

AN ACT

D.C. ACT 23-542

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 22, 2020

To amend the Sustainable Solid Waste Management Amendment Act of 2014 to require the Mayor to prepare plans for comprehensive organics management and for recycling infrastructure in the public space, create training and outreach guides on source separation for private collection properties, and establish a uniform labeling scheme for public collection properties and District facilities and agencies, to require certain private collection properties to source-separate back-of-house commercial food waste and all private collection properties to separate their excess edible food for donation, to require the Mayor to establish a collection point in the District for source-separated glass and allow the Mayor to require certain private collection properties to source-separate glass, to require certain private collection property owners to submit source separation plans, to require District agencies and facilities to comply with source separation requirements and report about these efforts to the Department of Public works, to require the Mayor to impose a surcharge on recycling disposed of at District transfer stations when recycling loads exceed a contamination threshold, to establish a grant program for on-site organic processing equipment, to establish a reuse and donation program to increase diversion of reusable materials from landfills and incineration, to require a study to assess the feasibility of a variable rate pricing model for residential waste management in the District, to revise the certification requirements for vendors recycling or reusing electronic equipment under the District's electronic waste recycling program, and to establish an extended producer responsibility collection and recycling program for primary and rechargeable batteries; to amend the Sustainable DC Omnibus Amendment Act of 2014 to require that food service entities only provide accessory disposable food service ware upon request by the customer or at a self-serve station and to make grants available to support reductions in the use of disposable food service ware; to amend the Healthy Schools Act of 2010 to establish grants for food waste programs and to encourage share tables at public and public charter schools; and to repeal section 704.1 and 704.2 of Title 21 of the District of Columbia Municipal Regulations.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Zero Waste Omnibus Amendment Act of 2020".

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Sec. 2. Title I of the Sustainable Solid Waste Management Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-154; D.C. Official Code § 8-1031.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 8-1031.01) is amended as follows:

(1) Paragraph (1) is redesignated as paragraph (1A).

(2) A new paragraph (1) is added to read as follows:

“(1) “Back-of-house commercial food waste” means commercial food waste separated at the point of discard by employees of a commercial establishment. The term “back-of-house commercial food waste” does not include food waste discarded directly by customers of the establishment, but does include food waste discarded on behalf of customers by employees.”.

(3) A new paragraph (1B) is added to read as follows:

“(1B) “Commercial food waste” means food waste produced by the production, consumption, and preparation of food at a commercial establishment.”.

(4) Paragraph (8A) is redesignated as paragraph (8C).

(5) New paragraphs (8A) and (8B) are added to read as follows:

“(8A) “Food service entity” means full-service restaurants, limited-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, vending trucks or carts, food trucks, food halls and cafeterias, including those operated by or on behalf of District departments and agencies, caterers, and other entities selling or providing food within the District for consumption on or off the premises. The term “food service entity” does not include retail food stores, convenience stores, or pharmacies.

“(8B) “Food waste” means material produced from the production, preparation, and consumption of food.”.

(6) New paragraphs (10A), (10B), and (10C) are added to read as follows:

“(10A) “In-vessel composting” means a process in which organic waste is enclosed in a drum, silo, bin, tunnel, reactor, or other container and maintained under controlled conditions of temperature and moisture for the purpose of producing compost.

“(10B) “Organic waste processing facility” means a facility that processes compostable materials through composting, aerobic digestion, or anaerobic digestion.

“(10C) “Organic waste processing system” means a system that processes compostable materials, such as an in-vessel composter or an anaerobic digester.”.

(7) A new paragraph (12A) is added to read as follows:

“(12A) “Public litter container” means a trash receptacle installed by a government agency or private entity, including a Business Improvement District established pursuant to the Business Improvement Districts Act of 1996, effective May 29, 1996 (D.C. Law 11-134; D.C. Official Code § 2-1215.01 *et seq.*), on a public sidewalk, in a park, or other public space.”.

(8) A new paragraph (14A) is added to read as follows:

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“(14A) “Retail food store” means any establishment where food and food products offered to the consumer are intended for off-premises consumption, including grocery stores and supermarkets. The term “retail food store” does not include convenience stores, pharmacies, farmers markets, and food service entities.”.

(9) Paragraph (20A) is redesignated as paragraph (20B).

(10) A new paragraph (20A) is added to read as follows:

“(20A) “Variable rate pricing model” means a model wherein the Mayor would impose fees for waste collection on public collection property owners proportional to the amount of trash generated at the property.”.

(b) Section 103 (D.C. Official Code § 8-1031.03) is amended as follows:

(1) Subsection (c) is amended as follows:

(A) The existing text is designated as paragraph (1).

(B) A new paragraph (2) is added to read as follows:

“(2) By January 1, 2023, the Mayor shall submit to the Council a comprehensive Organics Management Plan that describes how the District will manage residential and commercial compostable materials. Before submitting the Plan to the Council, the Mayor shall provide an opportunity for public review and comment on the proposed Plan. The Organics Management Plan shall include:

“(A) A list of locations where the District’s compostable materials will be processed, comprising regional organic waste processing facilities and on-site organic waste processing systems distributed throughout the District, and any policy changes that need to be implemented to support the identified processing capacity;

“(B) Plans for rolling out a compost collection program, including specific timelines and associated costs;

“(C) Plans for meeting the source separation requirements for compostable materials at private collection properties, upon the implementation of a compost collection program, as described in subsection (a)(2) of this section;

“(D) Goals for organics waste diversion over the first 10 years of the Organics Management Plan, and an explanation of how these goals will be met; and

“(E) A description of the public education, outreach, and technical assistance associated with implementing the Organics Management Plan.”.

(2) Subsection (d) is amended to read as follows:

“(d) The Mayor shall establish a uniform color, design, and labeling scheme for public collection property waste containers in the District and for waste containers at all District facilities and agencies.”.

