

COUNCIL OF THE COUNTY OF MAUI
CLIMATE ACTION, RESILIENCE, AND
ENVIRONMENT COMMITTEE

November 5, 2021

Committee
Report No. 21-113

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

Chair and Members:

Your Climate Action, Resilience, and Environment Committee, having met on July 21, 2021, August 4, 2021, and October 20, 2021, makes reference to County Communication 21-305, from Councilmember Tamara Paltin, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO PROHIBIT THE SALE, USE, OR DISTRIBUTION OF SUNSCREEN CONTAINING OXYBENZONE AND OCTINOXATE."

The purpose of the proposed bill is to add a new chapter 20.42, Maui County Code, to regulate the sale, use, and distribution of sunscreen containing oxybenzone and octinoxate which have significant negative impacts on the environment, specifically the marine environment. Regulation of oxybenzone and octinoxate is necessary to preserve the health, safety, welfare, and scenic underwater and natural beauty of Maui County.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed bill, entitled "A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 20.42, MAUI COUNTY CODE, TO PROHIBIT THE SALE, USE, OR DISTRIBUTION OF NON-MINERAL SUNSCREENS," approved as to form and legality.

The revised proposed bill prohibits the sale, use, or distribution of non-mineral sunscreens including those containing oxybenzone, octinoxate, or both. The revised proposed bill would take effect on October 1, 2022, if approved, and incorporates substantive and nonsubstantive revisions. The substantive revisions include:

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- Adding information to Section 1 of the bill relating to Act 104, Session Laws of Hawai'i 2018; Section 342D-19(b), Hawai'i Revised Statutes; the importance of coral reefs to the livelihood of residents and ecosystems of Maui County; and the United States Food and Drug Administration's ("FDA") proposed order concerning nonprescription sunscreen drug products.
- Removing references to oxybenzone and octinoxate and replacing them with "any non-mineral sunscreen."
- Updating Section 20.42.030 to remove "octinoxate" and "oxybenzone" from the list of definitions and adding definitions for "licensed healthcare provider," "non-mineral sunscreen," "titanium dioxide," and "zinc oxide."
- Changing the Section numbers for "Administration" to 20.42.050, and "Penalties" to 20.42.060.
- Adding a new Section 20.42.040, entitled "Exceptions," to read: "This section does not apply to the sale, distribution, or offer of sale of sunscreens banned by State law, to the extent such ban is governed by a rule of the State department of health under chapter 342D, Hawai'i Revised Statutes."
- Adding a new Section 2.42.070, entitled "No conflict with State or federal law," to read: "Nothing in this chapter may be interpreted or applied so as to create any requirement or duty in conflict with any State or federal law."

Your Committee notes Section 342D-21, Hawai'i Revised Statutes ("HRS"), already bans the sale, offer of sale, and distribution of any sunscreen that contains oxybenzone or octinoxate, or both, without a prescription issued by a licensed healthcare provider. Additionally,

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Section 342D-21 temporarily prohibited any county from enacting ordinances prohibiting the sale, use, or distribution of sunscreens containing oxybenzone or octinoxate. However, that prohibition expired on January 1, 2021.

Your Committee further notes sunscreens are considered to be nonprescription, over-the-counter drugs by the FDA that require specific testing to demonstrate that they are “generally recognized as safe and effective” (“GRASE”) for their intended use before being sold to consumers. On September 24, 2021, the FDA issued a proposed order concerning nonprescription sunscreen drug products and determined:

- That of the sixteen active ingredients currently used as UV filters in sunscreen products, zinc oxide and titanium dioxide (“mineral sunscreens”) are deemed GRASE.
- Two of the chemical compounds used in sunscreen products—aminobenzoic acid and trolamine salicylate—are proposed as not safe and effective for sunscreen use.
- The other twelve active ingredients currently used as UV filters in sunscreen products—avobenzone, cinoxate, dioxybenzone, ensulizole, homosalate, meradimate, octinoxate, octisalate, octocrylene, oxybenzone, padimate O, and sulisobenzene—remain under review and are sold under the definition of “Marketed Unapproved Drugs.”

Your Committee further notes guidance and justification for prohibiting the sale, use, or distribution of non-mineral sunscreens is supported in the Countywide Policy Plan.

Page 47 of the Countywide Policy Plan includes the following directives:

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Policies:

- “a. Protect and restore nearshore reef environments and water quality.”
- “b. Protect marine resources and valued wildlife.”

Implementing Actions:

- “a. Develop regulations to minimize runoff of pollutants into nearshore waters and reduce nonpoint and point source pollution.”

Your Committee received information and analysis on the revised proposed bill from various County agencies, including the Department of the Corporation Counsel; Department of Environmental Management; Department of Management; and the Mayor’s Office of Climate Action, Sustainability, and Resilience.

