

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 22,
KAUA'I COUNTY CODE 1987, AS AMENDED,
BY ESTABLISHING A NEW ARTICLE RESTRICTING THE USE AND SALE
OF POLYSTYRENE FOAM FOOD SERVICE CONTAINERS**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Chapter 22, Kaua'i County Code 1987, as amended, is hereby amended by establishing a new Article to be appropriately designated and to read as follows:

**"ARTICLE ____
RESTRICTING THE USE AND SALE OF
POLYSTYRENE FOAM FOOD SERVICE CONTAINERS**

Sec. 22-____.1 Findings and Purpose.

Polystyrene foam is neither degradable nor compostable and its disposal poses a significant risk to the environment and life forms throughout the food chain. Due to its lightweight nature and ability to break down into smaller fragments, 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 that foam food service containers should be regulated in order to protect the County's unique environment, the health and welfare of its marine and avian life, and to promote public health, reduce litter, and support increased diversion of organic waste by encouraging the use of environmentally preferred alternatives.

Food providers are encouraged to switch from polystyrene food service containers to compostable food service containers. The Director shall publish a list of available suitable compostable alternative containers by June 1, 2020.

Sec. 22-____.2 Definitions.

Whenever used in this Article, unless the context otherwise requires:

"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.

“Customer” means a person obtaining prepared food from a food provider.

“Director” means the County Engineer or duly authorized representative.

“Food provider” means any entity or person providing prepared food for consumption within the County, including but not limited to 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.

Sec. 22-___.3 Administration.

The Director shall administer this Article and adopt administrative rules pursuant to Chapter 91, Hawai'i Revised Statutes, by January 1, 2022.

Sec. 22-___.4 Prohibitions.

Except as provided in Sec. 22-___.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.

Sec. 22-___.5 Exemptions.

This Article shall not apply to any of 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 no 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.

Sec. 22-___.6 Enforcement and Penalties.

The Director will have primary responsibility for enforcement of this Article through the issuance of violation notices and requests to correct or cease the violation. The Director is authorized to promulgate rules and to take any other actions reasonably necessary to enforce this Article. Each day on

which any food provider sells or transfers polystyrene food service containers shall constitute a separate violation of this Article.

(a) Food providers shall be subject to an administrative fine for each separate violation as follows:

(1) A fine of two hundred fifty dollars (\$250) for a first violation;

(2) A fine of five hundred dollars (\$500) for a second violation; and

(3) A fine not exceeding one thousand dollars (\$1,000) for a third and any subsequent violation.

(c) Food providers 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 fifty dollars (\$50) for a first violation;

(2) A fine of one hundred dollars (\$100) for a second violation; and

(3) For a third and any subsequent violation:

(A) A fine not to exceed one hundred dollars (\$100) for an event of one to 200 persons;

(B) A fine not to exceed two hundred dollars (\$200) for an event of 201 to 400 persons;

(C) A fine not to exceed four hundred dollars (\$400) for an event of 401 to 600 persons; and

(D) A fine not to exceed six hundred dollars (\$600) for an event of more than 600 persons.

(d) The Director must afford the Food Provider the opportunity for a hearing under Hawai'i Revised Statutes Chapter 91.

(e) Fines collected pursuant to this Article shall be deposited into the solid waste management fund.

Sec. 22-___7 No Conflict with Federal or State Law.

Any provision of this Article shall be 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 persons acting within its boundaries, and not to regulate inter-county or inter-state commerce. It shall be construed with that intent.

Sec. 22-___8 Annual Report.

The Director shall provide a written report to the County Council by August 15 of each year evaluating the program Restricting The Use And Sale Of Polystyrene Foam Food Service Containers and submit any recommended changes to improve the program."

SECTION 2. This Ordinance shall take effect on January 1, 2022.

Introduced by: /s/ MASON K. CHOCK
/s/ KIPUKAI KUALI'I

DATE OF INTRODUCTION:

February 19, 2020

Lihu'e, Kaua'i, Hawai'i

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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2775, Draft 3, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on September 9, 2020 by the following vote:

FOR ADOPTION:	Chock, Cowden, Evslin, Kualii,	TOTAL - 4,
AGAINST ADOPTION:	Kagawa, Kaneshiro	TOTAL - 2,
EXCUSED & NOT VOTING:	Brun	TOTAL - 1*,
RECUSED & NOT VOTING:	None	TOTAL - 0.


Lihu'e, Hawai'i
September 9, 2020



Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

*Beginning with the March 11, 2020 Council Meeting and until further notice, Councilmember Arthur Brun will not be present due to U.S. v. Arthur Brun et al., Cr. No. 20-00024-DKW (United States District Court), and therefore will be noted as excused (i.e., not present).


ATTEST:


Arryl Kaneshiro
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

September 9, 2020

Approved this 15th day of
September, 2020.


Derek S.K. Kawakami,
Mayor
County of Kaua'i