(3) New subsections (e) and (f) are added to read as follows:

“(e)(1) By January 1, 2023, the Mayor shall submit to the Council a plan for how to provide recycling infrastructure in the public space. The plan shall make recycling available as appropriate with public litter containers, and require businesses providing public litter containers

to provide recycling containers, unless justified to the Mayor as physically infeasible. The plan shall include a uniform color, design, and labeling scheme for waste containers in the public space.

“(2) In preparing the plan required by this subsection, the Mayor shall analyze the District’s existing public space recycling infrastructure, using waste and recycling sorts to determine contamination rates, research best practices from the District and other jurisdictions, and provide an opportunity for public review and comment.

“(f)(1) By January 1, 2022, the Mayor shall develop a training and outreach program on proper source separation and waste reduction for janitorial staff and property managers at private collection properties, including District facilities and agencies, multifamily properties, and commercial properties.

“(2) The training and outreach program shall be updated at least every 5 years and upon the addition of a new source separation requirement.

“(3) In creating, updating, and disseminating the training and outreach program, the Mayor shall, at least 4 times a year, consult with waste collectors, waste management brokers, and property managers.”.

(c) New sections 103a and 103b are added to read as follows:

“Sec. 103a. Requirements for commercial food waste.

“(a) All entities identified in subsection (b) of this section shall:

“(1) Donate excess edible food consistent with the Good Faith Donor and Donee Act of 1981, effective October 8, 1981 (D.C. Law 4-39; D.C. Official Code § 48-301 *et seq.*);

“(2) Source-separate all back-of-house commercial food waste generated at its premises and:

“(A) Arrange for the separate collection and transport of the back-of-house commercial food waste to an organic waste processing facility or to processors for use as animal feed; provided, that such collection, transport, and disposal follow all applicable Federal, state, and local laws; or

“(B) Process back-of-house commercial food waste using an on-site organic waste processing system; provided, that:

“(i) Any on-site composting shall be in-vessel composting or a processing system approved by DPW;

“(ii) All equipment shall be properly sized to handle and process back-of-house commercial food waste generated at the premises in a safe and sanitary manner; and

“(iii) All equipment shall be installed in accordance with the applicable plumbing code and wastewater discharge regulations;

“(3) Provide waste containers consistent with the requirements for waste collection under section 104(a)(1) for the disposal of food waste in any employee work area;

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“(4) Ensure proper storage for food waste on site, including a container with a secure lid, that will ensure that it is maintained separately from all other materials generated at the premises, is not commingled with recyclable material or trash, and does not create a public nuisance;

“(5) Ensure employees are informed about the requirements for food waste by:

“(i) Providing regular training to employees concerning the proper methods to separate and store food waste, including separating and storing food to be donated, if applicable; and

“(ii) Posting instructions on the proper separation of food waste in a manner and location in which the instructions will be comprehensible and visible to employees who are disposing of food waste, including signage in multiple languages as appropriate; and

“(6) Post a sign that states clearly and legibly:

“(A) The trade or business name, address, and telephone number of, and the day and time of pickup by, the private collector that collects the food waste;

“(B) That the entity transports its own food waste; or

“(C) That the entity provides for on-site processing for food waste it generates on its premises.

“(b) The requirements in subsection (a) of this section shall apply as follows:

“(1) Beginning January 1, 2023, to:

“(A) A retail food store with a floor area of at least 10,000 square feet; and

“(B) Colleges and universities with at least 2,000 residential students;

“(2) Beginning January 1, 2024, to:

“(A) A retail food store not covered by paragraph (1)(A) of this subsection, that is part of a chain of retail food stores, for which the chain;

“(i) Operates the retail food stores under common ownership or control and receives waste collection from the same private collector;

“(ii) Consists of 3 or more retail food stores; and

“(iii) Has a combined floor area of at least 10,000 square feet;

“(B) Arenas or stadiums with seating capacity of at least 15,000 persons;

“(C) Hospitals and nursing homes, as those terms are defined in section 2(9) and (11) of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501(9) and (11)), with at least 300 beds; and

“(D) Colleges and universities not covered by paragraph (1)(B) of this subsection with at least 500 residential students; and

“(3) To any other entities added by the Mayor under subsection (c) of this section.

“(c) Beginning January 1, 2024, the Mayor may, by rule, apply the requirements in subsection (a) of this section to other entities, based on an evaluation of the available processing

capacity of all organic waste processing facilities and systems within 35 miles of the Capitol dome.

“(d) Collectors of source-separated food waste shall:

“(1) Provide training to businesses on how to properly source-separate food waste; and

“(2) Notify customers when they see contamination.

“(e)(1) The Mayor shall provide technical support to entities identified in subsection (b) of this section, as well as to any private waste collection properties that opt to voluntarily source separate compostable materials.

“(2) The Mayor shall conduct regular public education and outreach on the benefits of donating excess edible food and source separating compostable materials.

“(3) The Mayor shall not prohibit food service entities from composting or source separating compostable materials, including food waste that is not back-of-house commercial food waste, as long as they provide adequate consumer-facing waste collection service for compostable materials consistent with section 104.

“103b. Glass separation and recycling.

“(a) By January 1, 2022, the Mayor shall establish a collection point in the District for waste collectors to bring source-separated glass for transfer to a glass recycling facility.

“(b) Once the collection point required by subsection (a) of this section is established, the Mayor shall impose a fee for the disposal of glass sufficient to cover the costs of maintaining the glass collection point and transporting the glass to a glass recycling facility, which shall be deposited into the Solid Waste Disposal Cost Recovery Special Account established under section 6013 of the Fiscal Year 2008 Budget Support Act of 2007, effective September 18, 2007 (D.C. Law 17-20; D.C. Official Code § 1-325.91).

