

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

COUNTY OF HAWAI‘I

Adoption of Article II, Chapter 6

County of Hawai‘i Administrative Rules

1. Article II, Chapter 6, County of Hawai‘i Department of Environmental Management Administrative Rules, entitled “Rules Relating to Polystyrene Foam Food Container and Food Service Ware Reduction”, is adopted to read as follows:

“COUNTY OF HAWAI‘I DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

ADMINISTRATIVE RULES

ARTICLE II

CHAPTER 6

RULES RELATING TO POLYSTYRENE FOAM FOOD CONTAINERS AND FOOD SERVICE

WARE REDUCTION

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§ 6.01 Title. The rules of this chapter shall be known as the “Rules Relating to Polystyrene Foam Food Containers and Food Service Ware Reduction”. [Eff] (Auth: HRS §§91-2, 46-1.5(13), 46-1.5(14); Charter §6-10.4; HCC §20-60 (Imp: HRS §91-2)

§ 6.02 Purpose. These rules shall govern administrative procedures related to Chapter 20, Article 6, Hawai‘i County Code. [Eff] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §6-10.4; HCC §20-60) (Imp: HRS 91-2, HCC §20-60)

§6.03 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:

“Applicant” means either a County facility user or a food vendor that applies for an exemption under these rules.

“ASTM standard” means the standards of the American Society for Testing and Materials International Standards D6400 or D6868 for biodegradable and compostable paper/fiber and plastics.

“Biodegradable” means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal. It is the ability of organic matter to break down from a complex to a more simple form.

“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 an appropriate composting program or 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 (BPI) or similar ASTM recognized certifier.

“County facility” means any building, structure, or vehicle owned or operated by the County, its agents, agencies and departments and includes County buildings, structures, parks, recreation facilities, or property.

“County facility users” means all persons, societies, associations, organizations, or special event promoters who require a permit to reserve or rent a County facility or a permit or contract to use a sidewalk or roadway. County facility users also include concession contracts with the County, County managed concessions, County sponsored events and food services provided at County expense.

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

“Department” means the department of environmental management of the County of Hawai‘i.

“Director” means the director of the department of the environmental management or the director’s authorized representative.

“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:

(1) Service ware for takeout foods and/or leftovers from partially consumed meals prepared by a food vendor; and

(2) Containers that are intended for single use, such as cups; bowls; plates; trays; cartons; or containers that are hinged, lidded, or clamshell.

For the purposes of this article, “disposable food service ware” excludes straws, cup lids, utensils, bags, film wraps and packaging for unprepared food.

“Food packaging” means all food-related wrappings, bags, boxes, containers, bowls, plates, trays, cartons, cups, lids, or drinking utensils, in which food or beverage is placed or packaged on the retail food establishment’s premises, and which are not intended for reuse. Food packaging does not include forks, spoons, knives, straws, stirrers, or single-service condiment packages.

“Food provider” means any vendor, business, organization, 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.

“Food service ware” includes plates, bowls, cups, lids, straws, stirrers, forks, spoons, knives, napkins, trays, and other items primarily designed for use in consuming food.

“Food vendor” means any retail food establishment.

“Polystyrene foam” 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), sometimes referred to as “Styrofoam,” a Dow Chemical Company trademarked form of polystyrene foam insulation. 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.

“Prepared food” means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared for consumption by a retail consumer on the premises of a retail food establishment, including, but not limited to, beverages, ready to consume, and takeout food. “Prepared food” does not include raw meats, eggs, seafood and/or poultry unless provided for consumption without further food preparation. For example, sashimi and poke shall be considered to be prepared food.

“Recyclables” means material that has reached the end of its current use and is processed into material utilized in the production of new products. For the purpose of this article, recyclable materials will include only those types of plastic being accepted in the Hawai’i County Recycling program.

“Retail food establishment” means any sales outlet, store, shop, vehicle, or other place of business which sells or conveys foods or beverages to consumers, which foods or beverages are contained, wrapped, or held in or on food packaging. “Retail food establishment” shall include, but not be limited to, any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured, and sold or offered for sale, including, but not limited to a: restaurant; drive-in; coffee shop; cafeteria; short-order café; delicatessen; luncheonette; grill; sandwich shop; soda fountain; bed and breakfast; inn; tavern; bar; cocktail lounge; nightclub; roadside stand; take-out prepared food place; industrial feeding establishment; catering kitchen; mobile food preparation unit; commissary; grocery store; public food market; produce stand; food stand; or any other place in which food and drink is prepared for sale or for service on the premises or elsewhere; and any other establishment or operation where food is processed, prepared, served, or provided to or for consumers for charge. [Eff] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §6-10.4; HCC §20-62)

§6.04 Prohibitions and Requirements.

- (a) As of July 01, 2019 food vendors shall not provide food to a customer in disposable food service ware that is made from polystyrene foam unless exempt under §6.05.
- (b) As of July 01, 2019, food vendors using any disposable food service ware shall use a suitable recyclable or compostable product.