Your Committee also heard from representatives from the State Department of Health (“DOH”); State Department of Land and Natural Resources (“DLNR”); and Haereticus Environmental Laboratory, a nonprofit scientific organization dedicated to increasing the scientific, social and economic knowledge of natural environmental habitats in order to better conserve and restore threatened environmental habitats and resources.

Representatives from the State DLNR supported expanding prohibited sunscreens to include any non-mineral sunscreen, not limited to those containing oxybenzone or octinoxate. They noted chemicals in non-mineral sunscreens are harmful to coral, juvenile stages of fish, and humans.

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A representative from the State DOH agreed that while chemical sunscreens are harmful to the environment, they also can help to prevent skin cancer.

Your Committee noted the revised proposed bill does not prohibit the sale, use, or distribution of non-mineral sunscreen if a person has a prescription issued by a licensed healthcare provider.

Representatives from the Department of Environmental Management, Department of Management, and Department of the Corporation Counsel expressed support for the revised proposed bill.

In supporting the bill, your Committee acknowledged the Department of Environmental Management's role in educating the public, including businesses, travel and tourism partners, and visitors; and assistance with enforcement which may require additional staff funding in the Fiscal Year 2023 Budget.

Your Committee discussed that the regulation of chemical sunscreens would not impose a significant burden on interstate commerce.

Your Committee voted 7-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair King, Vice-Chair Sinenci, and members Johnson, Lee, Molina, Paltin, and Sugimura voted "aye."

Your Climate Action, Resilience, and Environment Committee RECOMMENDS the following:

1. That Bill 135 (2021), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 20.42, MAUI COUNTY CODE, TO PROHIBIT THE SALE, USE, OR DISTRIBUTION OF NON-MINERAL

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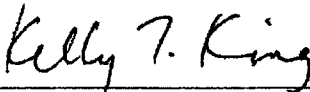
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SUNSCREENS," be PASSED ON FIRST READING and be
ORDERED TO PRINT; and

2. That County Communication 21-305 be FILED.

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



KELLY TAKAYA KING, Chair

care:cr:21054aa:nas

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 20.42,
MAUI COUNTY CODE, TO PROHIBIT THE SALE, USE, OR DISTRIBUTION OF
NON-MINERAL SUNSCREENS

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

SECTION 1. The Council finds that to preserve the State's marine ecosystems, the State banned the sale, offer of sale, and distribution in the State of any sunscreen that contains oxybenzone or octinoxate, or both, without a prescription issued by a licensed healthcare provider, through the enactment of Act 104, Session Laws of Hawai'i 2018, which is codified in Section 342D-21, Hawai'i Revised Statutes.

The Council further finds that while Section 342D-21, Hawai'i Revised Statutes, temporarily prohibited any county from enacting ordinances to prohibit the sale, use, or distribution of sunscreens containing oxybenzone or octinoxate, that prohibition expired January 1, 2021.

The Council further finds that Section 342D-19(b), Hawai'i Revised Statutes permits any county to adopt ordinances and rules governing any matter relating to water pollution control that is not governed by a rule of the State Department of Health adopted pursuant to Chapter 342D, Hawai'i Revised Statutes.

The Council further finds that coral reefs are essential for the livelihood of many residents of the County of Maui, both through the provision of food from subsistence fishing and from tourism and commercial fisheries.

The Council further finds that coral reefs dissipate wave energy and thereby protect coastal infrastructure, beaches, and communities.

The Council further finds that sunscreens are considered by the United States Food and Drug Administration (FDA) to be nonprescription, over-the-counter drugs that require specific testing to demonstrate that the sunscreen is generally recognized as safe and effective (GRASE) for its intended use before being sold to consumers. On September 24, 2021, the FDA issued a proposed order concerning nonprescription sunscreen drug products. In the proposed order, the FDA proposes that of the sixteen active ingredients currently used as UV filters in sunscreen products, zinc oxide and titanium dioxide ("mineral sunscreens") are deemed GRASE. Two of the chemical compounds used in sunscreen products — aminobenzoic acid (PABA) and trolamine salicylate — are proposed as not GRASE for use in sunscreens. The FDA has also proposed that the because the public record does not currently contain sufficient data to support positive GRASE determinations for avobenzene, cinoxate, dioxybenzone, ensulizole, homosalate, meradimate, octinoxate, octisalate, octocrylene, oxybenzone, padimate O, and sulisobenzene, these twelve ingredients are not GRASE because they require additional data.

The Council further finds that once the FDA finalizes the GRASE determinations for over-the-counter sunscreen products listed in the proposed order, the Council may revise its list of permitted sunscreens..

The Council further finds that action must be taken to prevent any potential harmful impacts of sunscreens certain harmful chemical compounds.

The Council finds that a number of non-mineral sunscreen products have recently been demonstrated to pose intolerable toxicologic threats, such as:

- Environmental contamination in coastal waters, including significant harmful impacts on the marine environment.
- Mortality in coral planula and gametes.
- Coral bleaching at temperatures lower than 87.8 degrees Fahrenheit.
- Damage to coral and other marine organisms' genomic integrity.
- Harm to humans including birth defects caused by Hirschsprung's disease.

