

BILL NO. 83
(DRAFT 2)

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 20 OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO PLASTIC AND POLYSTYRENE WASTE.

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

SECTION 1. Findings and purpose. The Council finds that the production, consumption, and end-of-life management of disposable foodware and serviceware has significant environmental impacts including greenhouse gas emissions, litter, marine pollution, environmental contamination, harm to wildlife, the depletion of precious natural resources, decrease of biodiversity, and the generation of hard-to-manage waste.

The purpose of this ordinance is to reduce disposable plastic or polystyrene foodware and serviceware in the County of Hawai'i, in alignment with the goals set forth by the County's Zero Waste Plan and with the State of Hawai'i's Aloha+ Challenge Solid Waste Reduction Goals.

SECTION 2. Chapter 20, article 1, section 20-01-03, of the Hawai'i County Code 1983 (2016 Edition, as amended) is amended by repealing the following definitions:

~~“[“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 a municipal or industrial composting facility. Compostable disposable food service ware includes ASTM standard paper/fiber and bio-plastics (plastic-like) products that are clearly labeled either on individual food service ware or packaging for food service ware so that any compost collector and processor can easily distinguish the ASTM standard compostable material from non-ASTM standard compostable material. Required certification of compostable food service ware shall be done by independent third party organization Biodegradable Products Institute or similar ASTM recognized certifier.]”~~

~~“[“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, cups, bowls, plates, or clamshell containers that are provided by a food vendor for takeout foods and beverages and/or leftovers from partially consumed meals, and excludes straws, cup lids, utensils, food-related bags and wrappers, packaging for unprepared food, and pre-packaged or pre-sealed items such as bread, cookies, milk, juice, snacks, candy, nuts, fruits, vegetables, or other items typically sold in a grocery store or a food manufacturer's retail location.]”~~

~~“[“Polystyrene foam,” sometimes referred to as “Styrofoam,” a Dow Chemical Company trademarked product, 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). 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.]”~~

~~“[“Food providers” means any vendor, business, organization, nonprofit 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.]”~~

SECTION 3. Chapter 20, article 1, section 20-01-03, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is further amended by adding definitions to be appropriately inserted and to read as follows:

““ASTM Standard” means the technical standard most recently published by ASTM International, Inc., 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959.”

““BPI certification mark” means the registered trademark of International Biodegradable Products Institute, Inc., 888c 8th Avenue, Suite 141, New York, NY 10019-8511, used to label a product as compostable.”

““CMA-certified” means certified by Compost Manufacturing Alliance, LLC, 1540 Retsil Road SE, Port Orchard, WA 98366-4175, as compliant with ASTM Standards D6400 or D6868.”

““Disposable” means designed to be discarded after a single use or a limited number of uses.”

““Food provider” means a person, business, or other establishment that sells or provides prepared food to the public.”

““Foodware” refers to items used to hold, store, or contain food or drink, such as cups, lids, covers, plates, bowl, trays, or other containers, but does not include wrappers, bags, bottles, or cartons.”

““Plastic” means a synthetic, polymeric petrochemical or other hydrocarbon-derived compound, not including bioplastics and other naturally-derived, bioactive, or biodegradable plastics.”

““Polystyrene” means a thermoplastic petrochemical compound composed of styrene monomers.”

““Pre-packaged food” means food or drink that is prepared and sealed, contained, wrapped, or packaged prior to distribution.”

““Reusable” refers to foodware or serviceware that is repeatedly returned to the food service provider or to a reuse service provider for reuse and is:

- (a) Explicitly designed and marketed to be used multiple times for the same product or for another foodware use in a supply chain without undergoing a change in form;
- (b) Designed for durability to function in its original condition to ensure the foodware can be conveniently and safely reused for multiple cycles;
- (c) Part of an established system to be repeatedly recovered, inspected, cleaned, and reissued into the supply chain for reuse for multiple cycles; and
- (d) Not constructed of polystyrene or plastic for the base of the container that is in primary contact with food or drink.”

““Serviceware” refers to implements used in the consumption of food or drink, such as a fork, spoon, stirrer, straw, or knife.”

SECTION 4. Chapter 20, article 1, section 20-01-03, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is further amended by amending the following definitions to read as follows:

““County facility” means any property, 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:], and franchisees.”

““County facility users” means [all persons, societies, associations, organizations, or special event promoters who require a permit to reserve or rent a Count facility or a permit or contract to use a sidewalk or roadway. County facility users also include] any person using a County facility for commercial purposes, including, but not limited to, concession contracts with the County, County managed concessions, County sponsored events, and food services provided at County expense.”

