

REQUEST FOR LEGAL SERVICES

D a t e: October 8, 2021

F r o m: Kelly Takaya King, Chair

Climate Action, Resilience, and Environment Committee

TRANSMITTAL

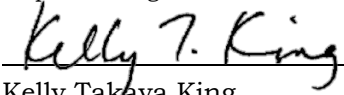
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Keola Whittaker, Esq.

Subject: **SUNSCREEN** (CARE-54)

Background Data: Please see the attached bill. Please submit the signed bill to care.committee@mauicounty.us with a reference to CARE-54.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER

Requestor's signature  Kelly Takaya King	Contact Person <u>Nicole Siegel or James Forrest</u> (Telephone Extension: 8008 or 7137, respectively)
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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): _____
REASON: _____

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)

care:ltr:054acc01:nas

Attachment

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 from 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 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 (PABA) 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—avobenzene, 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.”

The Council further finds that it may add additional allowed active ingredients if they are deemed GRASE in future FDA orders.

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; and
- damage to coral and other marine organisms' genomic integrity; and
- 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 require:

“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

care:misc:054abill02