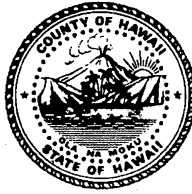


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 13
(DRAFT 4)

ORDINANCE NO. 17 63

AN ORDINANCE AMENDING CHAPTER 20, OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), BY ADDING A NEW ARTICLE RELATING TO REDUCTION OF POLYSTYRENE FOAM "STYROFOAM" FOOD CONTAINERS AND FOOD SERVICE WARE.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Chapter 20, Hawai'i County Code 1983 (2016 Edition, as amended), is amended by adding a new article to be appropriately designated and to read as follows:

"Article __. Polystyrene Foam Food Container and Food Service Ware Reduction.

Division 1. General Provisions.

Section 20-__. Findings and purpose.

Solid waste that is nondegradable or nonrecyclable poses unique problems for an island in the middle of the Pacific Ocean. Disposal of such waste either takes up valuable air space in existing landfills or ends up as litter, sometimes in our marine environment.

Polystyrene foam, sometimes incorrectly referred to as "Styrofoam," is neither degradable nor compostable. It is made from non-renewable fossil fuels and synthetic chemicals that can leach out over time into the environment, especially after contact with hot, greasy, or acidic foods. When discarded, polystyrene foam often breaks into tiny pieces, is mistaken for food and ingested by land and marine animals, including birds and fish. This is detrimental not only to wildlife but to other life forms in the food chain.

In view of the detrimental impacts of this substance in Hawai'i County, it is the purpose of this article to: reduce the use of polystyrene foam food containers and food service ware by supermarkets and other vendors; eliminate the use of polystyrene foam for packaging prepared and unprepared food; and thereby promote the use of environmentally preferable alternatives.

Although foods packaged outside of the limits of Hawai'i County are excluded from the provisions of this article, the purveyors of foods prepackaged outside of the limits of Hawai'i County are encouraged to follow these provisions and thereby support the County's policy goal to eliminate the use of polystyrene foam disposable food service ware.

Implementation of this ban will maximize diversion of compostables, including compostable foodware, from the waste stream to be available as compost to farmers, landscapers, and residents. Accordingly, this ordinance is being implemented in tandem with the County's full-scale compost program.

Through these measures, it is the Council's intent to improve environmental quality on the island and in the neighboring marine environment. Reduction of the amount of nondegradable and nonrecyclable waste that enters the waste stream is consistent with and furthers the goals and policies expressed in this County's general plan, integrated resource and solid waste management plan, and its adopted zero waste policy as well as promotes the health, safety, and welfare of the County and its residents.

Section 20-__ . Administration.

The director of the department of environmental management shall administer this article.

Section 20-__ . Definitions.

As used in this article, unless otherwise specified:

"ASTM standard" means the standards of the American Society for Testing and Materials International Standards D6400 or D6868 for biodegradable and compostable plastics.

"Biodegradable" means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal. It is the ability of organic matter to break down from a complex to a more simple form.

"Compostable" means all materials in the product or package will break down, or otherwise become part of usable compost (e.g., soil-conditioning material, mulch) in an appropriate composting program or facility. Compostable disposable food service ware includes ASTM-standard bio-plastics (plastic-like) products that are clearly labeled so that any compost collector and processor can easily distinguish the ASTM-standard compostable plastic from non-ASTM standard compostable plastic.

"County facility" means any building, structure, or vehicle owned and operated by the County, its agents, agencies, and departments and includes County buildings, structures, parks, recreation facilities, or property.

"County facility users" means all persons, societies, associations, organizations, or special event promoters who require a permit to reserve or rent a County facility or a permit or contract to use a sidewalk or roadway. County facility users also include concession contracts with the County, County managed concessions, County sponsored events and food services provided at County expense.

"Customer" means a person obtaining prepared food from a food provider.

“Director” means the director of the department of environmental management or the director’s authorized representative.

“Disposable food service ware” means disposable food containers that are commonly disposed of after a single use, that are used, or are intended to be used, to serve or transport prepared, ready-to-consume food or beverages. This includes, but is not limited to:

- (1) Service ware for takeout foods and/or leftovers from partially consumed meals prepared by a food vendor; and
- (2) Containers that are intended for single use, such as cups; bowls; plates; trays; cartons; or containers that are hinged, lidded, or clamshell.

For the purpose of this article, “disposable food service ware” excludes straws, cup lids, utensils, and packaging for unprepared food.