“(c) Beginning January 1, 2024, the Mayor may, by rule, require certain private collection properties that dispose of a high volume of glass containers to separate and store all recyclable glass containers and arrange for hauling source-separated glass to a glass recycling facility or collection point for recycling.”.

(d) Section 104 (D.C. Official Code § 8-1031.04) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Paragraph (2) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(B) Paragraph (3) is amended by striking the period and inserting the phrase “; and” in its place.

(C) A new paragraph (4) is added to read as follows:

“(4) Designating an agent responsible for implementing the requirements of this subtitle.”.

(2) Subsection (b) is amended to read as follows:

“(b)(1) By January 1, 2022, multi-family dwellings with 80 or more units, commercial buildings with 10 or more units, and businesses or nonprofit organizations with 101 or more employees shall submit a source separation plan to the Mayor, updated on an annual basis, outlining the steps the property owner will take to implement the requirements of this subtitle. The plan shall include:

“(A) A description of the private collection property, including the name, address, and telephone number of the agent designated pursuant to subsection (a)(4) of this section;

“(B) A description of the collector, including the trade or business name, address, and telephone number of, and the day and time of pickup by, the collector that collects the private collection property’s solid waste, as well as the sites where the materials are delivered;

“(C) A description of the private collection property’s current solid waste generation;

“(D) A description of the property owner’s efforts to educate tenants, residents, businesses, and employees about its source separation program, including a list of the materials to be recycled; and

“(E) A description of how the private collection property will recycle or reduce the amount of solid waste going to disposal facilities.

“(2) Private collection properties not subject to paragraph (1) of this subsection shall submit a source separation plan upon request by the Mayor.

“(3) The Mayor shall review and verify through on-site evaluation, consistent with section 114(e), implementation of the source separation plans required by this subsection. Private collection properties subject to the requirements of this subsection shall maintain, and make available upon request for inspection and copying during normal business hours, any contracts and invoices for collection and disposition of materials to be recycled for a period covering the most recent 5 years.

“(4) The Mayor shall provide electronic forms and online submissions, as appropriate, to assist private collection properties in meeting the requirements of this subsection.”.

(3) A new subsection (c) is added to read as follows:

“(c) All private collection properties shall separate their excess edible food for donation for human consumption to the maximum extent practicable.”.

(e) A new section 104a is added to read as follows:

“Sec. 104a. Requirements for District facilities and agencies.

“(a) All District facilities and agencies shall:

“(1) Separate waste in accordance with section 103 and provide adequate waste collection service in accordance with section 104; and

“(2) Maximize diversion of waste from landfill or incineration, including through promotion of reduction, reuse, repair, donation, recycling, and composting, including donating reusable goods to the maximum extent practicable.

“(b) Each agency shall designate a person responsible for compliance with this subtitle. The designated person shall ensure that employees and janitorial staff are annually trained on source separation requirements, consistent with the training program established under section 103(f), and that all recycling, composting, and trash receptacles are provided as required.

“(c) DPW shall annually collect information from each agency on how it is satisfying the requirements of subsections (a) and (b) of this section and include a summary in the annual report required by section 113, including a list of the persons designated pursuant to subsection (b) of this section.

“(d) District agencies shall maximize the purchase of Environmentally Preferable Products or Services, as that term is defined in section 104(30) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.04(30)).”.

(f) Section 105 (D.C. Official Code § 8-1031.05) is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

“(a-1) If a collector finds materials that are not the correct type as designated for that container, such as trash in a compostable or recyclable container, the collector shall notify the customer about the presence of incorrect materials.”.

(2) Subsection (b) is amended by adding a new paragraph (2A) to read as follows:

“(2A) A description of the contamination in collected solid waste, including how often the collector provided the notice required by subsection (a-1) of this section;”.

(3) A new subsection (g) is added to read as follows:

“(g) Collectors that deliver solid waste at a District transfer station for disposal shall, upon the request of DPW, provide an accurate list of all customer locations from which solid waste was collected for the load carried at the time of the request.”.

(g) Section 107(2) (D.C. Official Code 8-1031.07(2)) is amended to read as follows:

“(2) Implementing source separation education and outreach programs for public collection properties and private collection properties developed pursuant to sections 103(f) and 108, in coordination with SWEEP;”.

(h) Section 110(c) (D.C. Official Code § 8-1031.10(c)) is amended to read as follows:

“(c) The Mayor may issue grants to universities, nonprofit institutions, and businesses to promote sustainable waste management and diversion practices, policies, and techniques, including solid waste research, collection, marketing, and other services.”.

(i) Section 111(a) (D.C. Official Code § 8-1031.11(a)) is amended as follows:

(1) Paragraph (1) is amended as follows:

(A) Strike the word “disposal” and insert the phrase “disposal or transfer” in its place.

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(B) Strike the phrase “; and” and insert a semicolon in its place.

(2) Paragraph (2) is amended by striking the period and inserting the phrase “; and” in its place.

(3) A new paragraph (3) is added to read as follows:

“(3) A surcharge on the disposal of recycling at a solid waste disposal facility owned by the District where the recycling load exceeds a contamination threshold determined by the Mayor. Revenue from this surcharge shall be deposited into the Solid Waste Diversion Fund established by section 112.”.

(j) Section 112(b)(1) (D.C. Official Code § 8-1031.12(b)(1)) is amended by striking the phrase “surcharge established under section 111(a)(2)” and inserting the phrase “surcharges established under section 111(a)(2) and (3)” in its place.

(k) New sections 112c, 112d, and 112e are added to read as follows:

“Sec. 112c. On-site organic processing system acquisition grant program.

“(a) There is established a grant program, to be administered by DPW, to financially assist a business or nonprofit organization in the lease or purchase of an on-site organic processing system, such as an in-vessel composter or aerobic digester.

“(b) Grants shall be awarded on a competitive basis.

“(c) DPW may audit the accounts of a grantee receiving a grant under this section up to 3 years following the award of the grant.

