

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

COUNTY OF MAUI

Adoption of Title 17, Subtitle 04, Chapter 402

County of Maui Administrative Rules

1. Title 17, Subtitle 04, Chapter 402, County of Maui Administrative Rules, entitled "Rules Relating to Polystyrene Foam Food Service Containers", is amended to read as follows:

"COUNTY OF MAUI ADMINISTRATIVE RULES

TITLE MC-17

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

SUBTITLE 04

ENVIRONMENTAL PROTECTION & SUSTAINABILITY

CHAPTER 402

RULES RELATING TO [POLYSTYRENE FOAM FOOD SERVICE CONTAINERS]
PLASTIC DISPOSABLE FOODWARE

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§17-402-1 Title. The rules of this chapter shall be known as the “Rules Relating to [Polystyrene Foam Food Service Containers] Plastic Disposable Foodware”. [Eff 01/01/2022] (Auth: HRS §§91-2, 46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.030(A) (Imp: HRS §91-2)

§17-402-2 Purpose. These rules shall govern administrative procedures related to chapter 20.26, Maui County Code. [Eff 01/01/2022] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.010) (Imp: HRS §91-2, MCC §20.26.010)

§17-402-3 Definitions. For the purpose of these rules, unless it is plainly evident from the context that a different meaning is intended, the words and phrases used herein are defined as follows:

“Affordable” means that a non-polystyrene foam food service container costs less than 140 percent of the 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 can 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 plastic, 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 or the director’s authorized representative.

“Disposable” means something designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple re-use.”

“Foodware” means food service containers and utensils.

“Food provider” means any [entity or] person providing prepared food for consumption within the County, including without limitation 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.

“Plastic” means any material made, in whole or in part, from petroleum or petrochemical compounds, including so-called biodegradable products, where any portion is not compostable. “Plastic” also means all forms of polystyrene, polyethylene, polypropylene, and polycarbonate, or petrochemical polymeric compounds and additives that can be shaped by flow.

“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).

“Prepackaged food” means food and beverages contained in plastic disposable foodware that has been filled and sealed entirely outside the County or in a manner intended to prevent the food or beverage from having any direct human contact, such as shelf-stable food and beverages; condiment packets, poi bags, musubi wraps, plastic film, chip bags, cookie and cracker wrappers, bread bags, meal kits, ice bags; beverage-related bottles or cartons; packaging for unprepared food; and packaging for wholesale distribution of prepared food, baked goods, and dairy products. “Prepackaged foods” include “grab-and-go” prepackaged foods such as bentos, salads, and sandwiches. “Prepackaged foods” excludes prepared foods packaged and intended for immediate consumption (e.g., food purchased from a fast food establishment, food truck, or stand).

“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. “Prepared food” includes restaurant-style food and beverages that are packaged after being ordered and ready for consumption without further preparation.

“Shelf-stable food” means prepared food that can be stored at room temperature and does not require refrigeration, freezing, or heating for food safety purposes.”

“Utensils” means implements used in the consumption of food or drink, such as forks, knives, spoons, straws, coffee stirrers, cocktail picks, and chopsticks, excluding those contained within or attached to prepackaged food. [Eff 01/01/2022] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.020)

§17-402-4 Prohibition. Unless exempt under §17-402-5:

- (1) Food providers shall not sell, use, provide, or offer the use of [polystyrene foam food service containers.] plastic disposable foodware.
- (2) [Polystyrene foam food service containers] Plastic disposable foodware 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.

- (3) Polystyrene foam food service containers] Plastic disposable foodware shall not be sold, used, provided, or offered for sale [or sold] in the County.
- (4) Nothing in these rules precludes food providers from using or making available non-plastic alternative utensils, such as those made from paper, sugar cane, or bamboo; except, however that non-plastic utensils must only be provided upon the request or affirmative response of a person being provided the prepared food or beverage or in a self-service area or dispenser. [Eff 01/01/2022] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.040)

§17-402-5 Exemptions. This chapter shall not apply to the following:

- (1) [Polystyrene foam food containers] Plastic disposable foodware used for raw or butchered meats, poultry, [fish,] seafood, unprepared produce, or eggs unless provided for consumption without further food preparation (e.g., sashimi and poke).
- (2) [Polystyrene foam coolers and ice chests specifically designed and manufactured for multiple re-use.
- (3)] Foam blocks or pieces used as protective packaging during shipping (e.g., packing peanuts).
- [(4) Packaging] Use or sale of plastic disposable foodware in situations unique to the type of food, where there are no reasonable alternatives to [polystyrene foam food service containers,] plastic disposable foodware, provided the food provider applies for an exemption pursuant to §17-402-6 and such exemption is granted by the director.
- [(5) Packaging] (4) Use or sale of plastic disposable foodware in situations unique to the food provider, where compliance with this chapter would cause significant hardship and there is no reasonably affordable alternative to [polystyrene foam food service containers,] plastic disposable foodware, provided the food provider applies for an exemption pursuant to §17-402-7 and such exemption is granted by the director. A price for a product that is more than 40 percent higher than a comparable plastic product is not reasonably affordable.
- [(6) The] (5) The sale of [polystyrene food service containers] plastic disposable foodware to food providers [pursuant to] who have been issued an exemption described in this section. Distributors/sellers of plastic disposable foodware must ensure that such sales shall be made only to food providers with a valid exemption under these rules.

