

LOCAL LAW NO. “B” FOR 2020

A LOCAL LAW OF THE COUNTY OF ALBANY TO PROHIBIT WASTE BURNING AND TO PROTECT THE CLEAN AIR OF ALBANY COUNTY

Introduced: 2/10/20

By Messrs. Reinhardt, Miller, Mss. Cunningham, Plotsky, Messrs. Kuhn, A. Joyce, Ms. Chapman, Messrs. Bruschi, Clay, Cleary, Efekoro, Feeney, Fein, Mss. Lekakis, McLaughlin, McLean Lane, Messrs. Reidy, Peter, Simpson, R. Joyce, Domalewicz, Ethier, Ricard, Ward and Ms. Willingham:

Section 1: TITLE

This Local Law shall be known as the “Albany County Clean Air Law.”

Section 2: STATUTORY AUTHORIZATION

This Local Law is hereby adopted pursuant to the provisions of the New York Municipal Home Rule Law § 10(1)(ii)(a)(11), the Clean Air Act (42 U.S.C. § 7416), the Resource Conservation and Recovery Act (42 U.S.C. § 6929), New York State Air Pollution Control Act (Environmental Conservation Law §§ 19-0703 and 19-0709), and New York State Environmental Conservation Law § 27-0711.

Section 3: INTENT

It is the intent of this Local Law to promote and protect the public health and welfare of the residents of Albany County by prohibiting the burning or related processing of Waste.

Section 4: DEFINITIONS

As used in this Local Law, the following terms shall have the following meanings:

- A. NEW WASTE DISPOSAL FACILITY** shall mean any non-residential facility that, after the effective date of this Local Law:
- 1) disposes of Waste, uses Waste to heat an industrial process, or uses Waste to produce energy (heat, electricity, or a burnable fuel), and
 - 2) accomplishes this through the combustion of Waste (or gases produced on-site from the burning, gasification or pyrolysis of such Waste), or by producing a solid, liquid and/or gaseous fuel product through conversion of Waste.
 - 3) A New Waste Disposal Facility does not include:
 - i. landfills,
 - ii. publicly owned treatment works,
 - iii. anaerobic digesters,

- iv. facilities burning landfill gas or gas produced from anaerobic digestion, unless they are also burning Waste,
- v. systems used exclusively for on-site space heating purposes at a residential home,
- vi. manufacturing facilities that, on a consistent basis as part of their operations, have, prior to the effective date of this law, burned Waste generated on-site from their own manufacturing process, and plan to continue burning the same types of Waste, or
- vii. facilities which maintain valid permits identifying the types of Waste contained in this law which were lawfully disposing of such types of Waste through the combustion process pursuant to such permits in the 12 months preceding the effective date of this local law.

B. **RESPONSIBLE OFFICIAL** shall mean the natural person who is on file with the New York State Department of Environmental Conservation (DEC) as the Responsible Official, as defined in 6 NYCRR 201-2(b)(28). If no such individual properly meeting that definition is currently on file with DEC, the Responsible Official shall be the owner of the New Waste Disposal Facility. If the owner is a business entity, then the Responsible Official(s) shall be the person or persons sharing the highest level of decision-making power within the business entity.

C. **PERSON** shall mean any natural person, general or limited partnership, corporation, limited liability company, limited liability partnership, firm, association or organization, trust or other legal entity, or any combination thereof, and the agent(s) or employee(s) thereof.

D. **BURNING AND/OR PROCESSING** shall mean any type of combustion process involving any waste, including for use as a fuel in recovering useable energy.

E. **COMBUSTION** shall mean the thermal treatment of waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the waste. Examples of the combustion process include incineration, pyrolysis, and fluidized bed.

F. **WASTE** shall mean:

- i. all putrescible and non-putrescible materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water control facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris, discarded automobiles and offal but not including sewage and other highly diluted water carried materials or substances and those in gaseous form;
- ii. solid waste as defined by 6 NYCRR 360.2(a) and 42 USC 6903(27);
- iii. biosolids;

