

ORDINANCE NO. 4457

BILL NO. 127 (2016)  
Draft 2

A BILL FOR AN ORDINANCE ESTABLISHING A  
NEW CHAPTER 20.26, MAUI COUNTY CODE,  
RESTRICTING THE USE AND SALE OF  
POLYSTYRENE FOAM 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 foam has significant negative impacts on the environment, and contributes to the potential death of marine animals and avian populations through ingestion.

The council finds and declares that, to protect the County's unique environment and the health and welfare of its marine and avian life, polystyrene foam 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 FOAM FOOD SERVICE CONTAINERS**

**Sections:**

<b>20.26.010</b>	<b>Purpose.</b>
<b>20.26.020</b>	<b>Definitions.</b>
<b>20.26.030</b>	<b>Administration.</b>
<b>20.26.040</b>	<b>Prohibitions.</b>
<b>20.26.050</b>	<b>Exemptions.</b>
<b>20.26.060</b>	<b>Violation and penalties.</b>
<b>20.26.070</b>	<b>Public information.</b>
<b>20.26.080</b>	<b>No conflict with federal or state law.</b>

**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 foam 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 foam 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 foam” means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by techniques including fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam does not include clear or solid polystyrene (oriented 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, and 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 foam.

**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:

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

B. Polystyrene foam 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 foam 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 foam food containers used for raw or butchered meats, poultry, fish, or eggs unless provided for consumption without further food preparation (e.g., 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 (e.g., packing peanuts).

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

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 foam 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 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 December 31, 2018

APPROVED AS TO FORM  
AND LEGALITY:



RICHELLE THOMSON  
Deputy Corporation Counsel  
LF2016-1832

WE HEREBY CERTIFY that the foregoing BILL NO. 127 (2016), Draft 2


i. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 18th day of May, 2017, by the following vote:

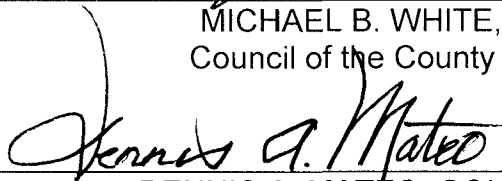
Michael B. WHITE Chair	Robert CARROLL Vice-Chair	Alika ATAY	Eleanora COCHRAN	S. Stacy CRIVELLO	Donald S. GUZMAN	G. Riki HOKAMA	Kelly T. KING	Yuki Lei K. SUGIMURA
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 23rd day of May, 2017.


DATED AT WAILUKU, MAUI, HAWAII, this 23rd day of May, 2017.

RECEIVED  
2017 MAY 23 PM 2:03  
OFFICE OF THE CLERK

  
MICHAEL B. WHITE, CHAIR  
Council of the County of Maui

  
DENNIS A. MATEO, COUNTY CLERK  
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 5 DAY OF June, 2017.

  
ALAN M. ARAKAWA, MAYOR  
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 4457 of the County of Maui, State of Hawaii.

  
DENNIS A. MATEO, COUNTY CLERK  
County of Maui

Passed First Reading on December 16, 2016  
Effective date of Ordinance December 31, 2018

RECEIVED  
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OFFICE OF THE COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 4457, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

\_\_\_\_\_  
County Clerk, County of Maui