- [(7) Packaging] (6) Use or sale of plastic disposable foodware in any state of emergency declared by the mayor pursuant to Section 127A-14, Hawaii Revised Statutes, or in any situation deemed by the [County] mayor to be an emergency requiring the immediate preservation of life, health, property, safety, or essential public services, such that use or sale of plastic disposable foodware is necessary during such emergency. 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.
- (7) Prepackaged food, not including food packaged in polystyrene foam food service containers.
- (8) Disposable plastic straws, if requested and used by persons with disabilities.
- (9) Disposable plastic straws used at hospitals, nursing facilities, assisted living facilities, adult residential care homes, hospice service agencies or homes, home health agencies, and home care agencies. [Eff 01/01/2022] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.050)

§17-402-6 Application for exemption under §17-402-5[(4)] (3) for packaging in situations unique to the type of food. A food provider may submit an application, preferably on the form provided by the director, and shall set forth with specificity:

- (1) The name, address, and copy of the food provider's most current business registration certificate (business license).
- (2) A description of the [polystyrene foam food service container(s)] plastic disposable foodware at issue, including an estimate of the monthly quantity of the [polystyrene foam container(s)] plastic disposable foodware used.
- (3) The factual basis to support the requested determination that there is no reasonable alternative to the use of [polystyrene foam food service containers,] plastic disposable foodware, which, for example, may include packaging necessary for safely containing food that is of significantly high or low temperature; specific transportation requirements or safeguards; or franchising agreements that contractually require use of [polystyrene foam food service containers] plastic disposable foodware without the ability to use alternative products.
- (4) Copies of all exemptions issued to the applicant under this chapter.
- (5) If an exemption is granted under this section, the [polystyrene foam food service containers] plastic disposable foodware may only be used for the specific food item(s) identified in the application. [Eff 01/01/2022] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.050(D))

§17-402-7 Application for exemption under §17-402-5[(5)] (4) for packaging in situations unique to the food provider. (a) To qualify for an exemption under 17-402-5(5), an applicant must be a food provider with a gross annual income of less than \$500,000 per location, as shown on the applicant's annual income tax filing for the most recent tax year. To qualify under this section, the applicant must not be a franchisee, part of a chain food service establishment, or a chain store.

(b) A food provider may submit an application, preferably on the form provided by the director, and shall set forth with specificity:

- (1) The name, address, and copy of the food provider's most current business registration certificate (business license).
- (2) The [polystyrene foam food service container(s)] plastic disposable foodware at issue, including why the food provider requires the product(s) and an estimate of the monthly quantity of the product used.
- (3) The factual basis to support the requested determination that use of compliant food service containers would cause the applicant significant hardship and there is no affordable compliant alternative.
- (4) Copies of all previous exemptions issued to the applicant under this chapter.

(c) In considering whether the applicant may experience a significant hardship, the director may consider factors such as the applicant's gross revenue, adjusted gross income, or average operating profit for the preceding five years; the cost to switch to [non-polystyrene food service containers;] non-plastic disposable foodware and the effect of compliance on applicant's cost to operate its existing business. [Eff 01/01/2022] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.050)

§17-402-8 Duration, renewal, and revocation of exemptions. (a) Initial exemptions are valid for a maximum period of two years, except shorter periods may be approved by the director.

(b) Applications to renew exemptions shall be submitted to the department no less than thirty days prior to the expiration of the exemption. Exemption renewals may be granted for up to two years upon a showing that the applicant continues to meet all applicable requirements.

(c) Exemptions may be revoked upon the director's finding that the basis for the exemption is no longer valid or the applicant has otherwise violated this chapter. [Eff 01/01/2022] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.030)

§17-402-9 Appeal. A person aggrieved by the director's decision may appeal the director's decision by filing with the board of variances and appeals a notice of appeal no later than thirty days from the date of mailing of the director's decision pursuant to the appeal procedures set forth in chapter 19.520, Maui

County Code. [Eff 01/01/2022] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.030)

§17-402-10 Violations and penalties. This chapter shall be enforced pursuant to section 19.530.030, Maui County Code.” [Eff 01/01/2022] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §8-15.3; MCC §20.26.060)

2. Material to be repealed is bracketed. New material is underscored.

3. Chapter 402, “Rules Relating to Plastic Disposable Foodware”, shall take effect on January 1, 2022.

Adopted this ____ day of _____, 2021, at Wailuku, Maui, Hawaii.

APPROVED AS TO FORM
AND LEGALITY:

COUNTY OF MAUI

RICHELLE THOMSON
Deputy Corporation Counsel
County of Maui
LF2014-2595

ERIC A. NAKAGAWA
Director of Environmental
Management

COUNTY OF MAUI

MICHAEL P. VICTORINO
Mayor

Received this ____ day of
_____, 2021.

KATHY L. KAOHU
County Clerk, County of Maui

CERTIFICATION

I, ERIC A. NAKAGAWA, Director, Department of Environmental Management, County of Maui, do hereby certify:

1. That the foregoing is a full, true and correct copy of the Amendment to the Rules Relating to Plastic Disposable Foodware, drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which was adopted on the _____ day of _____, 2021, following a public hearing on _____, 2021; and filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing rules was published in the Maui News on the _____ day of _____, 2021.

COUNTY OF MAUI

ERIC A. NAKAGAWA
Director of Environmental Management