

REQUEST FOR LEGAL SERVICES

Date: November 15, 2017
From: ELLE COCHRAN, CHAIR
INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE

TRANSMITTAL

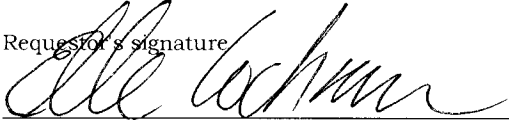
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Richelle Thomson, Esq.

Subject: A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, PROHIBITING THE SALE AND USE OF SPF SUNSCREEN CONTAINING OXYBENZONE AND OCTINOXATE (IEM-45)

Background Data: Please review and approve proposed bill (iem:misc:045abill04) . An original, signed copy of the bill is required.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY

OTHER:

Requestor's signature  Elle Cochran, Councilmember	Contact Person <u>Mimi DesJardins</u> (Telephone Extension: 7886)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 20, 2017
REASON: For transmittal to the Council as an attachment to the Committee Report for this item, to be heard at the December 1, 2017 meeting

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

iem:ltr:045acc02

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, PROHIBITING THE SALE AND USE OF SPF SUNSCREEN CONTAINING OXYBENZONE AND OCTINOXATE

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

SECTION 1. Oxybenzone and octinoxate have significant impacts on the environment and especially to the marine environment, including: causing mortality in coral planula and gametes, increasing the susceptibility of coral to undergo coral bleaching at temperatures lower than 87.8 degrees Fahrenheit, and causing potential damage to coral and other marine organisms' genomic integrity. These compounds have also been shown to degrade coral physiology and coral reef community integrity which reduce acclimation and resiliency to climate change factors, and degrade coral reefs by inhibiting recruitment. Increased probability of endocrine disruption, either causing demographic feminization in fish or other types of reproductive diseases, has been observed in marine invertebrate species (e.g. *sea urchins*), vertebrate species (e.g. fish such as wrasses, eels, and parrotfish), and mammals (in species similar to the Hawaiian Monk Seal).

Contamination of oxybenzone and octinoxate in Maui coastal waters acts as a pseudo-persistent pollutant, meaning that environmental contamination levels are constantly refreshed and renewed, every day, by swimmers and

beachgoers. Swimming and other water activities mean that these chemicals pollute Maui waters unless actively mitigated.

The Council finds and declares that, to preserve the health, safety, welfare, and scenic underwater and natural beauty of Maui, the sale and use of SPF sunscreen containing oxybenzone and octinoxate must be regulated.

SECTION 2. Title 20, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 20.40

PROHIBITED SALE AND USE OF SPF SUNSCREEN CONTAINING OXYBENZONE AND OCTINOXATE

Sections:

- 20.40.010 Purpose.
- 20.40.020 Definitions.
- 20.40.030 Administration.
- 20.40.040 Prohibitions.
- 20.40.050 Exemptions.
- 20.40.060 Violations and penalties.
- 20.40.070 Public information.
- 20.40.080 No conflict with federal or state law.

20.40.010 Purpose. The purpose of this chapter is to promote the health, safety, and welfare of Maui’s coral reefs and marine life, by regulating and limiting the sale and use of SPF sunscreen containing oxybenzone and octinoxate; and encourage the use of alternatives, such as SPF sunscreen containing zinc and titanium, which provide broad spectrum protection from the sun.

20.40.020 Definitions. Whenever used in this chapter, unless the context otherwise requires:

“Business” means any commercial enterprise or establishment, including sole proprietorships, joint ventures, partnerships, corporations, or any other legally cognizable entity, whether for profit or not for profit, and includes all employees of the business, or any independent contractors associated with the business.

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

“Octinoxate” is defined as the chemical (RS)-2-Ethylhexyl (2E)-3-(4-methoxyphenyl)prop-2-enoate under the International Union of Pure and Applied Chemistry chemical nomenclature registry, has a chemical abstract service registry number 5466-77-3, and whose synonyms include ethylhexyl methoxycinnamate, octyl methoxycinnamate, Eusolex 2292, and Uvinul MC80, and is intended to be used as protection against ultraviolet light radiation with a spectrum wavelength from 370 nanometers to 220 nanometers in an epidermal sunscreen-protection personal-care product.

“Oxybenzone” is defined as the chemical (2-Hydroxy-4-methoxyphenyl)-phenylmethanone under the International Union of Pure and Applied Chemistry chemical nomenclature registry, has a chemical abstract service registry number 131-57-7, and whose synonyms include benzophenone-3, Escalol 567, Eusolex 4360, KAHSCREEN BZ-3, 4-methoxy-2-hydroxybenzophenone and Milestab 9, and is intended to be used as protection against ultraviolet light radiation with a spectrum wavelength from 370 nanometers to 220 nanometers in an epidermal sunscreen-protection personal-care product.

“Person” means an individual, business, or other entity.

“Prescription drug” means the same as defined in section 328-1, Hawaii Revised Statutes.

“SPF sunscreen” means the same as in 21 C.F.R. 352.3.

20.40.030 Administration. The director shall administer this chapter and adopt administrative rules pursuant to chapter 91, Hawaii Revised Statutes, within 365 days from the date of adoption of this ordinance.

20.40.040 Prohibitions. Except as provided in section 20.40.050 of this chapter:

A. No business shall sell, offer for sale, or distribute for sale, SPF sunscreen containing oxybenzone or octinoxate.

B. SPF sunscreen containing oxybenzone or octinoxate shall not be sold, provided, or offered for use at any county facility, county-authorized concession, county-sponsored or county-permitted event, or county program.

C. No person shall use or apply SPF sunscreen containing oxybenzone or octinoxate, unless the SPF sunscreen is a prescription drug.

20.40.050 Exemptions. This chapter shall not apply to the sale or use of SPF sunscreen containing oxybenzone or octinoxate that are prescription drugs.

20.40.060 Violations and penalties. A. Violations of this chapter shall be subject to the civil penalties and enforcement procedures in section 19.530.030 of this code.

B. Fines collected pursuant to this chapter shall be deposited into the _____.

20.40.070 Public information. Restrictions in this chapter on the sale of SPF sunscreen containing oxybenzone and octinoxate shall be set forth on all application forms for permits relating to county facilities, county-managed concessions, county-sponsored or county-permitted events, and county programs.

20.40.080 No conflict with federal or state law. Nothing in this chapter shall be interpreted or applied to create any requirement or duty in conflict with any federal or state law.”

SECTION 3. This ordinance shall take effect 365 days after its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

iem:misc:045abill04