“Sec. 112d. Donation and Reuse Program.

“(a) There is established a Donation and Reuse Program (“Program”), to be administered by DOEE, to reduce needless waste and increase diversion of reusable material, including edible food, from landfills and incineration through donation or reuse.

“(b) The Program shall, in coordination with non-governmental organizations:

“(1) Develop or promote public-facing technology platforms for direct donation coordination and to facilitate exchange of used and surplus materials;

“(2) Perform public education and outreach on avoiding single-use products and encouraging reusable items;

“(3) Increase public awareness of and access to opportunities for reuse and donation;

“(4) Support and expand the District’s reuse infrastructure, including through site donation drop-off, Fix-It clinics, and non-governmental donation facilities; and

“(5) Prepare for and respond to emergency situations that result in surges of unsolicited donations in partnership with non-governmental donation facilities.

“(c) DOEE may issue competitive grants to community organizations and businesses to further the objectives of this section.

“(d) On an annual basis, the Program shall provide a report to the Mayor and the Council describing its activities in the previous year to meet the requirements of this section and provide recommendations on how to further increase donation and reuse in the District.

“Sec. 112e. Variable rate pricing study and pilot.

“By July 1, 2022, the Mayor shall conduct and submit to the Council a study to assess the feasibility and expected economic outcomes of implementing a variable rate pricing model for public collection properties in the District. This study shall include, at a minimum:

“(1) A pilot program implementing a variable rate pricing model at District public collection properties to assess how such a model incentivizes residents to reduce the volume of waste generated;

“(2) Recommendations based on the pilot program described in paragraph (1) of this section, community outreach, and best practices from other jurisdictions on how to implement a variable rate pricing model in the District, including how to minimize disproportionate impacts on low-income communities, minimize disruption associated with a transition to fees for public collection properties, and prevent increases in illegal dumping; and

“(3) An assessment of the financial implications of a variable rate pricing model for the District’s waste management budget.”.

(l) Section 113(a) (D.C. Official Code § 8-1031.13(a)) is amended as follows:

(1) Paragraph (4) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(2) Paragraph (5) is amended by striking the period and inserting a semicolon in its place.

(3) New paragraphs (6) and (7) are added to read as follows:

“(6) A summary of efforts made by District agencies and facilities to meet the requirements of sections 104 and 104a(a) and (b), broken down by agency, including:

“(A) A description of each agency’s waste collection services;

“(B) The name of the designated person responsible for compliance at each agency; and

“(C) All activities each agency has taken in the preceding year in furtherance of sections 104 and 104a(a) and (b); and

“(7) A description of the Mayor’s waste diversion goals for the remainder of the calendar year, including specific targets, plans for meeting those targets, and planned waste diversion programs.”.

(m) Section 114 (D.C. Official Code § 8-1031.14) is amended as follows:

(1) Subsection (d) is amended by striking the word “may” and inserting the word “shall” in its place.

(2) A new subsection (e) is added to read as follows:

“(e)(1) For the purpose of enforcing the provisions of this subtitle, or any rule issued pursuant to this subtitle, the Mayor may, upon the presentation of appropriate credentials to the owner, operator, or agent in charge, enter upon any public or private land in a reasonable and lawful manner during normal business hours for the purpose of inspection and observation.

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“(2) If denied access to any place while carrying out the activities described paragraph (1) of this subsection, the Mayor may apply to a court of competent jurisdiction for a search warrant.”.

(n) Section 117(b)(8) (D.C. Official Code § 8-1041.03(b)(8)) is amended to read as follows:

“(8) A signed statement certifying that vendors who recycle or reuse covered electronic equipment collected under the manufacturer’s waste management program have a valid third-party accredited certification recognized by the Mayor that prohibits:

“(A) Export of electronics equipment waste to developing countries for recycling or non-working hazardous equipment or parts for repairs;

“(B) Disposal of hazardous electronics equipment waste in solid waste landfills and incinerators; and

“(C) Use of prison labor for processing hazardous electronics equipment waste.”.

(o) Section 126(a)(1) (D.C. Official Code § 1-1041.12(a)(1)) is amended to read as follows:

“(a)(1) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this subtitle.”.

(p) Section 127 (D.C. Official Code § 1-325.381) is amended as follows:

(1) Subsection (b) is amended as follows:

(A) Paragraph (3) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(B) Paragraph (4) is amended by striking the period and inserting the phrase “; and” in its place.

(C) A new paragraph (5) is added to read as follows:

“(5) Fees and fines collected pursuant to section 138.”.

(2) Subsection (c) is amended by striking the phrase “and Subtitle B” and inserting the phrase “, Subtitle B, and Subtitle D” in its place.

(q) A new Subtitle D is added to read as follows:

“SUBTITLE D. EXTENDED PRODUCER RESPONSIBILITY FOR BATTERIES.

“Sec. 128. Definitions.

“For the purposes of this subtitle, the term:

“(1) “Battery” means a device that consists of one or more electrically connected electrochemical cells and is designed to store and deliver electric energy.

“(2) “Battery-containing product” means a product that contains or is packaged with a rechargeable or primary battery. The term “battery-containing product” does not include:

“(A) Covered electronic equipment, as that term is defined in section 115(4) of the Sustainable Solid Waste Management Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-154; D.C. Official Code § 8-1041.01(4));

“(B) A product in which the only batteries used are supplied by a producer participating in an approved battery stewardship plan;

“(C) A medical device, as described in 21 U.S.C. § 360c; provided, that the medical device is not designed and marketed for sale or resale principally to consumers for personal use; or

“(D) A motor vehicle, part of a motor vehicle, or a component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.

“(3) “Battery stewardship organization” means an organization registered under section 131(b).

