

DANNY A. MATEO
County Clerk



JOSIAH K. NISHITA
Deputy County Clerk

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

December 28, 2016

RECEIVED
2016 DEC 29 AM 11:58
OFFICE OF THE
COUNTY COUNCIL

Honorable Elle Cochran, Chair
Infrastructure Management Committee
Council of the County of Maui
Wailuku, Hawaii 96793

Dear Chair Cochran:

SUBJECT: COMMITTEE REPORT NO. 16-204

At its meeting of December 16, 2016, the Council of the County of Maui adopted Committee Report No. 16-204. However, in adopting the committee report, Bill No. 127 (2016) was amended prior to passage on first reading.

Respectfully transmitted for your files is a copy of Bill No. 127 (2016), which was passed on first reading and ordered to print.

Respectfully,

A handwritten signature in black ink that reads "Danny A. Mateo". The signature is written in a cursive style with a long, sweeping flourish extending upwards and to the right.

DANNY A. MATEO
County Clerk

/jym

Enclosure

COUNCIL OF THE COUNTY OF MAUI
INFRASTRUCTURE AND
ENVIRONMENTAL MANAGEMENT
COMMITTEE

December 16, 2016

Committee
Report No. 16-204

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Infrastructure and Environmental Management Committee, having met on October 31, 2016, and November 28, 2016, makes reference to County Communication 13-29, from Councilmember Michael P. Victorino, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.26, MAUI COUNTY CODE, PERTAINING TO POLYSTYRENE DISPOSABLE FOOD SERVICE CONTAINERS."

The purpose of the proposed bill is to prohibit the use of disposable polystyrene food service containers by food providers in Maui County.

Your Committee notes the Council's Infrastructure and Environmental Management Committee (2013-2015 Council term) met on this matter on July 28, 2014, November 17, 2014, and December 5, 2014.

The Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.26, MAUI COUNTY CODE, RESTRICTING THE USE AND SALE OF POLYSTYRENE FOOD SERVICE CONTAINERS." The purpose of the revised proposed bill is to restrict the use and sale of disposable polystyrene food service containers in Maui County.

Your Committee notes an informal task force, led by Councilmember Victorino was formed in 2014, made up of environmental advocates, food providers, manufacturers and wholesalers of disposable food service containers, and officials from the Department of Environmental Management and Office of the Mayor. The group met on

COUNCIL OF THE COUNTY OF MAUI
INFRASTRUCTURE AND
ENVIRONMENTAL MANAGEMENT
COMMITTEE

Page 2

Committee
Report No. 16-204

August 27, 2014, August 28, 2014, September 8, 2014, and September 22, 2014.

The scope of the task force included: 1) clarifying the bill's purpose; 2) identifying the materials, containers, foods, and food providers subject to the bill; 3) identifying the bill's potential impacts on food providers and County programs; 4) evaluating the bill's proposed exemptions; and 5) reviewing the reporting requirements of the administering agency.

The task force reported its findings and recommendations to the Committee on November 17, 2014. The revised proposed bill incorporates language recommended by the task force.

Your Committee notes numerous testifiers submitted public and written testimony in support of the revised proposed bill.

A representative from the Department of Environmental Management said additional funds will be needed for educational programs and outreach to increase the County's awareness on the restricted use and sale of polystyrene food service containers. The Department intends to request \$50,000 in the Fiscal Year 2018 Budget.

Your Committee recommended fines collected be deposited into the Solid Waste Management Fund instead of the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund. Monies collected would support enforcement personnel and operational requirements of the Department to ensure compliance.

Your Committee discussed the relatively small price difference between polystyrene food service containers and their compostable alternatives. Food providers have the option to recoup costs by transferring the price difference to the consumer.

COUNCIL OF THE COUNTY OF MAUI
INFRASTRUCTURE AND
ENVIRONMENTAL MANAGEMENT
COMMITTEE

Page 3

Committee
Report No. 16-204

Your Committee expressed concern with a proposed exemption allowing polystyrene food service containers for food prepared and packaged entirely outside of the County, but sold within the County. Your Committee inquired whether the exemption would raise any constitutional concerns.