“Food packaging” means all food-related wrappings, bags, boxes, containers, bowls, plates, trays, cartons, cups, lids, or drinking utensils, in which food or beverage is placed or packaged on the retail food establishment’s premises, and which are not intended for reuse. Food packaging does not include forks, spoons, knives, straws, stirrers, or single-service condiment packages.

“Food provider” means any vendor, business, organization, entity, group, or individual operating in the County which provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, supermarket, delicatessen, caterer, catering truck or vehicle; and any organization, group or individual which provides food in conjunction with services.

“Food service ware” includes plates, bowls, cups, lids, straws, stirrers, forks, spoons, knives, napkins, trays, and other items primarily designed for use in consuming food.

“Food vendor” means any retail food establishment.

“Polystyrene foam” means a thermoplastic petrochemical material utilizing the styrene monomer, which may be marked with resin symbol #6, processed by any number of techniques including, but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene), sometimes referred to as “Styrofoam,” a Dow Chemical Company trademarked form of polystyrene foam insulation. In food service, polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons intended for a single use. “Polystyrene foam” does not include solid hard polystyrene.

“Prepared food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared for consumption by a retail consumer on the premises of a retail food establishment, including, but not limited to, beverages, ready to eat, and takeout food. “Prepared food” does not include raw, butchered meats, fish and/or poultry unless provided for consumption without further food preparation. For example, sashimi and poke shall be considered to be prepared food.

“Recyclables” means material that has reached the end of its current use and is processed into material utilized in the production of new products. For the purpose of this article, recyclable materials will include only those types of plastic being accepted in the Hawai‘i County Recycling program.

“Retail food establishment” means any sales outlet, store, shop, vehicle, or other place of business which sells or conveys foods or beverages to consumers, which foods or beverages are contained, wrapped, or held in or on food packaging. “Retail food establishment” shall include, but not be limited to, any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured, and sold or offered for sale, including, but not limited to a: restaurant; drive-in; coffee shop; cafeteria; short-order café; delicatessen; luncheonette; grill; sandwich shop; soda fountain; bed and breakfast; inn; tavern; bar; cocktail lounge; nightclub; roadside stand; take-out prepared food place; industrial feeding establishment; catering kitchen; mobile food preparation unit; commissary; grocery store; public food market; produce stand; food stand; or any other place in which food and drink is prepared for sale or for service on the premises or elsewhere; and any other establishment or operation where food is processed, prepared, served, or provided to or for consumers for charge.

Section 20-__ . Construction and preemption.

Any provision of this article shall be null and void upon the adoption of any state or federal law or regulation imposing the same, or essentially the same, limits on the use of prohibited products as set forth in this article. This article is intended to be a proper exercise of the County’s police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-county or inter-state commerce. It shall be construed with that intent.

Division 2. Prohibitions and Requirements.

Section 20-__ . Prohibitions.

Food vendors are prohibited, as of July 1, 2019, from providing food to a customer in disposable food service ware that is made from polystyrene foam.

Section 20-__ . Required use of recyclable or compostable food service ware.

- (a) As of July 1, 2019, all food vendors using any disposable food service ware shall use a suitable recyclable or compostable product.
- (b) As of July 1, 2019, all county facility users shall use a suitable recyclable or compostable product for disposable food service ware.

“Section 20-__ . Exemptions.

- (a) The following are exempt from the provisions of this article:
 - (1) Foods packaged outside the limits of the County of Hawai‘i;
 - (2) Coolers and ice chests that are intended for reuse; and
 - (3) Packaging for raw meat, fish, and eggs that have not been further processed.
- (b) County facility users and food vendors.

- (1) The director may exempt a food vendor or County facility user from the provisions of this article, in a situation where compliance with the terms of this article would result in undue hardship. The exemption shall be in place for a period of time not to exceed one hundred eighty days.
 - (2) Undue hardship includes, but is not limited to, situations unique to the food vendor or County facility user that generally do not apply to other persons in similar circumstances.
 - (3) Food vendors and County facility users seeking an exemption from the requirements of this article shall provide all required information on an application for exemption, including but not limited to, documentation supporting the applicant's claim that compliance with this article will result in undue hardship.
 - (4) The director may approve or deny an exemption request in whole or in part. Applicants may appeal the director's decision to the environmental management commission.
 - (5) All exemptions shall be promptly posted on the County website for the department of environmental management as a notice of temporary exemption.
- (c) Emergency supplies or services procurement.
The mayor may exempt County facility users and food vendors from the provisions of this article, in a situation deemed by the mayor to be an emergency that necessitates such exemption in order to preserve the public peace, health, and safety. The exemption shall be in place until the mayor determines that the emergency situation has ceased and the exemption is no longer needed to preserve the public peace, health, and safety.

