

October 25, 2016

MEMO TO: IEM-5 File

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

SUBJECT: **TRANSMITTAL OF INFORMATIONAL DOCUMENT RELATING TO  
POLYSTYRENE DISPOSABLE FOOD SERVICE CONTAINERS**  
(IEM-5)

The attached document pertains to Item 5 on your Committee's agenda.

iem:ltr:005amc01:ske

Attachment

## IEM Committee

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**From:** Marge Bonar <margebonar@gmail.com>  
**Sent:** Tuesday, September 06, 2016 2:23 PM  
**To:** IEM Committee  
**Subject:** Revised IEM-5  
**Attachments:** Cleaned EPS Bill.doc

Attached is the revised bill that the environmental members of the Special Committee would like to offer as an alternative to that which was heavily influenced by the plastic industry and off-island participants.

With reams of support material offered at the time, there is a plethora of more recent arguments for eliminating plastic ( especially EPS) single use food service ware. Awareness provided by both local plastic elimination movements and by the WCC in Oahu, may have made the need for supplying this information moot. Whatever is needed, we stand ready to supply.

Mahalo,  
Marge Bonar on behalf of our ad hoc committee

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

BILL NO. \_\_\_\_\_ (2016)

A BILL FOR AN ORDINANCE ESTABLISHING A NEW  
CHAPTER 20.26, MAUI COUNTY CODE, PERTAINING TO  
RESTRICTION OF SINGLE-USE EXPANDED POLYSTYRENE FOOD SERVICE WARE

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**

**SINGLE-USE EXPANDED POLYSTYRENE FOOD SERVICE WARE**

Sections:

- 20.26.010 Purpose.
- 20.26.020 Definitions.
- 20.26.030 Administration.
- 20.26.040 Expanded 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. The Maui County Council joins many jurisdictions and the Maui County General Plan 6.1.2.-Action 2. "Develop regulations, programs, funding opportunities, and/or incentives to: (5) Discourage the use of slow degradable materials, e.g. Styrofoam.", in finding and declaring that to protect the health and welfare of the public, the County's unique natural environments, marine life, and terrestrial wildlife, the use of polystyrene food service containers must be regulated.

B. Many businesses, individuals and organizations have voluntarily adopted the use of compostable food service items manufactured from renewable resources, yet some still provide disposable foodservice products made from polystyrene.

C. Polystyrene is not compostable, not readily recyclable and, once in the environment, persists for an extensive, indeterminate length of time. The light weight and disposable nature of EPS food service products contributes to their potential as wind-borne litter on land, beaches and in waterways. In addition, once in the environment, polystyrene containers break down into smaller fragments which have been found to adversely impact the health of marine life, including

fish, turtles, and birds. Specifically, when this material is ingested in place of nutrients, the results are reduced appetite, reduced nutrient absorption, and death. These bits of polystyrene plastic additionally contribute to the bacterial contamination of marine waters when colonized by pathogenic species.

D. The U.S. Environmental Protection Agency has stated that the physical properties of polystyrene foam are such that “the material can have serious impacts on human health, wildlife, the aquatic environment and the economy”. According to the United States Food and Drug Administration, there is medical evidence to suggest that styrene, a known neurotoxin and primary component of polystyrene foam, can leach out when exposed to hot liquids or foods. Styrene is also a suspected carcinogen. Banning the use of non-recyclable and non-compostable food service ware will protect public health and reduce the proliferation of non-renewable petroleum-based products.

E. It is not economically feasible to recycle polystyrene single-use food service ware in Maui County and no local recycling programs accepts it. Recycling is possible, however, for some disposable food service ware made from materials other than polystyrene.

F. Polystyrene foodservice products are energy intensive to produce and are petroleum-based, a nonrenewable and heavily polluting resource. In planning for a healthy and sustainable future for Maui County, it is recognized that compostable materials derived from plants and other renewable resources are a preferable alternative to petroleum-based products.

