildlife, (ii) has the capacity that meets the disposal needs of the covered establishment and its private carter, (iii) is compatible with the private carter's hauling collection practices, and (iv) is closed and latched at the time it is placed out for collection.

3. Any private carter that collects source separated organic waste from a covered establishment shall either:

i. deliver collected organic waste to a transfer station that has represented that it will deliver such organic waste to a facility for purposes of composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule;
or

ii. deliver such organic waste directly to a facility for purposes of composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule.

d. Any transfer station that receives source separated organic waste pursuant to this section shall deliver or have delivered such organic waste directly to a facility that accepts organic waste for purposes of composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule. This subdivision shall not apply to waste that cannot be processed at an organic waste processing facility.

e. The provisions of this section relating to private carters shall be enforced by the business integrity commission. The provisions of this section relating to covered establishments shall be enforced by the department, the department of health and mental hygiene, and the department of consumer affairs.

f. The department, the business integrity commission, the department of health and mental hygiene, and the department of consumer affairs may promulgate any rules necessary to implement this section, including, but not limited to, rules establishing reporting requirements sufficient to demonstrate compliance with this chapter.

g. Any person who owns or operates two or fewer food service establishments may request, and the commissioner shall grant, a waiver of the requirements of this section if: (1) no single food service establishment has a floor area of at least seven thousand square feet; (2) the food service

establishment or establishments are individually franchised outlets of a parent business covered by paragraph five of the definition of “covered establishment” set forth in subdivision a of this section; and (3) the owner or operator establishes that such food service establishment or establishments do not receive private carting services through a general carting agreement between a parent business and a private carter. Such waiver shall be valid for twelve months and shall be renewable upon application to the commissioner via the department’s website.

§ 2. 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 *section 16-306.1 of this chapter*, subdivision g of section 16-308 of this chapter or *section 16-310.1 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:

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

e. (1) Any covered establishment that violates section 16-306.1 of this chapter or rules of the department, the department of health and mental hygiene, or the department of consumer affairs promulgated pursuant thereto shall be liable for a civil penalty recoverable in a civil action brought in the name of the commissioner or the commissioner of health and mental hygiene, or the commissioner of consumer affairs, or in a proceeding returnable 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, for any violation by a designated covered establishment that occurs during the first twelve months after the commissioner designates such covered establishment pursuant to subdivision b of section 16-306.1.

(2) Any transfer station that violates section 16-306.1 of this chapter or rules of the department 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 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 shall not issue a notice of violation, but shall issue a warning, for any violation by a designated covered establishment that occurs during the first twelve months after the commissioner designates such covered establishment pursuant to subdivision b of section 16-306.1.

(3) Any private carter that violates section 16-306.1 of this chapter or rules of the business integrity commission promulgated pursuant thereto shall be liable for a civil penalty recoverable in a civil action brought in the name of the chair of the business integrity commission, or in a proceeding brought by the chair of the business integrity commission held in accordance with title 16-A of this code, except that the chair of the business integrity commission shall not issue a notice of violation, but shall issue a warning, for any violation by a designated covered establishment

that occurs during the first twelve months after the commissioner designates such covered establishment pursuant to subdivision b of section 16-306.1.

§ 4. This local law shall take effect July 1, 2015.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on December 19, 2013 and approved by the Mayor on December 30, 2013.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 146 of 2013, Council Int. No. 1162-A of 2013) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.