““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 food provider, including, but not limited to, beverages, ready-to-eat, and takeout food. Prepared food does not include raw: eggs; butchered meats; fish; and/or poultry unless provided for consumption without further food preparation or heating. For example, sashimi and poke shall be considered to be prepared food. This also does not include pre-packaged or pre-sealed items such as breads, cookies, milk, juice, snacks, candy, nuts, fruits, vegetables, or other items typically sold in a grocery store or a food manufacturer’s retail location.] food or drink

that is cooked, served, packaged, or otherwise prepared at the request of a customer for immediate consumption with no heating, cooking, or other preparation required after sale to be safe for human consumption.”

SECTION 5. Chapter 20, article 5, of the Hawai‘i County Code 1983 (2016 edition, as amended) is amended to read as follows:

**“Article 5. ~~[Polystyrene Foam Food Container and Food Service Ware Reduction.]~~
Disposable Plastic and Polystyrene Reduction.**

Section 20-05-01. Prohibition.

~~[Food providers and County facility users are prohibited from providing food in disposable food service ware that is made from polystyrene foam.]~~

Any food provider, County facility user, or organization hosting an event with County grant funds may not sell, distribute, use, or otherwise provide to the public:

- (1) Disposable foodware made from polystyrene or plastic; or
- (2) Disposable serviceware made from polystyrene or plastic.

Section 20-05-02. Use of ~~[reyclable]~~ reusable or compostable ~~[food service ware]~~ foodware and serviceware required.

~~[(a) All food vendors using any disposable food service ware shall use a suitable recyclable or compostable product.~~

~~[(b) All County facility users shall use a suitable recyclable or compostable product for disposable food service ware.]~~

Any food provider, business, or County facility user selling, distributing, or otherwise providing prepared food to the public shall do so using disposable foodware or with disposable serviceware that is CMA-certified or visibly labeled as compostable with a BPI certification mark, or foodware or serviceware that is reusable.

Section 20-05-03. Exemptions.

(a) The following are exempt from the provisions of this article:

- ~~(1) [Foods packaged outside the limits of the County of Hawai‘i;]~~ Pre-packaged foods;
- (2) Coolers and ice chests that are intended for reuse; and
- (3) Food packaging for raw: meat; poultry; seafood; and eggs that have not been further processed.

(b) County facility users and food ~~[vendors.]~~ providers.

- (1) The director may exempt a food ~~[vendor]~~ provider 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]~~ provider or County facility user that generally do not apply to other persons in similar circumstances.

- (3) Food ~~[vendors]~~ providers 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 as specified by the director 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 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]~~ providers 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.

Section 20-05-04. Enforcement and special provisions.

- (a) Notwithstanding anything to the contrary, violations of this article shall be subject to a fine per day for each day in which the violation persists. In all respects not otherwise provided for, the director shall enforce this article in accordance with section 20-02-22.
- (b) A violation of this article in connection with a special event incurs:
 - (1) A fine of \$200 for the first violation;
 - (2) A fine of \$400 for the second violation; and
 - (3) For any subsequent violation, a fine not to exceed:
 - (A) \$400, in the case of an event of no more than two hundred persons;
 - (B) \$600, in the case of an event of more than two hundred persons but not more than four hundred persons;
 - (C) \$800, in the case of an event of more than four hundred persons but not more than six hundred persons; or
 - (D) \$1,000, in the case of an event of more than six hundred persons.

For the purposes of this section, "special event" means an event or occasion that is outside of the normal or regular activities of the host or the participants.
- (c) In assessing a fine under subsection (b), the director shall determine the applicable number of persons with respect to the special event.
- (d) The director may suspend enforcement of this article whenever, in the opinion of the director, compliance with this article in connection with a special event is unfeasible due to a shortage of compliant items or materials.
- (e) All fines assessed under this section shall be deposited into the solid waste fund.

Section 20-05-05. Education program.

The director, in consultation with the sustainability administrator, shall establish and maintain an education and public information program regarding alternatives to disposable foodware and serviceware."

SECTION 6. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 7. Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material, and underscoring need not be included.

SECTION 8. This ordinance shall take effect one year after its approval.

INTRODUCED BY:

Sp
for:



COUNCIL MEMBER, COUNTY OF HAWAI'I

Sp
for:



COUNCIL MEMBER, COUNTY OF HAWAI'I

_____, Hawai'i
Date of Introduction:
Date of 1st Reading:
Date of 2nd Reading:
Effective Date:

REFERENCE Comm. 482.10