

EACP Committee

From: Shane M. Sinenci
Sent: Monday, February 24, 2020 3:17 PM
To: EACP Committee
Subject: FW: Protect Maui Food Businesses, Fix the Plastic Ban

-----Original Message-----

From: Paul Kosasa <pkosasa@abcstores.com>
Sent: Friday, February 21, 2020 6:00 PM
To: Shane M. Sinenci <Shane.Sinenci@mauicounty.us>
Subject: Protect Maui Food Businesses, Fix the Plastic Ban

Dear Councilmember Sinenci,

This Bill violates the Commerce Clause of the Constitution. To allow mainland plastic containers for food and ban locally produced food in plastic containers discriminates against local producers. The food definitions used in this bill would include any locally produced food like chips or cookies. These items are sold in plastic film bags because there are no functional alternatives. It would disadvantage local producers since their packaging would be limited in ways that producers of food outside the County are not. In many circumstances plastic packaging is the best or only reliable option that can keep food safe, prevent spoilage, and protect from contamination. Making sure their food is safe and good for their customers is as important to Maui food manufacturers as it is to mainland food producers.

Many food manufacturers sell products at their manufacturing location. Many retailers bake their own bread. This bill would make it illegal to sell fresh bread or other products made on premise in the most reliable safest packaging available.

The definitions used in this bill also mean that there are inconsistencies between what would be banned in Maui County and what is banned on Oahu under Ordinance 19-030.

We have serious concerns about the impact that this will have on local food businesses. We strongly urge the Counsel to wait until the State Plastic Working Group finishes its work and creates statewide solutions.

If this measure is passed, in order to minimize negative impacts on our local food companies we respectfully ask that at minimum that the definitions and exemptions in this bill be revised accordingly: "Plastic disposable foodware" means plates, bowls, "clamshells," or other hinged containers that contain plastic and are designed to be discarded after a single use. The term does not include disposable plastic condiment packets; food-related bags or wrappers, including, but not limited to, musubi wraps, plastic film, poi bags, chip bags, cracker and cookie wrappers, bread bags, meal kits, or ice bags; beverage-related bottles or cartons; non-plastic foodware that contains a polyethylene or plastic coating; packaging for unprepared food; and packaging for wholesale distribution of prepared food, baked goods or dairy products."

"Prepared food means, foods or beverages which are prepared on the premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed. "Prepared food" is restaurant style food that is packaged after an item is ordered or offered for sale, and is ready to be consumed with no additional heating or cooking on or off the premises of a food vendor. "Prepared food" does not include raw eggs, raw butchered meats, raw fish, raw poultry, or prepackaged foods."

"Prepackaged food means foods that are sealed or wrapped in a container prior to being or ordered or offered for sale. Prepackaged foods are presealed or contained items, including but not limited to food for wholesale, breads, cookies, milk, juice, snacks, candy, nuts, fruits, frozen meals, poi, musubi, vegetables, fruit or other items typically sold in a grocery store or a food manufacturer's retail location."

We ask that an exemption be inserted for Prepackaged food and that a separate exemption be inserted for food packaged outside the County of Maui. This will ensure that the County is not in violation of interstate commerce laws and also that local businesses manufacturing prepackaged food are not unduly disadvantaged by the measure.

We ask that language be inserted to ensure that the measure does not inadvertently create conflict with the Americans with Disabilities Act (ADA). The measure grants that "Disposable plastic straws may be used by or provided to persons with disabilities, upon request." This is a necessary exemption. Under the ADA it is illegal for a business to ask someone to demonstrate or prove that they have a disability. We would appreciate some guidance in the measure for retailers on what to do if a person requests a plastic straw, whether or not they have an apparent disability, and whether or not they say they need the straw because of a disability.

Finally, in order to maintain consistency with Honolulu's Ordinance 19-030 below we've provided for your reference the exemption application language used in that measure:

(a) The department may grant an exemption from compliance with the restrictions of Section 41-27.2 upon application and the provision of sufficient evidence that there are no reasonable alternatives available to the food vendor to comply, or compliance with the restriction would cause significant hardship for the food vendor.

For purposes of this subsection, exemptions may be granted for a specified term of up to two years, and may be subsequently renewed for specified terms of up to two years thereafter, provided that during the term of the exemption, diligent efforts are made by the food vendor to become compliant.

(1) In situations where there are no reasonable alternatives available, a food vendor may submit an application, preferably on a form provided by the director, and shall set forth with specificity:

- (i) The food vendor's name and address, and a copy of the food vendor's most current business registration certificate;
- (ii) A description of the polystyrene foam food ware, disposable plastic service ware, or disposable plastic food ware at issue;
- (iii) The factual basis to support the requested determination that there is no reasonable alternative to the use of the non-compliant product at issue, which for example, may include packaging necessary for safely containing food that is of significantly high or low temperature, impact to Hazard Analysis and Critical Control Points plan applicable to the food vendor, or specific transportation requirements or safeguards; and
- (iv) Copies of all exemptions issued to the applicant under this article.

(2) In situations where compliance would cause significant hardship, a food vendor may submit an application, preferably on a form provided by the director, and shall set forth with specificity:

- (i) The food vendor's name and address, and a copy of the food vendor's most current business registration certificate;
- (ii) A description of the polystyrene foam food ware, disposable plastic service ware, or disposable plastic food ware at issue;
- (iii) The factual basis to support the requested determination that the use of a compliant product at issue would cause the applicant significant hardship and that there is no affordable compliant alternative; and
- (iv) Copies of all exemptions issued to the applicant under this article.

(b) The department may grant an "industry exemption" from compliance with the restrictions of Section 41-27.2 upon application and the provision of sufficient evidence that compliance with Section 41-27.2 would cause hardship to the food service industry. "Hardship" under this subsection will be construed to include, but not be limited to: situations where there are no acceptable alternatives to providing polystyrene foam food ware, disposable plastic service ware, or disposable plastic food ware to customers; or situations where acceptable alternatives are not readily available due to market supply constraints.

For purposes of this subsection, an "industry exemption" may be granted for a specified term of up to two years, and may be subsequently renewed for specified terms of up to two years thereafter, provided that during the term of the exemption, diligent efforts are made by the industry applicant to become compliant.

Any version of this measure will create challenges for Maui food businesses. We thank you for working with us to ensure that it will not be more burdensome than is necessary for our local companies.

Sincerely,

Paul Kosasa
1087 Waiholo St
Honolulu, HI 96821
pkosasa@abcstores.com