

REQUEST FOR LEGAL SERVICES

Date: June 21, 2021
From: Kelly Takaya King, Chair
Climate Action, Resilience, and Environment Committee

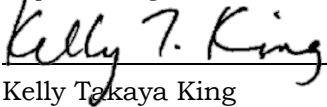
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Keola Whittaker, Esq.

Subject: **PLASTIC DISPOSABLE FOODWARE** (CARE-29)

Background Data: Please see the attached bill. Thank you for your suggestions, emailed on June 21, 2021. However, I have decided not to amend the chapter title or add new sections. I have incorporated part of the definition of "foam cooler" as you suggested, but I am not seeking additional edits. Please sign if the bill is legally defensible. If the bill is not legally defensible, please provide a public memo explaining why, with references to caselaw supporting your objections. Confidential legal advice is not sought. Please submit the response to care.committee@mauicounty.us with a reference to CARE-29.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Kelly Takaya King	Contact Person <u>Nicole Siegel or James B. Forrest</u> (Telephone Extension: <u>8008 or 7661, respectively</u>)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): June 23, 2021 at 12:30 p.m.
REASON: For posting on the June 30, 2021 CARE Committee meeting agenda

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 20.26, MAUI COUNTY
CODE, RESTRICTING THE USE AND SALE OF FOAM COOLERS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Because of its ability to break down into small and microscopic fragments that persist for decades, polystyrene foam coolers and ice chests have significant negative impacts on the environment and contribute to the potential death of marine animals and avian populations through ingestion.

By Ordinance 4457 (2017), the Council prohibited polystyrene foam food service containers, effective December 31, 2018. The Council finds that this prohibition has been effective in keeping such materials from entering the environment.

By Ordinance 5084 (2020), the Council prohibited plastic disposable foodware, effective January 1, 2022. The Council finds that this prohibition may also be effective in keeping such material from entering the environment and that further regulation is warranted.

The Council finds and declares that, to protect the County's unique environment and the health and welfare of its marine and avian life and prevent microplastics from entering the food chain, polystyrene foam coolers and ice chests must also be regulated.

SECTION 2. Section 20.26.020, Maui County Code, is amended to read as follows:

“20.26.020 Definitions. Whenever used in this chapter, unless the context otherwise requires:

“ASTM Standard” means the American Society for Testing and Materials (ASTM) International Standard.

“Compostable” means materials that can undergo biological decomposition or become part of usable compost in a safe and timely manner, either in an appropriate composting program or facility, or in a home compost pile or device. To qualify as compostable, such food service containers must meet ASTM Standard D6400 for Compostable Plastics, as amended.

“Foam cooler” means polystyrene foam coolers and ice chests, where such foam is not fully encased in another impermeable material by its original manufacturer, in which any foods or beverages are placed or packaged or intended to be placed or packaged.

“Department” means the department of environmental management.

“Director” means the director of environmental management.

“Disposable” means something designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple re-use, including foam coolers.

“Foodware” means foam coolers, food service containers, and utensils.

“Food provider” means any person providing prepared food for consumption within the County, including any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, food truck, catering vehicle or cart, or roadside stand.

“Food service container” means all plates, trays, cups, bowls, cartons, and hinged or lidded containers (clamshells) on or in which any foods or beverages are placed or packaged or intended to be placed or packaged.

“Plastic” means any material made, in whole or in part, from petroleum or petrochemical compounds, including so-called biodegradable products, where any portion is not compostable. “Plastic” also means all forms of polystyrene, polyethylene, polypropylene, and polycarbonate, or petrochemical polymeric compounds and additives that can be shaped by flow.

“Polystyrene foam” means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by techniques including fusion of polymer spheres (expandable bead polystyrene), injection

molding, foam molding, and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam does not include clear or solid polystyrene (oriented polystyrene).

“Prepackaged food” means food and beverages contained in plastic disposable foodware that has been filled and sealed entirely outside the County or in a manner intended to prevent the food or beverage from having any direct human contact, such as shelf-stable food and beverages; condiment packets, poi bags, musubi wraps, plastic film, chip bags, cookie and cracker wrappers, bread bags, meal kits, ice bags; beverage-related bottles or cartons; packaging for unprepared food; and packaging for wholesale distribution of prepared food, baked goods, and dairy products.

“Prepared food” means any food or beverage prepared for consumption using any cooking or food preparation technique, including chopping, slicing, mixing, brewing, freezing, or squeezing, or otherwise prepared for consumption. “Prepared food” includes restaurant-style food and beverages that are packaged after being ordered and ready for consumption without further preparation.

“Shelf-stable food” means prepared food that can be stored at room temperature and does not require refrigeration, freezing, or heating for food safety purposes.

“Utensils” means implements used in the consumption of food or drink, such as forks, knives, spoons, straws, coffee stirrers, cocktail picks, and chopsticks, excluding those contained within or attached to prepackaged food.”

SECTION 2. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 3. This ordinance will take effect upon approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

care:misc:029abill02:nas