(c) All County facility users shall use a suitable recyclable or compostable product for disposable food service ware. [Eff] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §6-10.4; HCC §§20-64, 20-65)

§6.05 Exemptions. This chapter shall not apply to the following:

- (1) Foods packaged outside the limits of the County of Hawai'i.
- (2) Polystyrene foam coolers and ice chests specifically designed and manufactured for multiple re-use.
- (3) Packaging for raw meats, poultry, seafood, and eggs provided for consumption which normally requires further food preparation.
- (4) County facility users and food vendors, in only the following instance: packaging used in situations unique to the County facility user or food vendor, where compliance with this chapter would cause significant undue hardship. Undue hardship includes, but is not limited to, situations unique to the County facility user or food vendor that generally do not apply to other persons in similar circumstances.

(1) County facility users and food vendors seeking an exemption from the requirements of this chapter shall provide all required information on an application for exemption, including but not limited to, documentation supporting the applicant's claim that compliance with this chapter will result in undue hardship.

(2) The director may approve or deny an exemption request under §6.05(4) in whole or in part. Applicants may appeal the director's decision to the environmental management commission.

(3) The department shall promptly post all exemptions on the County website for the Department of Environmental Management as a notice of temporary exemption. The notice shall remain on the County website as long as the exemption is in effect. The notice shall state the temporary exemption expiration date.

- (5) County facility users and food vendors in any situation deemed by the mayor of the County 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. [Eff] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §6-10.4; HCC §20-66)

§6.06 Application for exemption under §6.05(4) for packaging in situations unique to the County facility user. A County facility user shall submit an application, preferably on the form provided by the director, and shall set forth with specificity:

- (a) The name, mailing address, telephone, and email of the County facility user.
- (b) The name and location of the County facility to be used, submission date of the County facility use permit application, and event date(s) at the County facility.
- (c) A description of the polystyrene foam food service ware(s) at issue, including why the County facility user requires the product(s) and an estimate of the quantity of the product used.
- (d) The factual basis to support the requested determination that use of compliant food service ware would cause the County facility user undue hardship and there is no compliant alternative, 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 ware without the ability to use alternative products.

- (e) If an exemption is granted under this section, the polystyrene foam food service ware(s) may only be used for the specific food item(s) identified in the application. [Eff] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §6-10.4; HCC §20-66)

§6.07 Application for exemption under §6.05(4) for packaging in situations unique to the food vendor.

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

- (1) The name, mailing address, telephone, email, and a copy of the food vendor's most current business registration certificate (business license).
- (2) The polystyrene foam food service ware(s) at issue, including why the food vendor 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 ware(s) would cause the food vendor undue hardship and there is no compliant alternative.
- (4) In considering whether the applicant may experience an undue hardship, the director may consider factors submitted by applicant. .
- (5) If an exemption is granted under this section, the polystyrene foam food service ware(s) may only be used for the specific food item(s) identified in the application. [Eff] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §6-10.4; HCC §20-66)

§6.08 Duration, renewal, and revocation of exemptions. (a) Initial exemptions are valid for a maximum period of one hundred eighty (180) days, except that shorter periods may be approved by the director.

(b) Applications to renew exemptions shall be submitted to the department no later than thirty (30) days prior to the expiration of the exemption. Exemption renewals may be granted but shall not exceed one hundred eighty (180) days, including the initial exemption period, 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] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §6-10.4; HCC §20-66)

§6.09 Appeal. A County facility user or food vendor aggrieved by the director's decision may appeal the decision by filing with the environmental management commission a notice of appeal no later than thirty (30) days from the date of mailing of the director's decision, and a hearing shall be held before the environmental management commission. The environmental management commission, pursuant to the appeal procedures set forth in chapter 2-204, Hawai'i County Code, shall issue a decision. Any party to the appeal proceeding may obtain judicial review of the proceeding in the manner set forth in chapter 91-14, Hawai'i Revised Statutes. [Eff] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §6-10.4; HCC §20-67)

§6.10 Enforcement, violations, and penalties. This chapter shall be enforced pursuant to chapter 20, article 3, division 3, sections 20-67, 20-68, and 20-69, Hawai'i County Code." [Eff] (Auth: HRS §§46-1.5(13), 46-1.5(14); Charter §6-10.4; HCC §§ 20-67, 20-68, 20-69)

2. Chapter 6," Rules Relating to Polystyrene Foam Food Container and Food Service Ware Reduction", shall take effect on July 1, 2019.

DRAFT

Adopted this _____ day of _____, 2019, at Hilo, Hawai'i.

WILLIAM KUCHARSKI
Director
Department of Environmental Management
County of Hawai'i

Approved this _____ day of _____, 2019

HARRY KIM
Mayor, County of Hawai'i

APPROVED AS TO LEGALITY
AND FORM:

KEYRA K. WONG
Deputy Corporation Counsel
County of Hawai'i

Received this _____ day of _____, 2019.

CERTIFICATION

I, WILLIAM KUCHARSKI, Director of the Environmental Management, County of Hawai‘i, do hereby certify:

1. That the foregoing is full, true, and a correct copy of the Rules Relating to Polystyrene Foam Food Container and Food Service Ware Reduction, pursuant to the requirements set forth in Section 91-4.1, Hawai‘i Revised Statutes, which were adopted on _____, 2019, following a public hearing that closed on _____, 2019, and filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing adoptions to the rules was published in the _____ on the _____, 2019.

COUNTY OF HAWAI‘I

WILLIAM KUCHARSKI

Director
Department of Environmental Management
County of Hawai‘i