

# REQUEST FOR LEGAL SERVICES


**Date:** February 21, 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 revised proposed bill and, if appropriate, approve as to form and legality. If disapproved, please notify of disapproval and provide comments in writing below or contact our office for further proposed revisions.

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

Requestor's Signature  Shane M. Sinenci	Contact Person <u>Kasie Apo Takayama / Richard "Remi" Mitchell</u> (Telephone Extension: <u>7665 / 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): 4:30 p.m. on February 26, 2020  
REASON: For posting on the next Council 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)

eacp:ltr:016acc03:kmat

Attachment

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2020)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 20.26,  
MAUI COUNTY CODE, RELATING TO THE SALE AND USE  
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 and after 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.

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 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, to prevent microplastics from entering the food chain, and to advance the General Plan’s objectives, plastic disposable foodware must be regulated.

SECTION 2. Chapter 20.26, Maui County Code, is amended to read as follows:

**“Chapter 20.26**

**[POLYSTYRENE FOAM FOOD SERVICE CONTAINERS]  
PLASTIC DISPOSABLE FOODWARE**

Sections:

- 20.26.010 Purpose.
- 20.26.020 Definitions.
- 20.26.030 Administration.
- 20.26.040 Prohibitions.
- 20.26.050 Exemptions.
- 20.26.060 Violation and penalties.
- 20.26.070 Public information.
- 20.26.080 No conflict with federal or state law.
- 20.26.090 [Council review.] Effective date.

**20.26.010 Purpose.** The purpose of this chapter is to promote public health, reduce litter, and limit harmful materials from entering the environment by [the regulation] regulating and limiting of the use of [polystyrene foam food packaging by food providers] plastic disposable foodware; and [encourage] encouraging the use of environmentally preferred alternatives, such as [containers] foodware made from [recyclable and] compostable materials.

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

["Affordable" means purchasable for not more than forty percent more than the purchase cost of an equivalent polystyrene foam food service container.]

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

"Compostable" means materials that [are able to] 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.

"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.

"Foodware" means food service containers and utensils.

"Food provider" means any [entity or] 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 [and designed for one-time use].

“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, 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[, packaging,] or food preparation technique, including chopping, slicing, mixing, brewing, freezing, or squeezing, [and] 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.

["Recyclable" means used or waste materials that can be treated or processed to be made suitable for reuse, whether in their original form or with minimal alterations. For the purposes of this chapter, recyclable materials do not include polystyrene foam.]

“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.

**20.26.030 Administration.** A. The director [shall] must administer this chapter and adopt administrative rules [pursuant to] in accordance with chapter 91, Hawaii Revised Statutes, [with two hundred seventy days from the date of adoption of this ordinance.]

B. On or before September 1 of each [anniversary of the effective date,] year, the director [shall] must submit to the council a report detailing compliance with this chapter, including the number and type of exemptions granted.

**20.26.040 Prohibitions.** Except as provided in section 20.26.050:

A. Food providers [shall] must not sell, use, provide, or offer the use of [polystyrene foam food service containers.] plastic disposable foodware.

B. [Polystyrene foam food service containers shall] Plastic disposable foodware must 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.

C. [Polystyrene foam food service containers shall] Plastic disposable foodware must not be sold, used, provided, or offered for sale or sold in the County.

D. Nothing in this chapter precludes food providers from using or making available non-plastic alternative utensils, such as those made from paper, sugar cane, or bamboo; except, however, that non-plastic utensils must only be provided upon the request or affirmative response of a person being provided the prepared food or beverage or in a self-service area or dispenser.

**20.26.050 Exemptions.** This chapter [shall] does not apply to any of the following:

A. [Polystyrene foam food containers] Plastic disposable foodware used for raw or butchered meats, poultry, [fish,] seafood, unprepared produce, or eggs, unless provided for consumption without further food preparation (e.g., sashimi and poke)

B. [Polystyrene foam coolers and ice chests specifically designed and manufactured for multiple re-use.

C. ] Foam blocks or pieces used as protective packaging during shipping (e.g., packing peanuts).

[D. Packaging] C. Use or sale of plastic disposable foodware in situations unique to the type of food, where there are no reasonable alternatives to [polystyrene foam food service containers, provided] plastic disposable foodware if the food provider applies for an exemption and such exemption is granted by the director.

[E. Packaging] D. Use or sale of plastic disposable foodware in situations unique to the food provider, where

compliance with this chapter would cause significant hardship and there is no reasonably affordable alternative to [polystyrene foam food service containers, provided] plastic disposable foodware if 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.

[F. Packaging] E. Use or sale of plastic disposable foodware in any situation deemed by the County to be an emergency requiring the immediate preservation of life, health, property, safety, or essential public services. This exemption [shall] must be in place until the emergency has ceased or the mayor has determined the exemption is no longer applicable to the situation.

F. Prepackaged food, not including polystyrene foam food service containers.

G. Disposable plastic straws, if requested and used by persons with disabilities.

H. Disposable plastic straws used at hospitals, nursing facilities, assisted living facilities, adult residential care homes, hospice service agencies or homes, home health agencies, and home care agencies.

**20.26.060 Violation and penalties.** A. Violations of this chapter [shall] are be subject to the civil penalties and enforcement procedures of section 19.530.030. [of this code.]

B. Fines collected [pursuant to] under this chapter [shall] must be deposited into the [solid waste management] environmental protection and sustainability fund.

**20.26.070 Public information.** A. Restrictions in this chapter on the use of [polystyrene foam food service containers shall] plastic disposable foodware must be set forth 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.

**20.26.080 No conflict with federal or state law.** Nothing in this chapter [shall] may be interpreted or applied so as to create any requirement or duty in conflict with any federal or state law.

**20.26.090 [Council review.** The council shall review this chapter in 2021.] **Effective date.** Except for polystyrene foam food

service containers, the prohibitions of this chapter related to plastic disposable foodware take effect January 1, 2022.”

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 upon its approval.

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

eacp:misc:016abill03:kmat