

# REQUEST FOR LEGAL SERVICES

**Date:** November 16, 2016  
**From:** Elle Cochran, Chair  
Infrastructure and Environmental Management Committee

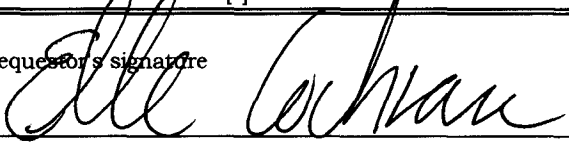
TRANSMITTAL

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

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

**Background Data:** Attached revised proposed bill establishes a new Chapter 20.26, Maui County Code, to restrict single-use expanded polystyrene food service containers. Please include the revised hard copy in your response.

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

Requestor's signature  Elle Cochran	Contact Person <u>Shelly Espeleta</u> (Telephone Extension: <u>7134</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): Friday, November 18, 2016, at noon.

REASON: For posting on November 28, 2016 IEM Committee 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)

iem:ltr:005acc01:ske  
Attachment

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

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

A BILL FOR AN ORDINANCE ESTABLISHING A  
NEW CHAPTER 20.26, MAUI COUNTY CODE,  
RESTRICTING THE USE AND SALE OF SINGLE-USE EXPANDED  
POLYSTYRENE FOOD SERVICE CONTAINERS

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

SECTION 1. Due to its lightweight nature and ability to break down into smaller fragments that persist for decades, expanded polystyrene is a distinct litter concern that has significant negative impacts on the environment, contributes to the potential death of marine animals and bird populations through ingestion, and is a suspected human carcinogen that can leach when exposed to hot liquids or foods.

The Council finds and declares that, to protect the health and welfare of the County's unique environment, its marine and avian life, and its people, single-use expanded polystyrene food service containers 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 20.26**

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

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.

**20.26.010 Purpose.** The purpose of this chapter is to reduce the negative impacts of single-use expanded polystyrene food service containers on the natural environment, economy, and health of County residents and visitors, and all wildlife; and encourage the use of environmentally preferred alternatives, such as containers made from recyclable and compostable materials.

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

“ASTM Standard” means the current ASTM International’s D6400 Standard Specification for Compostable Plastics, as amended.

“Compostable” means materials that are able to 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, disposable food service containers must meet the 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.

“Expanded 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, foam molding, and extrusion-blow molding (extruded foam polystyrene). The term does not include clear or solid polystyrene (oriented polystyrene).

“Food provider” means any entity 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.

“Prepared food” means any food or beverage prepared for consumption within the County using any cooking, packaging, or food preparation technique, including chopping, slicing, mixing, brewing, freezing, or squeezing, and requiring no further preparation to be consumed.

“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.

“Single-use expanded polystyrene food service container” means a disposable polystyrene product used to serve or transport prepared food and not specifically designed and manufactured for multiple re-use, including plates, trays, cups, bowls, cartons, and hinged or lidded containers (clamshells).

**20.26.030 Administration.** A. The director shall administer this chapter and 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 providing an estimate of the number of food providers using disposable food service containers that are recyclable or compostable.

**20.26.040 Prohibitions.** Except as provided in section 20.26.050 of this chapter:

A. Food providers are prohibited from transporting or providing food in single-use expanded polystyrene food service containers in the County.

B. Single-use expanded polystyrene food service containers may not be used at any County facility, County-managed concession, County-sponsored or County-permitted event, or County program.

C. Single-use expanded polystyrene food service containers may not be offered for sale or sold in the County.

**20.26.050 Exemptions.** A. This chapter shall not apply to any of the following:

1. Single-use expanded polystyrene food service containers for foods prepared and packaged entirely outside of the County.

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

3. Foam blocks or pieces used as protective packaging during shipping (i.e., packing peanuts).

4. Packaging in situations unique to the food provider where there are no reasonable alternatives to single-use expanded polystyrene food service containers, provided

the food provider applies for an exemption and such exemption is granted by the director.

5. Packaging in situations unique to the food provider, where compliance with this chapter would cause significant financial hardship, provided the food provider applies for an exemption and such exemption is granted by the director.

6. Packaging in any situation deemed by the mayor or the council to be an emergency requiring the immediate preservation of the public's peace, health, or safety.

B. The department shall maintain and make available to the public a list of exemptions, including items for which there are no affordable compostable or recyclable alternatives to a single-use expanded polystyrene food service container available.

**20.26.060 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 open space, natural resources, cultural resources, and scenic views preservation fund.

**20.26.070 Public information.** Restrictions in this chapter on the use of single-use expanded polystyrene food service containers shall 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.”

SECTION 3. This ordinance shall take effect on July 1, 2018.

APPROVED AS TO FORM  
AND LEGALITY:

RICHELLE THOMSON  
Deputy Corporation Counsel

iem:misc:005abill01:ske