

**OFFICE OF THE COUNTY ENGINEER
COUNTY OF KAUAI
DEPARTMENT OF PUBLIC WORKS
DRAFT ADMINISTRATIVE RULES PERTAINING TO
THE IMPLEMENTATION OF ORDINANCE 1079
ARTICLE 27, CHAPTER 22
RESTRICTING THE USE AND SALE OF
POLYSTYRENE FOAM FOOD SERVICE CONTAINERS**

§ 22-27-1 Title. The rules of this chapter shall be known as the “Rules Relating to Polystyrene Foam Food Service Containers”. (Auth: Title 8 HRS. §§91-2, 46-1.5(13), 46-1.5(14); Kaua’i County Code (“KCC”) §22-21.1; (Imp: HRS §91-2)

§ 22-27-2 Purpose. These rules shall govern administrative procedures related to KCC Chapter 22, Article 27 (Auth: HRS §§46- 1.5(13), 46-1.5(14); Kaua’i County Charter, as amended, §4.01;) (Imp: H.R.S. §91)

§ 22-27-3 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:

“ASTM Standard” means the American Society for Testing and Materials (ASTM).

“ASTM Standard D6400” means the ASTM specification for plastics and products made from plastics that are designed to be composted in municipal and industrial aerobic composting facilities.

“ASTM Standard D6868” means the ASTM specification establishing the requirements for labelling of materials and products (including packaging), wherein a biodegradable plastic film or coating is attached to compostable substrates and the entire product or package is designed to be composted in municipal and industrial aerobic composting facilities.

“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. For foodservice containers containing plastics to qualify as compostable, such food service containers must meet ASTM Standard D6400 for Compostable Plastics or ASTM Standard D6868 for biodegradable plastic film, as amended.

“Food provider” means any entity or person providing prepared food (as defined below) 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, 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.

§22-27-4 Prohibition. Unless exempt pursuant to §22-27-5:

- (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 offered for sale or sold in the County.

(Auth: HRS §§46-1.5(13), 46- 1.5(14); Charter §13; KCC §22-27.4)

§22-27-5 Exemptions. This Article shall not apply to the following:

- (a) Foods packaged outside the county of Kaua‘i.
- (b) 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).
- (c) Packaging in situations unique to the food provider, where there is not alternative to polystyrene foam food service containers, provided the food provider applies for an exemption and such exemption is granted by the Director.
- (d) Packaging in any situation deemed by the County to be an emergency requiring emergency supplies or services procurement.

(Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §13; KCC §22-27.5)

§22-27-6 Application for exemption pursuant to §22-27-5(c) for packaging in situations unique to the food provider.

- (a) To qualify for an exemption pursuant to 22-27-5(c), 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 pursuant to this section, the applicant must not be a franchisee, part of a chain food service establishment, or a chain store.

- (b) The 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) 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 pursuant to this chapter.

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; and the effect of compliance on applicant's cost to operate its existing business.

(Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §13; KCC §22-27.5(c))

§22-27-7 Application for exemption pursuant to §22-27-5(d) for packaging in any situations deemed by the County to be an emergency requiring supplies or services procurement.

- (a) To qualify for an exemption pursuant to 22-27-5(d), the food provider must cite the applicable County, State, or Federal emergency.
- (b) A food provider may submit an application, preferably on the form provided by the Director, which 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) 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 is not feasible due to the stated emergency.
 - (4) Copies of all previous exemptions issued to the applicant pursuant to this chapter.

In considering the application, the Director may consider factors such as the nature of the declared emergency; the expediency required under the emergency; availability of non-polystyrene food service containers; and the effect of compliance on the health and safety of the community related to the declared emergency.

(Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §13; KCC 22-27.5(d))

§22-27-8 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 these regulations.

(Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §13; KCC §22-27.6)

§22-27-9 Enforcement, violations, and penalties. This chapter shall be enforced pursuant to KCC § 22-27.6. (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §13)

§22-27-10 Effective Date. Pursuant to KCC § 22-27.3, these "Rules Relating to Polystyrene Foam Food Service Containers," shall take effect on January 1, 2022.