“(4) “Brand” means a trademark, including both a registered and an unregistered trademark, a logo, a name, a symbol, a word, an identifier, or a traceable mark that identifies a covered battery or covered battery-containing product, and identifies the owner or licensee of the brand.

“(5) “Collection rate” means a percentage, by weight, that a battery stewardship organization collects that is calculated by dividing the total weight of batteries that were estimated to have been sold in the District by all producers participating in an approved battery stewardship plan during the previous 3 calendar years.

“(6) “Covered battery” means a new or unused primary battery or rechargeable battery.

“(7) “Covered battery-containing product” means a new or unused battery-containing product.

“(8) “DOEE” means the District Department of Energy and Environment.

“(9) “Performance goal” means a metric proposed in a battery stewardship plan to measure, on an annual basis, the performance of that plan, taking into consideration technical feasibility and economic practicality, in achieving continuous, meaningful progress to improve the rate of battery recycling in the District. The term “performance goal” includes target collection rates, target recycling efficiencies by battery recycling process, and goals for public awareness, convenience, and accessibility.

“(10) “Primary battery” means a non-rechargeable battery that weighs 4.4 pounds (2 kilograms) or less, including alkaline, carbon-zinc, and lithium metal batteries.

“(11) “Producer” means, with respect to a covered battery or covered battery-containing product that is sold, offered for sale, or distributed for sale in the District:

“(A) A person who manufactures a covered battery or covered battery-containing product and sells or offers for sale in the District that covered battery or battery-containing product under the person’s own brand;

“(B) If there is no person to which subparagraph (A) of this paragraph applies, the owner or licensee of a brand under which a covered battery or covered battery-containing product is sold, offered for sale, or distributed in the District, whether or not the trademark is registered; or

“(C) If there is no person to which subparagraph (A) or (B) of this paragraph applies, a person that imports the covered battery or covered battery-containing product into the United States for sale or distribution in the District.

“(12) “Rechargeable battery” means a battery that contains one or more voltaic or galvanic cells, electrically connected to produce electric energy, designed to be recharged, that weighs less than 11 pounds (5 kilograms) and has a Watt-hour rating of no more than 300 Watt-hours. The term “rechargeable battery” does not include:

“(A) A battery that contains electrolyte as a free liquid, or

“(B) A battery that employs lead-acid technology, unless that battery is sealed and contains no free liquid electrolyte.

“(13) “Recycling” means the series of activities, including separation, collection, and processing, through which materials are recovered or otherwise diverted from the solid waste stream for use as raw materials or in the manufacture of products other than fuel.

“Sec. 129. Battery collection.

“(a) All producers of covered batteries and covered battery-containing products sold or offered for sale in the District of Columbia, including retail, wholesale, business-to-business, and online sales, shall:

“(1) Be a member of a battery stewardship organization pursuant to section 131; and

“(2) As part of a battery stewardship organization, implement a battery collection program that provides for collection of all batteries on a free, regular, convenient, and accessible basis. At the time of collection, there shall be no cost to consumers, retailers, or the District.

“(b) On or before January 1, 2022, a battery stewardship organization shall submit a proposed battery stewardship plan to DOEE for review. A battery stewardship organization shall implement the battery stewardship plan no later than 90 days after the plan is approved.

“(c) This subtitle shall not apply to batteries or battery-containing products that were imported into the District before the applicability date of section 2(q) of the Zero Waste Omnibus Amendment Act of 2020, passed on 2nd reading on December 1, 2020 (Enrolled version of Bill 23-506).

“Sec. 130. Battery stewardship plan.

“(a) A proposed battery stewardship plan shall include, at a minimum:

“(1) A list of producers and brands, including:

“(A) All producers participating in the battery stewardship plan and contact information for each of the participating producers;

“(B) The brands of batteries and battery-containing products covered by the battery stewardship plan; and

“(C) Brands of products meeting the exemption described in section 128(2)(B) that contain batteries supplied by producers participating in the battery stewardship plan;

“(2) An anticipated annual budget for the battery stewardship plan, broken down into administrative, collection, transportation, disposition, and communication costs, along with a description of the financing method used to implement the battery stewardship plan. The budget shall fund, at a minimum, staff responsible for implementing the battery stewardship plan in the District and include funds for fees administered by DOEE. The budget may not include legal fees or costs related to legislative efforts;

“(3) Economically and technically feasible performance goals for each of the first 3 years of implementation of the battery stewardship plan that are based on the estimated total weight of batteries that have been sold or offered for sale in the District in the previous 3 calendar years by the producers participating in the battery stewardship plan;

“(4) A description of how the battery stewardship organization will provide for the convenient collection of batteries from consumers as required by section 129(a). At a minimum, the battery stewardship plan shall provide for a minimum of one collection site per 10,000 people in the District, with a reasonable geographic spread of collection sites across all 8 wards, taking into account accessibility to public transit, and an explanation for the geographic spread; except, that DOEE shall not require the collection site minimum in this paragraph to be met in the first year of implementation of the plan if the plan provides a reasonable timetable for achieving that requirement;

“(5) A description of how the battery stewardship organization will arrange for components of the discarded batteries to be recycled to the maximum extent economically and technically feasible, in a manner that is environmentally sound and safe for waste management workers. At a minimum, recycling shall not include smelting of batteries that are not separated from any halogenated plastic casings prior to smelting;

“(6) A list of all key participants in the battery collection program, including:

“(A) The names of the collection sites accepting batteries under the plan, including the address and contact information for each collection site;

“(B) The name and contact information of a transporter or contractor collecting batteries from the collection sites; and

“(C) The name, address, and contact information of the recycling facilities that process the collected batteries;

“(7) A description of the education and outreach that will be used to inform consumers about the battery collection program, which must, at a minimum, notify the public that there is a free collection program for all batteries as well as the location of the collection sites and how to access the battery collection program; and

“(8) Other information as required by the Mayor through rulemaking.