Division 3. Enforcement.

Section 20- __. Enforcement process.

If the director determines that a violation of this article has occurred, the director shall take appropriate enforcement action. Enforcement actions, including the holding of contested case hearings, shall be conducted pursuant to section 2-204 of this Code and chapter 91 of the Hawai'i Revised Statutes.

Section 20- __. Penalties.

- (a) A fine may be imposed upon findings made by the director that any food vendor or County facility user has used polystyrene-based disposable food service ware in violation of this article. Each day on which any food vendor or County facility user has sold or transferred disposable food service ware made from polystyrene foam shall constitute a separate violation of this article.
- (b) Food vendors shall be subject to an administrative fine for each separate violation as follows:
 - (1) A fine of \$10 for a first violation;
 - (2) A fine of \$50 for a second violation; and
 - (3) A fine not exceeding \$200 for a third and any subsequent violation.

- (c) Food vendors and County facility users who violate this article in connection with commercial or non-commercial special events shall be assessed fines for each special event as follows:
- (1) A fine of \$10 for a first violation;
 - (2) A fine of \$50 for a second violation; and
 - (3) For a third and any subsequent violation:
 - (A) A fine not to exceed \$100 for an event of one to 200 persons;
 - (B) A fine not to exceed \$200 for an event of 201 to 400 persons;
 - (C) A fine not to exceed \$400 for an event of 401 to 600 persons; and
 - (D) A fine not to exceed \$600 for an event of 600 or more persons.
- (d) Failure to pay fine.
Fines not paid within thirty days from the date appearing on the notice of the fine or of the notice of determination of the director after the hearing, shall be collected in compliance with section 2-204(e) of this Code.

Section 20-__ . Other relief.

- (a) The County corporation counsel may seek legal, injunctive, or other equitable relief to enforce this article.
- (b) The remedies provided herein are cumulative and not exclusive.
- (c) All fines and other enforcement actions may be appealed as provided in sections 2-204 and 2-207 of this Code.

Section 20-__ . Education.

On or before January 1, 2019, the director shall establish an education program for businesses, nonprofit organizations, and the general public regarding compostable alternatives to polystyrene foam disposable food service ware.”

SECTION 2. Severability. If any provision of this ordinance or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 3. This ordinance shall take effect upon approval.

INTRODUCED BY:

Eileen O'Hara
COUNCIL MEMBER, COUNTY OF HAWAI'I

 Kona , Hawai'i
Date of Introduction: March 8, 2017
Date of 1st Reading: September 7, 2017
Date of 2nd Reading: September 20, 2017
Effective Date: September 29, 2017

OFFICE OF THE COUNTY CLERK
County of Hawai'i
Kona, Hawai'i

COUNTY CLERK
COUNTY OF HAWAII

2017 SEP 29 PM 4:11

(Draft 4)

Introduced By: Eileen O'Hara
Date Introduced: March 8, 2017
First Reading: September 7, 2017
Published: September 16, 2017

REMARKS: March 8, 2017 - Postponed
July 7, 2017 - Referred to the
Environmental Management Commission

Second Reading: September 20, 2017
To Mayor: September 28, 2017
Returned: September 29, 2017
Effective: September 29, 2017
Published: October 14, 2017

REMARKS: _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung		X		
David	X			
Eoff	X			
Kanuha	X			
Lee Loy		X		
O'Hara	X			
Poindexter	X			
Richards	X			
Ruggles	X			
	7	2	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung		X		
David	X			
Eoff	X			
Kanuha	X			
Lee Loy		X		
O'Hara	X			
Poindexter	X			
Richards	X			
Ruggles	X			
	7	2	0	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

Alexander J. Poindexter

COUNCIL CHAIRPERSON

Jill Kala

COUNTY CLERK

~~Approved~~ Disapproved this 29th day
of September, 20 17.

Harry Kim
MAYOR, COUNTY OF HAWAII

Bill No.: 13 (Draft 4)

Reference: C-107.165/EMC-1

Ord No.: 17 63