

COUNCIL OF THE COUNTY OF MAUI

**POLICY, ECONOMIC DEVELOPMENT,
AND AGRICULTURE COMMITTEE**

January 19, 2018

**Committee
Report No. _____**

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy, Economic Development, and Agriculture Committee, having met on September 18, 2017, and January 4, 2018, makes reference to County Communication 17-319, from Councilmember Yuki Lei K. Sugimura, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8.20, MAUI COUNTY CODE, TO PROHIBIT SMOKING IN VEHICLES WHEN PERSONS UNDER THE AGE OF EIGHTEEN ARE PRESENT."

The purpose of the proposed bill is to prohibit smoking in vehicles when minors under 18 years of age are present, thus reducing the minors' exposure to second-hand smoke.

Your Committee notes minors, especially infants and young children, are among the most vulnerable and least able to tolerate second-hand smoke. Studies show second-hand smoke is linked to many health problems, including more frequent and severe asthma attacks, respiratory infections, ear infections, and sudden infant death syndrome.

Your Committee notes the County of Hawaii and, most recently, the City and County of Honolulu passed similar measures to prohibit smoking in vehicles when minors under the age of 18 are present. The County of Kauai passed a bill to prohibit smoking in vehicles when minors under the age of 13 are present.

Your Committee further notes Section 328J-15, Hawaii Revised Statutes ("HRS"), expressly permits a county to enact ordinances that are more stringent than Chapter 328J, HRS.

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A Sergeant from the Department of Police said the Department supports the proposed bill. He said the Department also supports increasing the fine to \$97, consistent with that of a moving traffic violation.

Your Committee discussed whether to limit the prohibition to motor vehicles operated on a public roadway, and whether to distinguish between public and private roadways because there may be a reasonable expectation of privacy on private roadways. Your Committee recommended expanding the prohibition to include private roadways open to the public.

Your Committee also noted the definition of "smoke" or "smoking" in Section 8.20.020, Maui County Code ("MCC"), is fairly limited and does not include electronic smoking devices. Your Committee decided to add to the prohibition against smoking in vehicles an enlarged definition of "smoke" or "smoking," similar to the one already in place for bus stops, to mean "inhaling, exhaling, burning, or carrying any lighted or heated tobacco product or plant product intended for inhalation in any manner or in any form," including the use of an electronic smoking device.

Your Committee discussed imposing a higher fine for the prohibition against smoking in vehicles than the one provided for other violations of Chapter 8.20, MCC, to provide a strong deterrent. Your Committee recommended the current fine of \$25 to \$50 stand for any violation of the chapter except the new prohibition, which would be subject to a fine of \$200.

Your Committee discussed the correlation between smoking in vehicles and distracted driving. Your Committee noted the proposed bill addresses a health issue related to second-hand smoke in vehicles when minors are present, rather than a traffic safety issue. Your Committee nonetheless decided to add to the purpose of the bill the added benefit of minimizing distracted driving.

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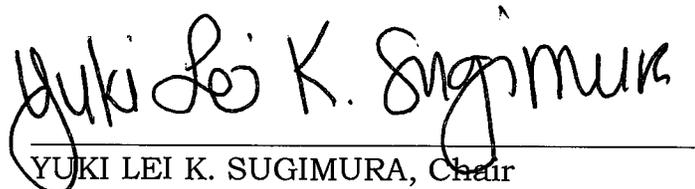
Your Committee voted 8-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Sugimura, Vice-Chair Crivello, and members Atay, Carroll, Cochran, Guzman, King, and White voted "aye." Committee member Hokama was excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Policy, Economic Development, and Agriculture Committee **RECOMMENDS** the following:

1. That Bill _____ (2018), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8.20, MAUI COUNTY CODE, TO PROHIBIT SMOKING IN VEHICLES WHEN PERSONS UNDER THE AGE OF EIGHTEEN ARE PRESENT," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 17-319 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



YUKI LEI K. SUGIMURA, Chair

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8.20,
MAUI COUNTY CODE, TO PROHIBIT SMOKING IN VEHICLES WHEN
PERSONS UNDER THE AGE OF EIGHTEEN ARE PRESENT

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The purpose of this ordinance is to protect and promote public health by prohibiting smoking in vehicles when minors under eighteen years of age are present, thus reducing such minors' exposure to second-hand smoke. Additionally, prohibiting smoking in vehicles when minors under eighteen years of age are present may prevent distracted driving, resulting in further protection to minors.

Section 328J-15, Hawaii Revised Statutes ("HRS"), provides that Chapter 328J, HRS, relating to smoking, shall not be construed to supersede or in any manner affect a county smoking ordinance, provided the ordinance is at least as protective of the rights of nonsmokers as Chapter 328J, HRS. The section also expressly permits a county to enact ordinances that are more stringent than Chapter 328J, HRS.