“(b)(1)(A) Within 120 days after receipt of a proposed battery stewardship plan, DOEE shall determine whether the plan complies with the requirements of this section. DOEE shall notify the applicant of the plan approval or rejection in writing. If DOEE rejects a proposed plan, DOEE shall include the reasons for rejecting the plan.

“(B) An applicant whose plan is rejected by DOEE shall submit a revised plan within 45 days after receiving the notice of rejection. DOEE shall review the revised plan, issue an order approving or disapproving the revised plan, and notify the applicant of the decision within 45 days after receipt of the revised plan. An applicant whose revised plan is rejected by DOEE may appeal the decision to the Office of Administrative Hearings, pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.01 *et seq.*).

“(C) In the event of an appeal of an initial plan’s disapproval, obligations of the battery stewardship organization and producers under this subtitle may be stayed in their entirety until final disposition of the appeal. In the event of an appeal of an amended plan’s disapproval, obligations of the battery stewardship organization and producers, including collection and remittance of fees to the battery stewardship organization, under this subtitle shall remain in accordance with the previously approved plan until final disposition of the appeal.

“(2) DOEE shall post all proposed battery stewardship plans, and any proposed amendments pursuant to subsection (c) of this section or section 132(b), on its website for 30 days after the date the application is submitted and provide an opportunity for public review and comment.

“(c) Every 2 years following approval of the battery stewardship plan, the battery stewardship organization shall submit updated performance goals to DOEE for approval, based on the implementation of the program up until that point and current economic and technical feasibility. DOEE may require a battery stewardship organization to make other revisions to the plan if the performance goals under the battery stewardship plan are not being met after 2 years of plan implementation.

“(d) Any battery collection site designated under a plan shall:

“(1) Complete a safety tutorial on how to safely manage batteries, to be provided by the battery stewardship organization implementing the stewardship plan;

“(2) Prominently display the availability of drop-off at their location; and

“(3) Provide for the acceptance of up to 100 batteries per visit, and accept all batteries regardless of type or brand.

“Sec. 131. Battery stewardship organization.

“(a) A battery stewardship organization shall:

“(1) Develop and submit a battery stewardship plan that meets the requirements of section 130;

“(2) Maintain a public, regularly-updated website that lists all producers and producers’ brands covered by the battery stewardship organization’s approved battery stewardship plan;

“(3) Provide sellers, government agencies, nonprofit organizations, and all collection sites with educational materials describing collection opportunities for batteries under the battery stewardship plan, including any signage required by section 130(d)(2); and

“(4) Cover all costs for battery collection, transportation, processing, education, administration, recycling, and end-of-life handling, with such handling being in accordance with practices approved by DOEE.

“(b) Beginning January 1, 2022, and annually thereafter, a battery stewardship organization shall file a registration form with DOEE. The registration form shall require the following information:

“(1) A list of the producers participating in the battery stewardship organization;

“(2) For each participating producer, the name, address, and contact information of a person responsible for ensuring the participating producer’s compliance with this subtitle;

“(3) A description of how the battery stewardship organization proposes to meet the requirements of subsection (b) of this section, including any reasonable requirements for participation in the battery stewardship organization; and

“(4) The name, address, and contact information of a person for a nonmember producer to contact on how to become a member of the battery stewardship organization.

“Sec. 132. Annual reporting.

“(a) On or before April 1, 2023, and annually thereafter, a battery stewardship organization shall submit a report to DOEE describing activities carried out under the battery stewardship plan during the previous calendar year. The report shall include, at a minimum:

“(1) Any updated contact information for the battery stewardship organization, all participants in the organization, and a list of the brands of batteries and battery-containing products for which the battery stewardship organization is responsible;

“(2) The weight of the batteries collected by the battery stewardship organization, reported to the extent feasible by:

“(A) Collection site; and

“(B) Chemistry type of primary and rechargeable batteries;

“(3) The estimated total sales, by weight, of batteries and batteries contained in or with battery-containing products sold in the District by the producer or producers participating in the battery stewardship organization, to the extent feasible for each of the previous 3 calendar years;

“(4) A description of progress made toward the program performance goals under section 130(a)(3), including:

“(A) A summary of how program implementation compared to performance goals;

- applicable; and
- “(B) An explanation of why performance goals were not met, if applicable; and
 - “(C) An evaluation of the effectiveness of methods and processes used to achieve the performance goals and how methods and processes can be improved;
- “(5) A description of the collection sites, including:
- “(A) The addresses and contact information, including website links, for all collection sites;
 - “(B) A map indicating the location of all collection sites in the District; and
 - “(C) An assessment of collection convenience and accessibility;
- “(6) A description of the educational materials that support implementation of the battery stewardship plan, including examples, as well as an evaluation of the success of the education and outreach effort and how it can be improved;
- “(7) A description of the manner in which the collected batteries were sorted, consolidated, managed, and processed, including:
- “(A) The manner in which the collected batteries were recycled, including weight and chemistry of material recycled;
 - “(B) What facilities processed the batteries, including a summary of any violations of environmental laws and regulations over the previous 3 years at each facility; and
 - “(C) A discussion of recycling efficiency rates; and
- “(8) The costs of implementation of the battery stewardship plan, including the costs of collection, recycling, education, and outreach, and an anticipated budget for the next calendar year.

“(b) In the event a battery stewardship organization does not meet a performance goal, the battery stewardship organization shall, in coordination with DOEE, amend its battery stewardship plan, following the requirements set forth in section 130, to conduct more outreach, provide additional education materials, or improve collection accessibility as needed.

“(c) Four years after the date the initial battery stewardship plan is approved, a battery stewardship organization shall hire an independent third party to conduct an assessment of the battery stewardship plan and implementation of the plan. The assessment shall examine the effectiveness of the battery stewardship plan in collecting and recycling batteries and compare the cost-effectiveness of the plan to that of collection plans or programs for batteries in other jurisdictions. The results of the assessment and recommendations to improve the battery stewardship plan shall be submitted to DOEE as part of the annual report required under subsection (a) of this section.

