

REQUEST FOR LEGAL SERVICES

Date: January 9, 2018
From: Yuki Lei Sugimura, Chair
Policy, Economic Development, and Agriculture Committee

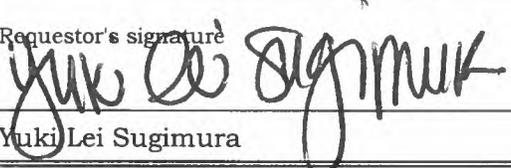
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Edward S. Kushi, Jr., Esq.

Subject: PROHIBITING SMOKING IN VEHICLES WHEN PERSONS UNDER THE AGE OF EIGHTEEN ARE PRESENT (PEA-41)

Background Data: Please review revisions to the proposed bill based on the Committee's discussion at its meeting of January 4, 2018, and, if appropriate, approve as to form and legality. For ease of reference, a track-changes version and a "clean" version are attached. Please also include the signed hard copy with your response.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Yuki Lei Sugimura	Contact Person <u>Shelly Espeleta</u> (Telephone Extension: 7134)
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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): Wednesday, January 10, 2018, 10 a.m.

REASON: To meet posting deadline for January 19, 2018 Council agenda.

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)

ORDINANCE NO. _____

BILL NO. _____ (20178)

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. ~~A.—Any person violating [any of the provisions] Section 8.20.030 (A) through (Q) 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.”~~

~~B.—Any person violating Section 8.20.030 (R) of this chapter shall be fined \$200.~~

SECTION 45. 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 56. 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
2017-0919
2017-07-21 Proposed Bill
pea:misc:041abill01:ske

ORDINANCE NO. _____

BILL NO. _____ (2018)

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

pea:misc:041abill01:ske