Your Committee has received an opinion, dated December 5, 2016, from the Department of the Corporation Counsel, advising that the bill as drafted should survive Commerce Clause scrutiny, assuming the Council's policy decision is premised on a science-based public purpose and the burden on interstate commerce is not excessive.

Your Committee notes the lengthy public record of deliberations on the bill, including ample testimony from scientists, is replete with scientific bases for the Council's policy decision to restrict the use and sale of disposable polystyrene food service containers in Maui County.

The bill's preamble states:

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.

Your Committee further notes it has researched the effect of similar restrictions in other municipalities and concludes the bill would not impose an excessive burden on interstate commerce.

COUNCIL OF THE COUNTY OF MAUI
INFRASTRUCTURE AND
ENVIRONMENTAL MANAGEMENT
COMMITTEE

Page 4

Committee
Report No. 16-204

Your Committee noted the effective date of July 1, 2018, allows ample time for food providers and other businesses to deplete their remaining inventory of polystyrene containers prior to the ordinance going into effect.

Your Committee discussed the need for an anti-litter campaign to address littering as an ongoing issue regardless of the type of materials being restricted for use.

Your Committee voted 5-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Cochran, Vice-Chair Hokama, and members Carroll, Guzman, and White voted "aye." Committee members Baisa and Crivello were excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's substantive revisions, and other nonsubstantive revisions.

Your Infrastructure and Environmental Management Committee **RECOMMENDS** the following:

1. That Bill 127 (2016), as revised herein and attached hereto, entitled "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 PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 13-29 be FILED.

COUNCIL OF THE COUNTY OF MAUI
**INFRASTRUCTURE AND
ENVIRONMENTAL MANAGEMENT
COMMITTEE**

Page 5

**Committee
Report No. 16-204**

This report is submitted in accordance with Rule 8 of the Rules of the Council.



ELLE COCHRAN, Chair

iem:cr:16005aa:ske

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that the recommendations contained in COMMITTEE REPORT NO. 16-204 were adopted by the Council of the County of Maui, State of Hawaii, on the 16th day of December, 2016, by the following vote:

MEMBERS	Michael B. WHITE Chair	Donald S. GUZMAN Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	S. Stacy CRIVELLO	G. Riki HOKAMA	Michael P. VICTORINO
ROLL CALL	Aye	Aye	Excused	Aye	Aye	Aye	Aye	Aye	Aye

Bill No. 127 (2016) was amended prior to passage on first reading.



COUNTY CLERK

ORDINANCE NO. _____

BILL NO. 127 (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.**
20.26.090 **Council review.**

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 plastics, 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 containers used for raw or butchered meats, poultry, fish, or eggs unless provided for consumption without further food preparation (for example, 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 (for example, packing peanuts).

D. 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.

E. Packaging in situations unique to the food provider, where compliance with this chapter would cause significant

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.

F. 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.

20.26.090 Council review. The Council shall review this ordinance in 2021."

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

APPROVED AS TO FORM AND LEGALITY:


~~RICHELLE M. THOMSON~~

Department of the Corporation Counsel
County of Maui

paf:ske:16-196a

DIGEST

ORDINANCE NO. _____
BILL NO. 127 (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

This bill proposes to amend the Maui County Code, by adding a new chapter to be designated as Chapter 20.26, Polystyrene Food Service Containers, to restrict the use and sale of disposable polystyrene food service containers in the County.

I, DENNIS A. MATEO, County Clerk of the County of Maui, State of Hawaii, DO HEREBY CERTIFY that the foregoing BILL NO. 127 (2016) was passed on First Reading by the Council of the County of Maui, State of Hawaii, on the 16th day of December, 2016, by the following vote:

AYES: Councilmembers Robert Carroll, Eleanora Cochran, Donald G. Couch Jr., S. Stacy Crivello, G. Riki Hokama, Michael P. Victorino, Vice-Chair Donald S. Guzman, and Chair Michael B. White.

NOES: None.

EXCUSED: Councilmember Gladys C. Baisa.

DATED at Wailuku, Maui, Hawaii, this 28th of December, 2016.



DENNIS A. MATEO, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk, County of Maui, for use and examination by the public.