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**COUNTY COUNCIL**  
COUNTY OF MAUI  
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[www.MauiCounty.us](http://www.MauiCounty.us)

December 1, 2016

MEMO TO: Patrick K. Wong  
Corporation Counsel

F R O M: Elle Cochran, Chair  
Infrastructure and Environmental Management Committee

SUBJECT: **POLYSTYRENE DISPOSABLE FOOD SERVICE CONTAINERS** (IEM-5)

At its meeting of November 28, 2016, the Infrastructure and Environmental Management Committee discussed a revised proposed bill entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.26, MAUI COUNTY CODE, RESTRICTING THE USE AND SALE OF POLYSTYRENE FOOD SERVICE CONTAINERS." The purpose of the bill is to restrict the use and sale of polystyrene food service containers in the County of Maui.

Proposed Maui County Code Section 20.26.050(A) in the bill provides an exemption for polystyrene food service containers used "for foods prepared and packaged entirely outside of the County but sold within the County." Constitutional and legal questions were raised in reference to the exemption. May I please request your legal opinion in response to the following:

1. Does the exemption raise Commerce Clause concerns?
2. Would there be any apparent constitutional or legal concerns should the exemption be removed?

May I please request a response no later than **Monday, December 5, 2016**, in order to consider further revisions to the bill prior to the agenda being posted for the December 16th Council meeting. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Patrick K. Wong  
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Should you have any questions, please contact me or the Committee staff (Shelly Espeleta at ext. 7134, Sharon Brooks at ext. 7137, or Rayna Yap at ext. 8007).

iem:ltr:005acc02:ske

cc: Mayor Alan M. Arakawa  
Director of Environmental Management  
Stacia Ash, Recycling Specialist, Department of Environmental Management  
Rob Parsons, Environmental Coordinator, Office of the Mayor