“Sec. 133. DOEE responsibilities.

“(a) DOEE shall maintain a website that includes:

- “(1) A copy of all approved battery stewardship plans;
- “(2) The names of producers participating in approved battery stewardship plans;

“(3) A list of all approved brands covered by a battery stewardship plan filed with DOEE; and

“(4) A copy of all annual reports submitted under section 132.

“(b) A battery stewardship organization implementing an approved battery stewardship plan in compliance with the requirements of this subtitle may petition DOEE alleging, with evidence, that a producer is not complying with the requirements of this subtitle or a battery stewardship plan. DOEE shall investigate and provide a determination to the petitioner within 45 days after receipt of a petition. DOEE shall take enforcement action if noncompliance is demonstrated.

“(c) Every 5 years, DOEE shall report on the status of the battery recycling program and provide this report to the Council and on its website. The report shall include:

“(1) The amount, by weight, of batteries collected under approved battery stewardship plans;

“(2) The percentage of collected batteries not covered by or attributable to a producer participating in an approved battery stewardship organization; and

“(3) Recommendations for any amendments to this subtitle.

“(d) In addition to the requirements of subsection (c) of this section, DOEE’s first report under subsection (c) of this section shall include:

“(1) An evaluation of whether an environmental handling fee, meaning an amount added at the point of sale to the purchase price of a covered battery or battery-containing product, would promote and support increased battery recycling in the District; and

“(2) An assessment of how rechargeable batteries with a watt-hour rating above 300 watt-hours could be incorporated into the battery collection program under this subtitle.

“(e) DOEE shall assist in educational and outreach efforts to inform the public about the battery collection opportunities in the District.

“Sec. 134. Cause of action.

“(a) A battery stewardship organization implementing an approved battery stewardship plan in compliance with the requirements of this subtitle may bring a civil action against a producer for damages when:

“(1) The plaintiff incurs more than \$1,000 in actual costs collecting, handling, recycling, and properly disposing of the defendant producer’s batteries sold or offered for sale in the District; and

“(2) The defendant producer is not in compliance with the requirements of section 129(a).

“(b) DOEE shall not be a necessary party to or be required to provide assistance or otherwise participate in a civil action authorized under this section solely due to its regulatory requirements under this subtitle, unless subject to subpoena before a court of jurisdiction.

“(c) A battery stewardship organization may file a civil action under this section regardless of whether it has petitioned DOEE under section 133(b).

“(d) For the purposes of this section, the term “damages” means:

“(1) The actual costs a plaintiff battery stewardship organization incurs in collecting, handling, recycling, or properly disposing of batteries reasonably identified as having originated from another battery producer or battery stewardship organization, and

“(2) The attorneys’ fees and costs associated with bringing the civil action.

“Sec. 135. Immunity from liability; confidential information.

“(a) Notwithstanding the provisions of Chapter 45 of Title 28 of the D.C. Official Code, a producer and a battery stewardship organization may negotiate, enter into agreements with, share the burdens of their operation with, and conduct business with each other in accordance with this subtitle in ways that may affect competition. No producer or battery stewardship organization shall be prosecuted, held liable, or subject to penalties or damages under Chapter 45 of Title 28 of the D.C. Official Code for actions conducted in accordance with this subtitle, including:

“(1) The creation, implementation, or management of a battery stewardship organization and any battery stewardship plan regardless of whether it is submitted, denied, or approved;

“(2) The cost and structure of a battery stewardship plan;

“(3) The types or quantities of batteries being recycled or otherwise managed pursuant to this subtitle; and

“(4) The establishment, administration, or disbursement of environmental handling fees or fee schedules, if applicable, to be collected at the point-of-sale for covered batteries and covered battery-containing products.

“(b) Financial, production, and sales data reported to the Mayor by a battery stewardship organization shall not be subject to disclosure under the Freedom of Information Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), or any other law or regulation; except, that the Mayor may release a summary form of the data that does not disclose individual producer information.

“Sec. 137. Disposal ban.

“(a) Beginning January 1, 2022, no producer shall dispose of batteries in the District except through battery recycling programs or other methods approved by the Mayor.

“(b) Beginning January 1, 2023, no person in the District shall knowingly dispose of batteries in the District except through battery recycling programs or other methods approved by the Mayor.

“Sec. 138. Rules, enforcement, and fees.

“(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this subtitle.

“(b)(1) The Mayor shall charge an annual administrative fee to producers or battery stewardship organizations implementing approved battery stewardship plans to cover the

District's oversight costs, including planning, plan review, annual oversight, enforcement, and other directly related tasks.

"(2) The Mayor may impose civil fines and penalties for violations of the provisions of this subtitle or any rules issued pursuant to this subtitle, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act"). Enforcement and adjudication of an infraction shall be pursuant to the Civil Infractions Act.

"(3) Fees, penalties, and fines collected under this subtitle shall be deposited in the Product Stewardship Fund established by section 127.

"(c)(1) For the purpose of enforcing the provisions of this subtitle, or any rule issued pursuant to this subtitle, the Mayor may, upon 48 hours' written notice and the presentation of appropriate credentials to the owner, operator, or agent in charge, enter upon any public or private property in a reasonable and lawful manner during normal business hours for the purpose of inspection and observation.

"(2) If denied access to any place while carrying out the activities described paragraph (1) of this subsection, the Mayor may apply to a court of competent jurisdiction for a search warrant."

Sec. 3. The Sustainable DC Omnibus Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-142; D.C. Official Code § 8-1531 *et seq.*), is amended as follows:

(a) Section 401 (D.C. Official Code § 8-1531) is amended as follows:

(1) Paragraphs (1) and (1A) are redesignated as paragraphs (1A) and (1B), respectively.