- iv. hazardous waste as defined by NY Environmental Conservation Law § 27-0901(3);
- v. waste as defined by NY Environmental Conservation Law § 27-0901(11);
- vi. aqueous film-forming foam that contains perfluoroalkyl and polyfluoroalkyl substances (PFAS);
- vii. low-level radioactive waste as defined by N.Y. Environmental Conservation Law § 29-0101(1);
- viii. high-level radioactive waste;
- ix. transuranic waste;
- x. regulated medical waste as defined by NY Environmental Conservation Law § 27-1501(1);
- xi. automobile shredder residue;
- xii. discarded automobiles;
- xiii. waste tires as defined by NY Environmental Conservation Law § 27-1901(13);
- xiv. plastics, or any material that has been source separated for recycling or composting purposes;
- xv. pharmaceutical wastes or expired pharmaceuticals;
- xvi. disaster debris;
- xvii. electronic wastes;
- xviii. processed engineered fuel;
- xix. refuse derived fuels;
- xx. any material determined by the U.S. Environmental Protection Agency or New York state agency to be a non-hazardous secondary material, or
- xxi. the solid residue of any air or water pollution control device.

Section 5: PROHIBITION

- A. No person shall be permitted to burn or otherwise use the combustion process to dispose of Waste at a New Waste Disposal Facility in Albany County.

Section 6: PENALTIES FOR OFFENSES

- A. Failure to comply with any of the provisions of this Local Law shall be a violation as contemplated by Article 10 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of up to \$2,000 or imprisonment of the Responsible Official for not more than 10 days, or both, for the first offense. A second offense shall be a misdemeanor as contemplated by Article 10 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine up to \$5,000 or imprisonment of the Responsible Official for a period of not more than 30 days, or both. All subsequent offenses shall be a misdemeanor punishable of a fine up to \$10,000 or imprisonment of the Responsible Official for a period of not more than 50 days, or both. For purposes of this subsection, each day of noncompliance with this Local Law shall constitute a separate and distinct offense.

B. Injunctions; concurrent remedies.

- i. In addition to any other remedy provided herein, the County of Albany may institute a suit in equity where unlawful conduct exists for an injunction to restrain a violation of this article.
- ii. In addition, any officer enforcing this law may issue stop work orders or compliance notices relative to any violation of this Local Law.
- iii. The penalties and remedies prescribed by this article shall be deemed concurrent. The existence or exercise of any remedy shall not prevent the County of Albany from exercising any other remedy provided herein or otherwise provided at law or equity.
- iv. The terms and provisions of this article are to be liberally construed, so as best to achieve and effectuate the goals and purposes hereof.

- C. In the event the County desires or is required to take legal action to enforce this Local Law, the violator will be responsible for any and all necessary costs and expenses incurred by the County relative thereto, including attorneys', engineering, consulting, and experts' fees; provided, however, any responsibility or liability therefor, and the amount thereof, shall be determined by a court or other tribunal of competent jurisdiction, and this clause shall be interpreted, construed, and applied only to the maximum extent permitted by applicable law.

Section 7: ENFORCEMENT AND ADMINISTRATION

Enforcement of this Local Law shall be the responsibility of the law enforcement agencies within the County.

Section 8: SEVERABILITY

If any provisions of this Local Law are held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of this Local Law shall remain in effect.

Section 9: EFFECTIVE DATE

This Local Law shall take effect upon filing with the Secretary of State.

Referred to Law and Conservation, Sustainability and Green Initiatives Committees – 2/10/20

Favorable Recommendation Conservation, Sustainability and Green Initiatives Committee – 7/29/30

Favorable Recommendation Law Committee – 7/29/30

Mr. Peter made a motion to amend the Section 4(A)(3)(vii) to read “facilities which maintain valid permits identifying any of the types of Waste contained in this law which

were lawfully disposing of such types of Waste through the combustion process pursuant to such permits in the 12 months preceding the effective date of this local law.”

Amendment passed by voice vote with Mr. Langdon opposed.

Mr. Clay made a motion to call the previous question, and the motion passed unanimously.

On long roll call vote the following members voted in favor as amended: Messrs. Beston, Bruschi, Ms. Chapman, Messrs. Clay, Cleary, Commisso, Ms. Cunningham, Messrs. Domalewicz, Efekoro, Ethier, Feeney, Fein, Grimm, A. Joyce, R. Joyce, Kuhn, Ms. Lekakis, Mr. Mayo, Mss. McLaughlin, McLean Lane, Messrs. Miller, O'Brien, Perlee, Peter, Ms. Plotsky, Messrs. Reidy, Reinhardt, Ricard, Simpson, Smith, Ward and Ms. Willingham – 32

Those opposed: Messrs. Burgdorf, Drake, Langdon, Ms. Lockart, Messrs. Mauriello, Tunny, and Ms. Whalen - 7

Local Law was adopted as amended – 8/10/20