

REQUEST FOR LEGAL SERVICES

Date: December 6, 2016
From: Elle Cochran, Chair
Infrastructure and Environmental Management Committee

TRANSMITTAL

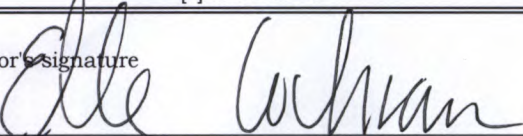
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Richelle Thomson, Esq.

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

Background Data: Please review and, if appropriate, approve as to form and legality, the attached revised proposed bill to establish a new Chapter 20.26, Maui County Code, to restrict the use and sale of polystyrene food service containers, passed with amendments at the November 28, 2016 meeting of the Infrastructure and Environmental Management Committee. The proposed bill incorporates amendments substituting "shall" for "may" at Section 20.26.040(C); and, substituting the "solid waste management fund" for "open space, natural resources, cultural resources, and scenic views preservation fund" at Section 20.26.060(B), as well as nonsubstantive revisions. 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): Wednesday, December 7, 2016, at 4:30 p.m.

REASON: For posting on December 16, 2016 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)

iem:ltr:005acc03: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
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, polystyrene has significant negative impacts on the environment, contributes to the potential death of marine animals and avian populations through ingestion, and is a suspected human carcinogen.

The Council finds and declares that, to protect the County's unique environment and the health and welfare of its marine and avian life and its people, 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

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.**
20.26.080 No conflict with federal or state law.

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 and limiting of the use of polystyrene food packaging by food providers; 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:

“Affordable” means purchasable for not more than 40 percent more than the purchase cost of an equivalent polystyrene food service container.

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

“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, such food service containers must meet ASTM Standard D6400 for compostable pPlastics, as amended.

“Department” means the department of environmental management.

“Director” means the director of environmental management.

“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.

“Polystyrene” means a thermoplastic petrochemical material utilizing a styrene monomer, including all polystyrene, meaning any styrene or vinyl chloride polymer which is blown into a foam-like material. Polystyrene may be 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).

“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, or otherwise prepared for consumption.

"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.

20.26.030 Administration. A. The director shall administer this chapter and adopt administrative rules pursuant to chapter 91, Hawaii Revised Statutes, within 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, the director shall submit to the council a report detailing compliance with this ordinance, including the number and type of exemptions granted.

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

A. Food providers shall not sell, use, provide, or offer the use of polystyrene food service containers.

B. Polystyrene food service containers shall 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 food service containers shall not be offered for sale or sold in the County.

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

A. Polystyrene food service containers for foods prepared and packaged entirely outside of the County but sold within the County.

B. Polystyrene food containers used for raw or butchered meats, poultry, fish, or eggs unless provided for consumption without further food preparation (for example, sashimi and poke).

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

D. Foam blocks or pieces used as protective packaging during shipping (for example, packing peanuts).

E. Packaging in situations unique to the type of food, where there are no reasonable alternatives to polystyrene food service containers, provided the food provider applies for an exemption and such exemption is granted by the director.

F. Packaging in situations unique to the food provider, where compliance with this chapter would cause significant financial hardship and there is no affordable alternative to polystyrene food service containers, provided the food provider applies for an exemption and such exemption is granted by the director.

G. Packaging 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 be in place until the emergency has ceased or the mayor has determined the exemption is no longer applicable to the situation.

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 solid waste management fund.

20.26.070 Public information. Restrictions in this chapter on the use of 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.

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

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

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

iem:misc:005abill02:ske

ORDINANCE NO. _____

BILL NO. _____ (2016)

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“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, such food service containers must meet ~~the~~ ASTM Standard D6400 for cCompostable pPlastics, as amendedfor compostability.

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20.26.030 Administration. A. The director shall administer this chapter and adopt administrative rules pursuant to chapter 91, Hawaii Revised Statutes, within 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, the director shall submit to the council a report detailing compliance with this ordinance, including the number and type of exemptions granted.

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

A. Food providers shall not sell, use, provide, or offer the use of polystyrene food service containers.

B. Polystyrene food service containers shall 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 food service containers ~~may~~shall not be offered for sale or sold in the County.

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

A. Polystyrene food service containers for foods prepared and packaged entirely outside of the County but sold within the County.

B. Polystyrene food containers used for raw or butchered meats, poultry, fish, or eggs unless provided for consumption without further food preparation (~~e.g. for example~~, sashimi and poke).

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E. Packaging in situations unique to the type of food, where there are no reasonable alternatives to polystyrene food

service containers, provided the food provider applies for an exemption and such exemption is granted by the director.

F. Packaging in situations unique to the food provider, where compliance with this chapter would cause significant financial hardship and there is no affordable alternative to polystyrene food service containers, provided the food provider applies for an exemption and such exemption is granted by the director.

G. Packaging 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 be in place until the emergency has ceased or the mayor has determined the exemption is no longer applicable to the situation.

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 solid waste management fund.

20.26.070 Public information. Restrictions in this chapter on the use of 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.

20.26.080 No conflict with federal or state law. Nothing in this Ordinance-chapter shall be interpreted or applied so as to create any requirement or duty in conflict with any federal or state law."

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

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel

County of Maui

~~APPROVED AS TO FORM
— AND LEGALITY:~~

RICHELLE THOMSON
~~Deputy Corporation Counsel~~
~~LF2014-3081~~[iem:misc:005abil02:ske](#)