Many non-mineral sunscreen ingredients also have 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. These ingredients have been shown to increase the probability of endocrine disruption in marine invertebrate species, such as sea urchins; vertebrate species, including fish such as wrasses, eels, and parrotfish; and mammals, such as in species similar to the endangered Hawaiian monk seal.

The active ingredients used in non-mineral sunscreen products in Maui County coastal waters acts as a pollutant, with environmental contamination levels refreshed and renewed, every day, by swimmers and beachgoers.

The Council finds that, to preserve the health, safety, and welfare of humans and the environment, as well as scenic underwater and natural beauty of Maui County, only mineral sunscreens may be sold, offered for sale, used, or distributed in the County.

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

"Chapter 20.42

SUNSCREEN

Sections:

20.42.010 Prohibitions.

20.42.020 Permit-application forms.

20.42.030 Definitions.

20.42.040 Exceptions.

20.42.050 Administration.

20.42.060 Penalties.

20.42.070 No conflict with State or federal law.

20.42.010 Prohibitions. A. A person must not sell, offer for sale, or distribute for sale any non-mineral sunscreen without a prescription issued by a licensed healthcare provider.

B. Any non-mineral sunscreen must not be sold, provided, or offered for use at any County facility, County-authorized concession, County-sponsored or County-permitted event, or County program, without a prescription issued by a licensed healthcare provider.

C. Any non-mineral sunscreen must not be used or applied by any person, unless the sunscreen is from a prescription issued by a licensed healthcare provider.

20.42.020 Permit-application forms. Each agency must express this chapter's prohibitions on all permit-application forms

for County facilities, County-managed concessions, County-sponsored and County-permitted events, and County programs.

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

“Sunscreen,” “licensed healthcare provider,” and “prescription” mean the same as defined in section 342D-21, Hawai‘i Revised Statutes.

“Non-mineral sunscreen” means any sunscreen that uses an active ingredient other than zinc oxide and titanium dioxide.

“Titanium dioxide” means the chemical Titanium (IV) oxide under the International Union of Pure and Applied Chemistry chemical nomenclature registry, has a chemical abstract service registry number 13463-67-7, and whose synonyms include TiO₂, Titania, Rutile, Anatase, Brookite, akaogiite, titanium white, Pigment White 6 (PW6), Colour Index (CI) 77891, oxido de titanio (IV), and Titandioxid, and is intended to be used as protection against ultraviolet light radiation with a spectrum wavelength from four hundred nanometers to two hundred twenty nanometers in an epidermal sunscreen-protection personal-care product.

“Zinc oxide” means the chemical Oxozinc under the International Union of Pure and Applied Chemistry chemical nomenclature registry, has a chemical abstract service registry number 1314-13-2, and whose synonyms include ZnO, zinc white, calamine, Chinese White, flowers of zinc, and zinc oxide, and is intended to be used as protection against ultraviolet light radiation with a spectrum wavelength from four hundred nanometers to two hundred twenty nanometers in an epidermal sunscreen-protection personal-care product.

20.42.040 Exceptions. This section does not apply to the sale, distribution, or offer of sale of sunscreens banned by State law, to the extent such ban is governed by a rule of the State department of health under chapter 342D, Hawai‘i Revised Statutes.

20.42.050 Administration. The department of environmental management must administer this chapter and may adopt administrative rules in accordance with chapter 91, Hawai‘i Revised Statutes.

20.42.060 Penalties. A. Violations of this chapter are subject to the penalties and enforcement procedures of section 19.530.030.

B. Money from fines collected for violation of this chapter must be deposited into the environmental protection and sustainability fund.

20.42.070 No conflict with State or federal law. Nothing in this chapter may be interpreted or applied so as to create any requirement or duty in conflict with any State or federal law."

SECTION 3. Section 3.55.040, Maui County Code, is amended to read as follows:

"3.55.040 Deposits to the fund. ~~[There shall]~~ The following must be deposited into the environmental protection and sustainability fund:

1. ~~[Monies]~~ Money transferred from the wastewater reclamation division of the department of environmental management related to the processing, handling, or disposal of sewage sludge.

2. Any fees or portions ~~[thereof]~~ of fees as set forth in the annual budget ordinance.

3. Supplemental transfers as set forth in the annual budget ordinance.

4. Money from fines collected for violations of chapter 20.42."

SECTION 4. This Ordinance takes effect on October 1, 2022.

APPROVED AS TO FORM AND LEGALITY:



KEOLA R. WHITTAKER
Deputy Corporation Counsel
Department of the Corporation Counsel
County of Maui
LF 2021-0007
2021-10-11 Ord Est Ch 20.42 (PAF 21-144) (KK)