(2) A new paragraph (1) is added to read as follows:

"(1) "Accessory disposable food service ware" means any disposable food service ware, including straws, utensils, condiment cups and packets, cup sleeves, and napkins, that is not used to hold or contain food."

(3) New paragraphs (7), (8), and (9) are added to read as follows:

"(7) "Reusable food service ware" means containers, bowls, plates, trays, cups, glasses, forks, spoons, knives, takeout containers, and other items used to contain and consume beverages and prepared food that are manufactured and designed to be washed and sanitized and used repeatedly over an extended period of time.

"(8) "Third-party food ordering platform" means any website, mobile application, or other internet service that offers or arranges for the sale of food and beverages prepared by, and the delivery or pickup of food and beverages from, food service entities.

"(9) "Third-party reusable food service ware providers" means entities that provide washed and sanitized reusable food service ware to food service entities for their use, either in packaging takeout or delivery orders or for on-site dining, and then recuperate the food

service ware after use by customers for commercial wash and sanitation before providing the reusable food service ware for subsequent use by food service entities.”.

(b) Section 403 (D.C. Official Code § 8-1533) is amended by adding new subsections (d), (e), and (f) to read as follows:

“(d) Food service entities may use reusable food service ware, including food service ware provided by a third-party reusable food service ware provider, in serving on-site, takeout, and delivery customers.

“(e)(1) By January 1, 2022, food service entities shall provide accessory disposable food service ware only upon request by the customer or at a self-serve station. Take-out or delivery orders shall not include accessory disposable food service ware unless specifically requested by the customer in person, on the phone, or online.

“(2) Food service entities shall provide options for customers to affirmatively request accessory disposable food service ware across all ordering platforms, including digital platforms, telephone, and in-person, whether for on-site dining, takeout, or delivery. This paragraph shall apply even when a food service entity uses a third-party food ordering platform.

“(3) By July 1, 2021, third-party food ordering platforms shall provide customers the ability to affirmatively request accessory disposable food service ware, including the ability to select the specific items they need.

“(f)(1) DOEE shall make available grants through a competitive process or a formula grants process, or rebates through an equivalent process, to food service entities and third-party reusable food service ware providers to support reductions in the use of disposable food service ware, including to help cover the cost of establishing dishwashing capacity, purchase of reusable food service ware, or the procurement or provision of reusable food service ware services from or by third-party reusable food service ware providers.

“(2) For the purposes of this subsection, the term “formula grants process” means a process developed by DOEE to distribute grants based on the availability of funding and the needs of applicants.”.

Sec. 4. The Healthy Schools Act of 2010, effective July 27, 2010 (D.C. Law 18-209; D.C. Official Code § 38-821.01), is amended as follows:

(a) Section 101 (D.C. Official Code § 38-821.01) is amended by adding a new paragraph (8C) to read as follows:

“(8C) “Share table” is a location where school community members can place unopened or sealed foods to provide for other community members to take food that would otherwise be thrown away.”.

(b) Section 102(c) (D.C. Official Code § 38-821.02(c)) is amended by adding a new paragraph (11) to read as follows:

“(11) To decrease food and food packaging waste at schools and provide greater food access to those in need, the Office of the State Superintendent for Education may issue

grants through a competitive process or a formula grants process to local education agencies, schools, nonprofit organizations, or partnerships developed among schools or with nonprofit organizations to support efforts to address food and food packaging waste, including implementation and management of share tables, purchase or provision of reusable food service ware, including from third-party reusable food service ware providers, and other food waste and food waste packaging reduction programs.”.

(c) Section 203 (D.C. Official Code § 38-822.03) is amended by adding a new subsection (d) to read as follows:

“(d)(1) Public schools, public charter schools, and participating private schools are strongly encouraged to establish share tables.

“(2) A summary of share table participation shall be included in the report required pursuant to section 303.”.

Sec. 5. Section 704 of Title 21 of the District of Columbia Municipal Regulations (21 DCMR § 704), is amended as follows:

(a) Subsection 704.1 is repealed.

(b) Subsection 704.2 is repealed.

Sec. 6. Applicability.

(a) Sections 2(a), 2(b), the amendatory section 103a within 2(c), 2(d)(2), 2(e), 2(g), 2(k), 2(l), 2(m)(1), 2(p), 2(q), the amendatory section 403(e)(1) and (2) and (f) in section 3(b), and 4(b) shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of the provisions identified in subsection (a) of this section.

Sec. 7. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 8. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the

ENROLLED ORIGINAL

Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
December 22, 2020



COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, DC, 20004

Docket No. B23-0506

ITEM ON CONSENT CALENDAR

ACTION

First Reading, CC

VOTE DATE

November 17, 2020

VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT

ROLL CALL VOTE – Result

Passed

Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec
Chairman Mendelson	X					Grosso	X					Silverman	X				
Allen	X					McDuffie	X					T. White	X				
Bonds	X					Nadeau	X					Todd	X				
Cheh	X					Pinto	X										
Gray	X					R. White	X										
X - Indicate Vote			AB – Absent			NV - Present, Not Voting			Rec - Recused								

CERTIFICATION RECORD

Secretary to the Council

12-7-20

Date

Docket No. B23-0506

ITEM ON CONSENT CALENDAR

ACTION

Final Reading, CC

VOTE DATE

December 1, 2020

VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT

ROLL CALL VOTE – Result

Passed

Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec
Chairman Mendelson	X					Grosso	X					Silverman	X				
Allen	X					McDuffie	X					T. White	X				
Bonds	X					Nadeau	X					Todd	X				
Cheh	X					Pinto	X										
Gray	X					R. White	X										
X - Indicate Vote			AB – Absent			NV - Present, Not Voting			Rec - Recused								

CERTIFICATION RECORD

Secretary to the Council

12-7-20

Date