

Exhibit 1

RULE 2-13 Relating to Disposable Foodware and Serviceware

2-13-1. **Purpose.** To establish standards, procedures, and enforcement mechanisms necessary to implement Ordinance 26-03 (Bill 83), relating to the reduction of single-use plastic and polystyrene waste within the County of Hawai'i

2-13-2. Prohibitions and Requirements.

- (a) No food provider shall sell, distribute, or provide the following items:
 - a. Disposable plastic or polystyrene foodware including but not limited to cups, lids, bowls, plates, clamshells, trays, utensils, stirrers, straws, and portion cups
 - b. Compostable foodware or serviceware that is not third-party certified compostable (ASTM Standards D6400, D6868, or D8410)
 - c. Biodegradable foodware or serviceware that is not third-party certified biodegradable.
 - d. Reusable foodware or serviceware that does not meet the definition in section 1-1-2 of these rules.
- (b) Food providers, businesses, and County facility users shall only sell, distribute, or provide prepared food to the public using:
 - (a) Disposable foodware and serviceware that is third-party certified compostable (ASTM Standards D6400, D6868, or D8410).
 - (b) Disposable foodware and serviceware that is third-party certified to a technical standard related to biodegradability.
 - (c) Reusable foodware or serviceware that meets the definition in section 1-1-2 of these rules.

2-10-3. **Exemptions.** This rule shall not apply to the following:

- (a) The following products are exempt from provisions of these rules:
 - a. Pre-packaged foods
 - b. Coolers and ice chests that are intended for reuse
 - c. Food packaging for raw meat, raw poultry, raw sea food, and eggs that have not been further processed.
- (b) Exemptions for food providers and county facility users
 - a. The director may provide exemptions in situations where compliance with these rules would result in undue hardship such as situations unique to food providers and county facility users that generally do not apply to other persons in similar circumstances.
 - b. The director may approve or deny an exemption request in whole or in part and applicants may appeal the director's decision to the commission.
 - c. Exemptions shall be posted on the department's website as a notice

of temporary exemption.

d. Exemptions shall be in place for up to 180 days

2-10-4. Application for Exemption Due to Undue Hardship. County facility users and food providers seeking an exemption from the requirements of this chapter due to undue hardship shall complete the department application and submit it to the director as set forth below. All exemptions granted under this section shall be promptly posted on the County website for the department as a notice of temporary exemption. The director may approve or deny an exemption application for undue hardship in whole or in part.

(a) Application for Exemption Due to Hardship to the County Facility User. A County facility user shall submit a Department application to the director and shall include with specificity the following:

- (1) The name, mailing address, telephone number, and email of the County facility user.
- (2) 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.
- (3) 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.
- (4) 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.
- (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.

(b) Application for Exemption Due to Hardship to the Food Vendor: A Food vendor shall submit a Department application to the director and shall include with specificity the following:

- (1) The name, mailing address, telephone number, 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) The director may consider the information provided by the applicant to determine whether an undue hardship exists to justify an exemption.
- (5) If an exemption is granted, the polystyrene foam food service ware(s) may only be used for the specific food item(s) identified in the application.

2-10-5. 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 exemptions. 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.

2-10-6. Inspections and Records.

- (a) Food providers and county facility users shall maintain invoices, certification documentation, and supplier information for two years
- (b) Records shall be made available to the director or authorized representatives
- (c) The director or authorized representatives may conduct inspections during normal business hours.
- (d) Inspectors may request invoices, product lists, and certification documentation.
- (e) Inspectors may collect samples of foodware for verification.

2-10-7. Administrative Fines.

- (a) A fine may be imposed upon findings made by the director that any food vendor or County facility user has used foodware or serviceware in violation

of this rule. Each day on which any food vendor or County facility user has sold or transferred disposable food service ware made from polystyrene foam shall constitute a separate violation of this article.

- (b) Food vendors shall be subject to an administrative fine for each separate violation as follows:
 - (1) A warning for a first violation;
 - (2) A fine of \$50 for a second violation; and
 - (3) A fine not exceeding \$200 for a third and any subsequent violation.
- (c) Food vendors and County facility users who violate this rule in connection with commercial or non-commercial special events shall be assessed fines for each special event as follows:
 - (1) A fine of \$200 for a first violation;
 - (2) A fine of \$400 for a second violation; and
 - (3) For a third and any subsequent violation:
 - (A) A fine not to exceed \$400 for an event of one to 200 persons;
 - (B) A fine not to exceed \$600 for an event of 201 to 400 persons;
 - (C) A fine not to exceed \$800 for an event of 401 to 600 persons; and
 - (D) A fine not to exceed \$1000 for an event of 600 or more persons.
- (d) Failure to pay fine. Fines not paid within thirty days from the date appearing on the notice of violation and order or of the notice of determination of the director after the hearing, shall be collected in compliance with chapter 20, HCC.

2-10-8. Appeal. A County facility user or food provider aggrieved by the director's final decision may appeal the decision in accordance with chapter 20, HCC.

2-10-9. Emergency Exemption. The mayor may exempt County facility users and food vendors from the provisions of this chapter in a situation deemed by the mayor to be an emergency that necessitates such exemption in order to preserve the public peace, health, and safety.

The exemption shall remain 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.