The prohibition against smoking in vehicles when minors under eighteen years of age are present provides such minors greater protections against second-hand smoke and distracted driving than those currently afforded by State law.

SECTION 2. Section 8.20.020, Maui County Code, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Motor vehicle” means the same as defined in section 286-2, Hawaii Revised Statutes.”

SECTION 3. Section 8.20.030, Maui County Code, is amended to read as follows:

“8.20.030 Prohibition in certain areas. No person shall smoke in the following areas:

A. Any enclosed or partially enclosed area or building owned, leased, operated, or maintained by the County, except for residential dwelling units, which shall be regulated herein as multifamily dwellings.

B. Elevators in buildings generally open to and used by the public, including elevators in apartments and other multi-unit residential buildings.

C. Patient rooms, wards, waiting rooms, lobbies, and public hallways of public and private health care facilities, including but not limited to, hospitals, clinics, and physician and dental offices.

D. Rooms, halls, or auditoriums that are primarily used for exhibiting motion pictures, stage dramas, dance, musical performances, or other similar performances during the time that such rooms, halls, or auditoriums are open to the public for such exhibition.

E. Museums, libraries, and galleries.

F. All areas open to the public in the following business establishments:

1. Food and grocery stores and supermarkets.
2. Drug stores.
3. Banks, savings and loan associations, financial services loan companies, and credit unions.
4. Day care nurseries during business hours.
5. Retail stores, except for retail tobacco stores.

G. Any restrooms open to the public in places specified in this section.

H. Any areas of any business or charitable establishment that have been designated by the owner, operator, manager, or other persons having control of such establishment as a no-smoking area and marked with signs described in section 8.20.035.

I. All enclosed or partially enclosed areas within multifamily dwellings that are open to the common use of all unit owners or residents, including but not limited to lobbies, hallways, corridors, stairways, waiting areas, and recreation areas.

J. All enclosed or partially enclosed areas within commercial buildings not subject to the exclusive use and possession of a tenant and open to the common use of the tenants of the building and their employees and customers, other than bars, including but not limited to, common entrance areas, lobbies, malls, hallways, corridors, escalators, stairways, and waiting or rest areas within commercial buildings.

K. All of the areas set forth in subsections I and J in the event a building is both a multifamily dwelling and a commercial building.

L. All enclosed or partially enclosed areas within hotels that are open to the common use of the public, hotel guests, or hotel employees, other than bars, including but not limited to, lobbies, hallways, corridors, stairways, waiting areas, recreation areas, banquet halls, banquet rooms, and ballrooms.

M. All of the areas set forth in subsections J and L in the event a building is both a commercial building and a hotel.

N. All vehicles owned or leased by the County.

O. Any taxicab designated as a no-smoking taxicab by its owner or driver, provided that the no-smoking taxicab displays the international "no-smoking" symbol in the following locations:

1. Inside the taxicab on the glove compartment so that it is visible to any person seated in the front passenger seat area and on the back of the front seat so that it is visible to any passenger seated in the rear of the taxicab.

2. Outside the taxicab below each of the passenger door handles or affixed to the upper part of the windows of each passenger door. Such exterior symbols may be decals, magnetic or painted directly on the vehicle doors or windows.

P. Any restaurant, including a bar area within a restaurant's premises.

Q. Any bus stop established pursuant to chapter 11.07 of this code. The area of the bus stop for which the smoking prohibition applies shall extend out from the bus stop sign and the footprint of the shelter in every direction by twenty feet. The footprint of the shelter is defined by vertical planes extending down from the outermost edges of the shelter overhang or roof, if any. For purposes of this subsection, "smoke" or "smoking" means inhaling, exhaling, burning, or carrying any lighted or heated tobacco product or plant product intended for inhalation in any manner or in any form; "smoking" includes the use of an electronic smoking device.

R. Any motor vehicle operated on a public roadway, or a private roadway open to the public, whenever occupied by a person under eighteen years of age. For purposes of this subsection, “smoke” or “smoking” means inhaling, exhaling, burning, or carrying any lighted or heated tobacco product or plant product intended for inhalation in any manner or in any form; “smoking” includes the use of an electronic smoking device.”

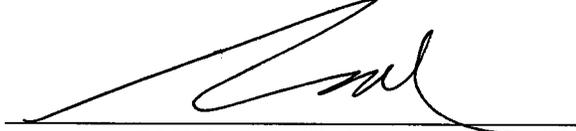
SECTION 4. Section 8.20.040, Maui County Code, is amended to read as follows:

“8.20.040 Violation—penalty. Any person violating any of the provisions of this chapter shall be fined not less than \$25 and not more than \$50[.]; provided that the fine for a violation of section 8.20.030(R) of this chapter shall be \$200.”

SECTION 5. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 6. This ordinance shall take effect on July 1, 2018.

APPROVED AS TO FORM AND LEGALITY:



EDWARD S. KUSHI, JR.
Department of the Corporation Counsel
County of Maui

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