G. In the Hawai'i Marine Debris Action Plan 2012-2013, NOAA cited the need to address marine debris. This corresponds with the Honolulu Strategy: A global framework for prevention and management of marine debris,

Strategy 4.6: The Hawaiian Islands have limited disposal options for solid waste. Currently waste is disposed of in landfills, incinerated at the H-Power facility, or end up as trash in watersheds and on beaches, and eventually as marine debris. Ultimately, we need to decrease our use of disposable items and reduce the importation and use of non-compostable items. Consumers and suppliers of non-reusable and non-compostable items should be the target of education and outreach activities on the benefits of reusable and compostable products as well as the impacts of marine debris. A multi-pronged approach is needed to reduce land-based debris in Hawaii's waterways, including passing legislation to minimize the continued use and production of single-use plastics, such as plastic bottles and Styrofoam food containers.

**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.

“Compostable” means all materials that comprise a single-use food service container or utensil 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 items must meet ASTM International standards 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.

“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 who provides prepared or ready to eat food, including farmers’ markets and stands, sporting events and non-profit fundraising efforts.

“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.

“Single-use food service container” means disposable products used by a food provider for serving or transporting prepared food that is not specifically designed and manufactured for multiple re-use. This includes but is not limited to plates, cups, trays, and hinged or lidded containers, straws, cup lids, and utensils.

#### **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.

#### **20.26.040 Restrictions of use**

- A. Except as provided in section 20.26.050 of this chapter, all food providers, retail or wholesale vendors, non-profit organizations and individuals are prohibited from dispensing prepared food to customers, donors, members or recipients in expanded polystyrene single-use disposable food service containers, plates, dishes, trays, cups, bowls, clamshells or other service containers or providing such expanded polystyrene single-use disposable food service ware to customers.
- B. Expanded Polystyrene single-use disposable food service ware 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 food using expanded polystyrene products or sale of disposable food containers.

- D. Wholesale and retail sales of single use expanded polystyrene products, except where a valid exemption has been granted, shall not be allowed after the effective dates of this bill.

**20.26.050 Exemptions.**

- A. Exemptions for food items filled and sealed out of state shall only apply to shelf stable food items that require specific packaging for product protection during shipment and commercially prepared frozen food, sold as components or raw ingredients with the intention of being thawed and/ or further prepared in a kitchen.
- B. Polystyrene foam coolers and ice chests that are specifically designed and manufactured for multiple re-use.
- C. Foam blocks or pieces used as protective packaging in shipping.
- D. A food provider applies for an exemption and the exemption is granted by the director for a specified product where no packaging alternative exists to a specific and necessary polystyrene or non-recyclable plastic food service container, for which there is not an alternative available or in use by any vendor selling a substantially similar product.
- E. Use of and/or sale of exempted single-use items for other food products, not expressly granted an exemption are subject to being fined and /or rescission of exemption for approved items.
- F. Any situation deemed by the Mayor or the County Council to be an emergency for the immediate preservation of the public peace, health, or safety.

**20.26.060 Violation and penalties.**

- A. Administrative rules for regulation and enforcement of this chapter shall be formulated by the Department of Environmental Management.
- B. Fines collected pursuant to this chapter shall be deposited into the Environmental Protection and Sustainability Division, Recycling Section, of the Department of Environmental Management

**20.26.070 Public information**

- A. Applications for rental, reservation or event permits (including camping, picnics, community center and other events in Maui County Parks) issued by the county shall include information about restrictions on use of expanded polystyrene products.
- B. Where applicable, a statement that the applicant recognizes and agrees to abide by these rules shall be part of the application. In the event that pre-existing applications forms for facility use are submitted, a separate instruction sheet shall be included and attached, with all restrictions clearly defined and a separate signature required.
- C. A penalty for use of prohibited items will be assessed. Photographs of their usage or expanded polystyrene container presence in trash receptacles post-event at County facilities shall be considered proof of violation and the permitted party shall be liable for such penalties.
- D. There shall be no differentiation between commercial, non-commercial and non-profit uses for the purpose of this bill.

- E. The Department shall maintain a publicly available list of current exemptions, including the name of the applicant and the specific food items carrying the exemption and effective dates for which the exemption is granted.

**20.27.80 Effective Date**

- A. This ordinance shall take effect 12 months after adoption by the Maui County Council.
- B. Wholesalers, distributors and retail sellers of the prohibited products shall cease sales to all customers within 8 months after adoption of this bill.