



## Legislation Text

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Int. No. 392

By Council Members Koppell, Yassky, Liu, Nelson, Vann, Dilan, Fidler, Gerson, Jackson, Lopez, Quinn, Sanders, Seabrook, Stewart, Weprin and Brewer

A Local Law to amend the administrative code of the city of New York, in relation to requiring a deposit program for all primary and rechargeable batteries.

Be it enacted by the Council as follows:

Section 1. Legislative Intent and Findings. The Council finds and declares that in 2001 there were five billion batteries sold in the United States, that approximately two hundred fifty million batteries were sold in New York City alone, and that it is in the public interest to have these batteries, some of which contain toxic material, removed from the waste stream and recycled to the maximum extent possible.

The Council further finds and declares that the presence of toxic metals in discarded rechargeable batteries is a matter of great concern in light of their adverse effect on groundwater quality when disposed of in landfills and their presence in emissions or residual ash when incinerated at a resource recovery facility; that cadmium, lead and mercury found in batteries, on the basis of available scientific and medical evidence, are of particular concern; that it is desirable to reduce the toxicity of waste materials in the solid waste streams directed to resource recovery and sanitary landfill facilities; that the removal of used primary and rechargeable batteries containing high levels of cadmium, lead or mercury from the solid waste stream can have a significant beneficial impact on the quality of the emissions and residual ash resulting from the incineration of solid waste at resource recovery facilities, and on groundwater quality in those regions where solid waste is disposed at sanitary landfill facilities; that the most effective and appropriate method to promote the reduction of toxic metals from battery disposal is to require the battery industry to accept the financial responsibility for the environmentally sound collection, transportation and recycling or proper disposal of discarded primary and rechargeable batteries.

The Council therefore determines that it is in the public interest of the City to maximize the removal of used primary and rechargeable batteries from the solid waste stream by requiring a deposit on all primary and rechargeable batteries, along with other facilitating measures, which will provide a necessary incentive for the economically efficient and environmentally benign collection,

recycling, and disposal of such batteries.

§2. Chapter 3 of title 16 of the administrative code of the city of New York is hereby amended by adding a new subchapter 7 to read as follows:

SUBCHAPTER 7

§16-325 Definitions.

§16-326 Battery Deposit Program.

§16-327 Penalties.

§16-325 Definitions. a. “Primary battery” means a device consisting of one or more cells, each cell consisting of a positive electrode, a negative electrode and an electrolyte, which is used to provide stored electrical power. The term “primary battery” includes, but is not limited to, an alkaline manganese battery, a zinc-carbon battery, a mercuric oxide battery, a silver oxide battery, a lithium battery, and a non-rechargeable battery otherwise known as a household battery, but shall not include a battery used in motor vehicles.

b. “Rechargeable battery” means any rechargeable nickel-cadmium or sealed lead-acid battery, or battery pack containing such a battery, weighing less than twenty-five pounds but shall not include a battery used for motor vehicles or for memory backup in an electronic device.

c. “Dealer” means every person, firm or corporation which engages in the sale of primary or rechargeable batteries, or products containing such batteries, to a consumer.

d. “Distributor” means every person, firm or corporation which engages in the sale of primary or rechargeable batteries, or products containing such batteries, to a dealer.

e. “Place of business” means the location at which a dealer sells or offers for sale to consumers, primary or rechargeable batteries, or products containing such batteries at the time of sale.

f. “Redeemer” means any person who demands the refund value provided for herein in exchange for the used primary or rechargeable battery, but shall not include a dealer, as defined in subdivision c of this section.

g. “Redemption center” means any establishment offering to pay the refund value of a primary or rechargeable battery under the provisions of subdivision e of section 16-326 of this subchapter.

h. “Battery manufacturer” means every person, firm or corporation which: (i) produces primary or rechargeable batteries, or packages such batteries for sale, except that if such production or packaging is for a distributor having the right to produce or otherwise package that same brand of battery, then such distributor shall be deemed to be the battery manufacturer; or (ii) imports primary or rechargeable batteries into the United States.

i. “Deposit initiator” for each primary or rechargeable battery for which a refund value established pursuant to subdivision a of section 16-326 of this subchapter means: (i) the battery manufacturer, if such manufacturer sells or offers for sale primary or rechargeable batteries, or products containing such batteries, to dealers within the city of New York; (ii) a distributor of such batteries if such distributor sells or offers for sale primary or rechargeable batteries, or products containing such batteries, to dealers within the city of New York if such distributor’s purchase of such batteries was not, directly or indirectly, for a registered deposit initiator.

j. “Refund value” means the amount established pursuant to subdivision a of section 16-326 of this subchapter.

§16-326 Battery Deposit Program. a. Every primary and rechargeable battery sold or offered for sale in the city shall have a refund value of not less than ten cents for each primary battery and not less than one dollar for each rechargeable battery. Each such battery shall have the refund value clearly indicated thereon as provided in subdivision d this section.

b.1. A dealer shall accept at his place of business from a redeemer any used primary or rechargeable battery of the type and brand sold by the dealer, and shall pay to the redeemer the refund value of each such battery as established by subdivision a of this section.

2. A distributor shall accept from a dealer or operator of a redemption center any used primary or rechargeable batteries of the type and brand sold by the distributor, and shall pay the dealer or operator of a redemption center the refund value of each such battery as established by subdivision a of this section.

3. In addition to the refund value of a battery as established by subdivision a of this section, a distributor, as part of any agreement with a dealer or operator of a redemption center, shall reimburse such dealer or operator two cents for each primary or rechargeable battery accepted by the distributor from such dealer or operator of a redemption center.

