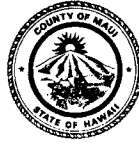


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Director of Council Services  
David M. Raatz, Jr., Esq.

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov/council](http://www.mauicounty.gov/council)

August 12, 2014

MEMO TO: Patrick K. Wong  
Corporation Counsel

EC

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

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

At the Infrastructure and Environmental Management Committee meeting on July 28, 2014, the Committee discussed a proposal to prohibit the sale and use of polystyrene disposable food service containers. Testifiers representing the business sector expressed concern that the proposal creates inequity in the marketplace between businesses that prepare and package food locally and those businesses that sell food which is prepared and packaged entirely outside of the County.

May I request you comment on the County's legal authority to enact legislation that would require all providers of polystyrene disposable food service containers to either: (1) accept and manage the waste that is generated from the polystyrene containers; or (2) pay a fee to the County to offset the cost to dispose of those containers.

I would appreciate receiving a response by **Friday, August 29, 2014**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Jordan Molina at ext. 7134, or Rayna Yap at ext. 8007).

iem:ltr:005acc01:jkm

Attachment

cc: Richelle M. Thompson, Deputy Corporation Counsel

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

BILL NO. \_\_\_\_\_ (2009)

A BILL FOR AN ORDINANCE ESTABLISHING A  
NEW CHAPTER 20.26, MAUI COUNTY CODE,  
PERTAINING TO POLYSTYRENE DISPOSABLE  
FOOD SERVICE CONTAINERS

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

SECTION 1. Title 20, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

"Chapter 20.26

POLYSTYRENE DISPOSABLE FOOD SERVICE CONTAINERS

Sections:

20.26.010	Purpose
20.26.020	Definitions
20.26.030	Administration
20.26.040	Polystyrene disposable food service container restrictions
20.26.050	Exemptions
20.26.060	Application for exemption
20.26.070	Violation and penalties

20.26.010 Purpose. A. As of 2009, there are approximately 300 restaurants and other food providers in the County. Many of these businesses use disposable food service containers made from polystyrene. Polystyrene is not biodegradable or compostable and persists in the environment for hundreds and possibly thousands of years. Marine animals and birds confuse polystyrene for a source of food, and the ingestion of polystyrene often results in reduced appetite and nutrient absorptions, and possible death by starvation.

B. The council finds and declares that to protect the health and welfare of the County's unique environment and marine life and bird populations, and to relieve already overburdened landfills, the use of polystyrene disposable food service containers must be regulated.

20.26.020 Definitions. Whenever used in this chapter, the following terms shall have the meaning given in this section, unless it shall be apparent from the context that a different meaning is intended.

"ASTM Standard" means ASTM International's D6400 Standard Specification for Compostable Plastics, as amended.

"Biodegradable" means able to decompose into elements normally found in nature within a reasonably short period of time after disposal.

"Compostable" means all materials that comprise a disposable food service container are able to undergo biological decomposition or become part of usable compost, in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. To qualify as compostable, disposable food service containers must meet ASTM Standard for compostability, and any bioplastic or plastic-like product must be clearly labeled.

"Department" means the department of environmental management.

"Director" means the director of environmental management.

"Disposable food service container" means a disposable product used by a food provider for serving or transporting prepared food that is not specifically designed and manufactured for multiple re-use. This includes plates, cups, bowls, trays, and hinged or lidded containers. This does not include single-use disposable items such as straws, cup lids, or utensils.

"Food provider" means any establishment located or providing food within the County that provides prepared food for public consumption on or off its premises, including any store, shop, sales outlet, restaurant, supermarket, delicatessen, catering vehicle, and any other person or organization providing prepared food.

"Polystyrene" means a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, or extrusion-blow molding (extruded foam polystyrene). The term also includes clear or solid polystyrene that is known as oriented polystyrene.

"Prepared food" means any food or beverage that is served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared for consumption within the County. This does not include raw meats, fish, or poultry sold from a butcher case

or similar retail appliance. Prepared food may be consumed on or off the premises and includes take-out food.

20.26.030 Administration. A. The director shall administer this chapter and shall adopt administrative rules pursuant to chapter 91, Hawaii Revised Statutes, within one hundred eighty days from the effective date of this ordinance.

B. On or before September 1 of each year, the director shall submit to the council a report assessing the estimated increase in the number of food providers using disposable food service containers that are compostable or recyclable.

20.26.040 Polystyrene disposable food service container restrictions. A. Except as provided in section 20.26.050 of this chapter, food providers are prohibited from dispensing prepared food to customers in polystyrene disposable food service containers or providing polystyrene disposable food service containers to customers.

B. Polystyrene disposable food service containers shall not be used at County facilities, County-managed concessions, County-sponsored events, or County-permitted events, or within the County by franchisees, contractors, or vendors doing business with the County.

C. Except as provided in section 20.26.050 of this chapter, food providers are prohibited from retail sales of polystyrene products used as disposable food containers.

20.26.050 Exemptions. This chapter shall not apply to:

A. Prepared foods that are prepared or packaged entirely outside of the County.

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

C. Situations unique to the food provider where there are no reasonable alternatives to polystyrene disposable food service containers, and compliance with this chapter would cause significant economic hardship, provided that the food provider applies for an exemption and the exemption is granted by the director.

D. Situations where no reasonably feasible available alternative exists to a specific and necessary expanded polystyrene or non-recyclable plastic, provided that the food provider applies for

an exemption and the exemption is granted by the director.

E. Any situation deemed by the mayor or the council to be an emergency requiring the immediate preservation of the public peace, health, or safety.

20.26.060 Application for exemption. A. Food providers may apply for a one-year exemption from this chapter pursuant to section 20.26.050(C) or 20.26.050(D) of this chapter. If granted, applicants may reapply for subsequent exemptions prior to the end of the one-year exemption period.

B. The application for exemption shall be provided by the department. The application shall request all information necessary for the making of a decision on the application, including documentation showing the factual support for the claimed exemption. The applicant may be required to provide additional information before a determination is made to grant or deny the exemption.

20.26.070 Violation and penalties. A. Violations of this chapter shall be subject to the civil penalties and enforcement procedures of section 19.530.030 of this code.

B. Fines collected pursuant to this chapter shall be deposited into the diversion program-solid waste management fund."

SECTION 2. This ordinance shall take effect on July 1, 2011.

APPROVED AS TO FORM  
AND LEGALITY:



DAVID A. GALAZIN  
Deputy Corporation Counsel

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