

COUNCIL OF THE COUNTY OF MAUI

# INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE

December 1, 2017

**Committee  
Report No.** \_\_\_\_\_

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

Chair and Members:

Your Infrastructure and Environmental Management Committee, having met on October 16, 2017, and November 13, 2017, makes reference to County Communication 17-316, from Councilmember Elle Cochran, relating to oxybenzone and its effects on the environment.

By correspondence dated October 10, 2017, the Chair of your Committee transmitted to the Department of the Corporation Counsel, two proposed bills, the first entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20. \_\_, MAUI COUNTY CODE, PROHIBITING THE SALE AND USE OF PERSONAL CARE PRODUCTS CONTAINING OXYBENZONE AND OCTINOXATE", and the second entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20. \_\_, MAUI COUNTY CODE, PROHIBITING THE SALE OF PERSONAL CARE PRODUCTS CONTAINING OXYBENZONE AND OCTINOXATE". The purpose of the first proposed bill is to ban the sale and use of personal care products containing oxybenzone and octinoxate. The purpose of the second proposed bill is to ban only the sale of personal care products containing oxybenzone and octinoxate.

At its meeting of October 16, 2017, your Committee heard testimony from the Volunteer Coordinator for the outreach and information staff at the 'Ahihi-Kina'u Natural Reserve. He testified that according to the Haereticus Environmental Laboratory in Virginia, a safe level of oxybenzone and octinoxate exposure for coral reefs is 64 parts per trillion. The most recent testing of oxybenzone and octinoxate levels at the Natural Reserve area indicated a level of 1,084 parts per trillion. This represented a substantial increase from a previous test result of 864 parts per trillion,

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despite significant efforts to educate the public about the detrimental effects of these chemicals on Maui's coral reefs and marine environment.

Your Committee noted the detrimental impact on tourism if Maui's coral reefs and fish continue to be harmed from the introduction of oxybenzone and octinoxate into the marine environment, and the potential harm to human food sources, such as seaweed and fish. Your Committee also noted the enforcement challenges the bill presents, and the need for sufficient scientific data to support either proposed bill. After further discussion and considering the merits of both proposed bills, your Committee recommended moving forward with the first proposed bill that bans both the sale and use of personal care products containing oxybenzone and octinoxate.

The Deputy Corporation Counsel stated that although the State Department of Land and Natural Resources Aquatic Division ("DLNR") enforces off-shore activities, Hawaii Revised Statutes ("HRS") §46-1.5(13), allows counties to enact laws deemed necessary to protect health, life, and property, among other things. She advised the importance of having sound scientific evidence in the public record to support either proposed bill. She also stated the State Legislature had a similar proposal before its last legislative session, but the bill failed to pass.

Your Committee noted a State bill similar to the first proposed bill is included in the 2018 Maui County Legislative Packet that will be submitted to the 30<sup>th</sup> Hawaii State Legislature convening in January, 2018. The State version differs from the County version in that its ban on the sale and use of personal care products containing oxybenzone and octinoxate would apply state-wide. Nevertheless, your Committee elected to proceed with a County ban at the same time.

At its meeting of November 13, 2017, your Committee received presentations from Dr. Craig A. Downs, a forensic ecotoxicologist and the Executive Director of the Haereticus Environmental Laboratory in Virginia, and Joe DiNardo, retired research scientist and toxicologist. Both

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presenters were designated as resource persons pursuant to Rule 18, Rules of Council, as both individuals have extensive background in the field of toxicology, particularly as it relates to environmental hazards.

Both Dr. Downs' and Mr. DiNardo's presentations outlined the detrimental effects of oxybenzone and octinoxate on the marine environment and human health.

Your Committee noted several testifiers who reported possible impact of the chemicals on inland water resources, such as Ching's Pond in Keanae, where tourists often go to swim after applying sunscreen, and which water then feeds into nearby lo'i patches. One testifier witnessed seeing a shiny sheen on the water as it enters the lo'i patches. Your Committee noted the possible detrimental impact that an introduction of these chemicals may have on inland food sources, such as taro.

During the meeting, the Chair of your Committee distributed a revised proposed bill entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.\_\_, MAUI COUNTY CODE, PROHIBITING THE SALE AND USE OF SPF SUNSCREEN CONTAINING OXYBENZONE AND OCTINOXATE." The purpose of the revised proposed bill is to replace "personal care products" with "SPF sunscreen," and to include a definition of "SPF sunscreen."

The Deputy Corporation Counsel stated she had concerns about the revised proposed bill, including the legal impacts of the ban and other legal issues. She suggested an executive session so she could express those concerns to your Committee. Your Committee chose not to go into executive session. Your Committee noted individual members could have further discussions with Corporation Counsel at any time prior to first reading if they had legal concerns about the revised proposed bill. The Deputy Corporation Counsel stated the Council could enact the revised proposed bill without approval as to form and legality by the Department of the Corporation Counsel.

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Your Committee voted 4-1 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Cochran and members Atay, Carroll, and White voted "aye." Committee member Sugimura voted "no." Committee Vice-Chair Guzman and member Hokama were excused.

Your Committee is in receipt of a further revised proposed bill incorporating nonsubstantive revisions. This revised proposed bill is not approved as to form and legality by the Department of the Corporation Counsel. Your Committee notes the Deputy Corporation Counsel has stated that the Department of the Corporation Counsel will not be approving the revised proposed bill as to form and legality.

Your Infrastructure and Environmental Management Committee RECOMMENDS the following:

1. That Bill \_\_\_\_\_ (2017), attached hereto, entitled "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 PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 17-316 be FILED.

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



\_\_\_\_\_  
ELLE COCHRAN, Chair

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:

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Department of the Corporation Counsel  
County of Maui

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