4. A distributor who initiates a deposit on a primary or rechargeable battery must reimburse any other distributor who redeems such battery for the deposit and handling fee paid by the redeeming distributor. Without limiting the rights of the department or any person, firm or corporation under this or any other provision of this section, a distributor may initiate an action for injunctive relief against continuing violations of this section and until arrangements for collection and return of used primary or rechargeable batteries or reimbursement of the redeeming distributor for such deposits and handling fees are made.

c. 1. A dealer, distributor or operator of a redemption center may refuse to accept for redemption any used primary or rechargeable battery which does not state thereon a refund value as established by subdivision a and provided by subdivision d of this section.

2. A dealer or operator of a redemption center may also refuse to accept any broken, corroded or dismembered battery, or any battery which contains a significant amount of foreign material, as determined in rules to be promulgated by the commissioner.

Notwithstanding the provisions of this subdivision, a distributor shall accept primary and/or rechargeable batteries as provided in paragraph two of subdivision b of this section if the dealer shall have accepted and paid the refund value of such battery.

d. 1. Every primary and rechargeable battery, or product containing such battery, sold or offered for sale in the city by a battery manufacturer, distributor or dealer shall clearly indicate by permanently marking or embossing upon the battery or by printing as part of the product label the refund value of the battery and the words "New York City" or the letters "NYC."

2. Such embossing or permanent imprinting on the battery shall be the responsibility of the manufacturer which produces the battery or product containing such battery or person, firm or corporation which otherwise packages the battery; provided, however, that the duly authorized agent of any such person, firm or corporation may indicate such refund value by a label securely affixed on any packaging containing batteries or consumer product containing primary or rechargeable batteries imported into the United States.

e. The commissioner shall promulgate rules with respect to (1) the sorting of the batteries which a distributor may require of dealers and redemption centers; (2) the pick up of returned batteries by distributors, including the party to whom such expense is to be charged, the frequency of such pick ups and the payment for refunds and handling fees thereon; (3) the right of dealers to restrict or limit the number of batteries redeemed, the rules for redemption at the dealers' place of business, and the redemption of batteries of a brand or type for which sales have been discontinued, and to issue permits to persons, firms or corporations which establish redemption centers, subject to applicable provisions of local and state laws, at which redeemers and dealers may return used batteries and receive payment of the refund value of such batteries. No dealer or distributor shall be required to obtain a permit to operate a redemption center at the same location as the dealer's or distributor's place of business. Operators of such redemption centers shall receive payment of the refund value of each battery from the appropriate manufacturer or distributor as provided under subdivisions b and c of this section.

f. 1. Each deposit initiator shall be required to deposit into a refund account an amount equal to the refund value which is received with respect to each primary or rechargeable battery sold by such deposit initiator within the city of New York.

2. Each such refund value account shall be kept separate and apart from all other monies in the possession of the deposit initiators.

3. Deposits to such refund value accounts shall be made no less frequently than every five business days and all interest, dividends and other money earned on the refund value account shall be paid directly into said account.

4. Deposit initiators shall file quarterly reports on refund value accounts with the commissioner of finance, in the manner required by such commissioner.

5. The commissioner of finance shall promulgate rules regarding the manner of collection and remittance to the city of funds

deposited in such refund value accounts, provided that an amount equal to eighty percent of the balances on deposit in the refund value accounts at the close of each month shall be paid to the department of finance by the tenth day of the succeeding month. The commissioner of finance shall conduct an annual audit and prepare an annual report for each such refund value account.

6. The commissioner of finance shall collect from deposit initiators and remit to the general fund of the city of New York the collections from deposit initiators required to be deposited in each refund value account.

g. 1. Each deposit initiator shall register with the department and shall not sell any primary or rechargeable battery in the city of New York until and unless it has so registered in accordance with the requirements of this section.

2. The commissioner may, after a hearing, suspend or revoke the registration of any deposit initiator or refuse to register any applicant as a deposit initiator who: (a) fails to file a report required by this section; (b) files or causes to be filed a report or other document required under this section which is false; or (c) has been convicted of having violated any provision of state or local tax law within one year prior to applying for registration or during such period of registration.

3. The commissioner may provide for an administrative procedure to appeal decisions to revoke, suspend, or refuse such registration.

h. The commissioner shall require the maintenance of accounts, records or other documents relating to the sale of primary and rechargeable batteries by deposit initiators; and request, review or examine such documents.

i. It shall be unlawful for a distributor, acting alone or aided by another, to return used primary or rechargeable batteries to a dealer or redemption center for their refund value if the distributor had previously accepted such batteries from any dealer or operator of a redemption center.

§16-327 Penalties. a. Any person who violates any provision of section 16-326 of this subchapter shall be liable for a civil penalty of not less than one hundred dollars nor more than five hundred dollars, and not less than an additional civil penalty of five hundred dollars for each day during which each such violation continues, in a proceeding before the environmental control board.

b. In addition to the civil penalty provided for in subdivision a of this section, any violation of subdivision i of section 16-326 of this subchapter shall be a misdemeanor punishable by a fine of not less than five hundred dollars nor more than one thousand dollars and an amount equal to two times the amount of money received as a result of such violation.

§3. Severability. If any sentence, paragraph, section or part of this local law shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not impair or invalidate the remainder thereof but shall be confined to that part.

§4. This local law shall take effect July 1, 2004, except that the commissioner of sanitation and the commissioner of finance shall take all measures necessary for the implementation of this local law, including the promulgation of rules, prior to such effective

date.

3/7/03

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