

May 4, 2017

MEMO TO: Mike White, Council Chair

F R O M: Gary Saldana   
Legislative Analyst

SUBJECT: **POLYSTYRENE RESEARCH** (PAF17-100B)

During research on Bill 127 (2016) entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.26, MAUI COUNTY CODE, RESTRICTING THE USE AND SALE OF POLYSTYRENE FOOD SERVICE CONTAINERS," review included various communities throughout the United States to determine the extent of restrictions cities and counties have imposed on the use of polystyrene food containers.

Surfrider.org and The 5Gyres Institute provide interactive lists of communities that have adopted some level of restriction on the use of polystyrene containers. The 5Gyres Institute notes, within the State of California, 100 cities and counties have enacted polystyrene bans.

Many communities focus their restrictions on polystyrene foam containers (expanded and extruded polystyrene), and typically do not include polystyrene containers utilizing a plastic polymer (clear or colored container).

The City and County of San Francisco is considered to have one of the most restrictive Polystyrene Bans in the country.

San Francisco in 2007 initially passed a ban on "polystyrene foam food ware for food prepared and served" in the City and County.

In 2016 San Francisco increased the ban to include polystyrene foam (extruded and blown) containers to include:

1. meat, fish trays and egg cartons
2. packaging material
3. cooler, ice chests \*
4. pool toys\*
5. dock floats, mooring buoys or anchor and navigational markers\*

\* That are encased in a more durable material.

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The San Francisco ban does not restrict polystyrene containers that are non-foam because they are not known to break into smaller pieces like the foam containers and become potential health hazards.

At its meeting of December 16, 2016, the former County Council (Term 2015-2017) when discussing Bill 127(2016), voted to require food prepackaged outside of the County to comply with the provisions of Bill 127. However, concerns were noted relative potential "Commerce Clause" and possible defense of the Bill.

Accordingly, during the research and while consulting with the aforementioned entities that are keeping a tally of communities with polystyrene bans, to date no community has restricted the use of pre-packaged polystyrene food containers where the item is sealed prior to receipt of the local food service provider or store.

In fact, many communities state in their ordinances "restrictions not apply to prepared food packaged outside the city and sold or otherwise provided to the consumer in the same food service ware in which it originally was packaged."

Additionally, many such ordinances also have a statement that reads as follows: "Businesses packaging prepared food outside of the City are encouraged to use food service ware that is compostable or recyclable and is not made, in whole or in part, from Polystyrene Foam."

The above research summary is submitted to assist the Council in its consideration of Bill 127 (2016). Should you require additional research, or would like copies of any of the documents referenced in this memorandum, please let me know.

Paf:grs:17-100b

cc: Deputy County Clerk  
Director of Council Services  
Corporation Counsel