

REQUEST FOR LEGAL SERVICES

Date: January 29, 2020
From: Shane M. Sinenci, Chair
Environmental, Agricultural, and Cultural Preservation Committee


TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Richelle Thomson, Esq.

Subject: RESTRICTING THE USE AND SALE OF SINGLE-USE PLASTIC DISPOSABLE FOODWARE (EACP-16)

Background Data: Please review the attached proposed bill and, if appropriate, approve as to form and legality. Please provide a hard copy of the proposed bill with your response.

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

Requestor's signature  Shane M. Sinenci	Contact Person <u>Kasie Apo Takayama or Richard Mitchell</u> (Telephone Extension: <u>7665 or 7662, 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): February 3, 2020
REASON: For distribution at the February 4th EACP Committee Meeting.

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)

eacp:ltr:016acc01:kmat

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2020)

A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 20.24, MAUI COUNTY
CODE, RESTRICTING THE USE AND SALE OF
PLASTIC DISPOSABLE FOODWARE

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, plastic disposable foodware has significant negative impacts on the environment, contributes to the potential death of marine animals and avian populations through ingestion, and has been found to be ingested by humans in microplastic form through the food chain. Plastic disposable foodware, such as straws, has also been found to cause significant physical harm to marine animals and avian populations prior to breaking down into fragments.

The Countywide Policy Plan, the top-level component of the County of Maui 2030 General Plan, directs the Council to “improve waste-disposal practices and systems to be efficient, safe, and as environmentally sound as possible,” to create policies that “provide sustainable waste-disposal systems and comprehensive, convenient recycling programs to reduce the flow of waste into landfills,” and to “develop strategies to promote public awareness to reduce pollution and litter, and encourage residents to reduce, reuse, recycle, and compost waste materials.”

These objectives are also consistent with the 2030 solid waste reduction goals articulated by the State-level Aloha+ Challenge, to which Maui County is a partner, that seeks to “support changes in design, material use, and manufacturing that reduce waste and toxicity” and to “significantly reduce the annual generation of solid waste.”

Another partner to the Aloha+ Challenge is the City and County of Honolulu, whose City Council approved one of the strictest bans on plastics in the country on December 4, 2019, and whose mayor signed the bill into law on December 15, 2019. Other jurisdictions that have adopted similar plastic bans include the City of Malibu, California, and the City of Seattle, Washington.

The Council finds and declares that, to protect the County’s unique environment and the health and welfare of its marine and avian life, to prevent microplastics from entering the food chain, and to advance the General Plan’s objectives, plastic disposable foodware must be regulated.

SECTION 2. Title 20, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

Chapter 20.24

PLASTIC DISPOSABLE FOODWARE

Sections:

- 20.24.010 Purposes.
- 20.24.020 Definitions.
- 20.24.030 Administration.
- 20.24.040 Prohibitions.
- 20.24.050 Exemptions.
- 20.24.060 Enforcement.
- 20.24.070 Public information.

20.24.080 No conflict with federal or State law.

20.24.010 Purposes. This chapter's purposes are: to promote public health, reduce litter, and limit harmful materials from entering the environment by regulation of the use of plastic disposable foodware; and to encourage the use of environmentally preferred alternatives, such as containers, straws, and utensils made from compostable materials.

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

"Compostable" means meeting the American Society for Testing and Materials (ASTM) International Standard D6400 for Compostable Plastics, as amended.

"Department" means the department of environmental management.

"Director" means the director of environmental management.

"Disposable foodware" means utensils and "food service containers," as defined in section 20.26.020.

"Food provider" means any person providing prepared food for consumption within the County, whether at a fixed or mobile location, 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 car, or roadside stand.

"Plastic" means a synthetic material made from fossil fuel-based polymers such as polyethylene, polystyrene, polypropylene, and polycarbonate, or petrochemical polymeric compounds and additives that can be shaped by flow.

"Prepackaged food" means prepared food that is sealed, contained, or wrapped in a manner to protect and prevent the prepared food from having any direct human contact prior to being provided for sale by a food vendor to a customer, such as bentos, kimchi, seaweed salad, takuan, tofu, pre-made sandwiches, desserts, pies, noodles, salads, parfaits, and drinks.

"Prepared food" means food or beverages that are prepared for consumption on or off the premises of a food vendor, by cooking, chopping, peeling, slicing, mixing, brewing, freezing, squeezing, or otherwise processed at premises owned, leased, or otherwise controlled by the food vendor; but the term does not include raw meat, raw poultry, raw seafood, unprepared produce, and uncooked eggs. "Prepared food" includes restaurant-style food and beverages that are packaged after being ordered and ready to be consumed without further preparation.

"Utensils" means implements intended to assist in the consumption of food or drink.

20.24.030 Administration. A. The director must administer this chapter and may adopt administrative rules in accordance with chapter 91, Hawaii Revised Statutes.

B. On or before September 1 of each year, the director must submit to the council a report detailing compliance with this chapter.

20.24.040 Prohibitions. Unless exempted under section 20.24.050:

1. Food providers may not sell, use, provide, or offer the use of plastic disposable foodware to customers or employees.

2. Plastic disposable foodware may not be sold, used, provided, or offered for use at any County facility, County-authorized concession, County-sponsored or County-permitted event, or County program.

3. Plastic disposable foodware may not be sold, used, provided, or offered for sale or sold in the County.

20.24.050 Exemptions. A. This chapter's prohibitions do not apply to any of the following:

1. Plastic disposable foodware used for raw or butchered meats, poultry, seafood, unprepared produce, or uncooked eggs, unless provided for consumption without further food preparation, such as sashimi and poke.

2. Plastic packaging for prepackaged food and shelf-stable food.

3. Plastic packaging in situations unique to the food provider, where compliance with this chapter would cause significant hardship and there is no reasonably affordable alternative to plastic disposable foodware, so long as the food provider applies for an exemption and such exemption is granted by the director. A price for a product that is more than 40 percent higher than a comparable plastic product is not reasonably affordable.

4. Plastic packaging and disposable foodware in any situation determined by the director or the mayor to be an emergency requiring immediate action for the preservation of life, health, property, safety, or essential public services. This exemption must be in place until the emergency has ceased or the director or the mayor has determined the exemption is no longer applicable to the situation.

20.24.060 Enforcement. A. Enforcement and administration of this chapter are under the department's jurisdiction.

B. Violations of this chapter are subject to the civil penalties and enforcement procedures of section 19.530.030.

C. Fines collected under this chapter must be deposited into the solid waste management fund.

20.24.070 Public information. A. All agencies must set forth this chapter's restrictions on the use of plastic disposable foodware on all application forms for permits relating to County facilities, County-managed concessions, County-sponsored or County-permitted events, or County programs.

B. The department must engage in an education and outreach campaign in coordination with community and business partners to facilitate implementation of this chapter.

20.24.080 No conflict with federal or State law. Nothing in this chapter is intended create any requirement of duty to comply if compliance is in conflict with any federal or State law and must not be interpreted or applied to create a conflict with any federal or State law."

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This ordinance takes effect one year from its enactment.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

eacp:misc:016abill01:kmat