

COUNCIL OF THE COUNTY OF MAUI

HOUSING, HUMAN SERVICES, AND TRANSPORTATION COMMITTEE

September 4, 2015

**Committee
Report No.** _____

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

Chair and Members:

Your Housing, Human Services, and Transportation Committee, having met on August 20, 2015, makes reference to County Communication 15-205, from Presiding Officer Pro Tempore Michael P. Victorino, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 8.20, MAUI COUNTY CODE, RELATING TO PROHIBITING SMOKING AT BUS STOPS." The purpose of the proposed bill is to prohibit smoking at County bus stops.

Your Committee notes the proposed prohibition would apply to any County bus stop established pursuant to Chapter 11.07, Maui County Code ("MCC"). The prohibition would encompass an area extending out from the bus stop sign and the footprint of the bus shelter in every direction by 20 feet.

The proposed bill also updates references in Chapter 8.20, MCC, to reflect the repeal of Chapter 328K, Hawaii Revised Statutes ("HRS"), and the enactment of Chapter 328J, HRS, relating to smoking.

Your Committee notes Section 8.20.030, MCC, prohibits smoking in "[a]ny enclosed or partially enclosed area or building owned, leased, operated, or maintained by the County, except for residential dwelling units." In addition, Section 328J-3, HRS, prohibits smoking in enclosed or partially enclosed areas open to the public, including "[a]irports and public transportation facilities and vehicles, including buses and taxicabs, under the authority of the State or county, and ticket, boarding, and waiting areas of public transit depots."

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The First Deputy Corporation Counsel noted that while the existing prohibitions could arguably include County bus stops, the proposed bill would make it clear County bus stops, as well as an area extending out from the bus stop sign and the footprint of the bus shelter in every direction by 20 feet, are also areas in which smoking is prohibited. The description of the area encompassed by the prohibition is compatible with Section 328J-6, HRS, which defines as a presumptively reasonable minimum distance 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited.

Your Committee discussed adding electronic smoking devices, such as devices commonly known as “e-cigarettes,” to the prohibition. A Deputy Corporation Counsel said the State had recently passed legislation, Act 19 (2015), relating to the regulation of tobacco products. The State legislature found the unregulated use of electronic smoking devices is potentially hazardous to health and disruptive to an orderly and productive work environment. The State legislature, therefore, added new definitions in Section 328J-1, HRS, for “electronic smoking device” and “tobacco product.” The State legislature also amended the definition of “smoke” or “smoking” by broadening it to mean “inhaling, exhaling, burning, or carrying any lighted or heated tobacco product or plant product intended for inhalation in any manner or in any form,” and to include the use of an electronic smoking device. Act 19 (2015) takes effect January 1, 2016.

Your Committee felt it appropriate to add these definitions in the proposed bill and to expand the prohibition at bus stops to include the broader definition of “smoking” soon to be used by the State, which would include the use of an electronic smoking device. Your Committee revised the bill accordingly.

Your Committee notes that, because the proposed bill relates to smoking at bus stops only, separate legislation would be needed for the expanded definition of “smoke” or “smoking” to apply to areas other than bus stops.

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The Director of Transportation voiced support for the proposed bill. She noted smoking is already banned in buses. Your Committee notes that, in addition to the prohibition stated in Section 328J-3, HRS, excerpted above, Subsection 8.20.030(N), MCC, also prohibits smoking in “[a]ll vehicles owned or leased by the County.”

The Director of Transportation said the cost of obtaining signage to advise of the smoking prohibition at County bus stops would be less than \$10,000, and signs could be made within four to six weeks. To accommodate the time needed to post appropriate signage at County bus stops and advise the public of the prohibition, your Committee revised the effective date of the proposed bill to November 1, 2015.

Your Committee discussed enforcement by the Department of Fire and Public Safety relating to signage requirements, and the Department of Police relating to other aspects of the existing smoking prohibition. Your Committee also reviewed the response from the Department of the Prosecuting Attorney, which noted the Department had not prosecuted any cases under Chapter 8.20, MCC, or Chapter 328J, HRS. The Departments stated they did not anticipate the proposed bill would impact personnel needs.

A Deputy Corporation Counsel stated Section 8.20.040, MCC, provides for a fine of \$25 to \$50 for a violation of the Chapter, which fines would accrue to the State.

Your Committee stressed the importance of protecting the health of bus riders, who should be able to wait for the bus without exposure to second-hand smoke.

Your Committee voted 6-0 to recommend passage of the proposed bill on first reading, incorporating your Committee’s revisions, and filing of the communication. Committee Chair Crivello, Vice-Chair Baisa, and

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members Carroll, Couch, Guzman, and Victorino voted "aye." Committee member Hokama was excused.

Your Committee is in receipt of a revised proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 8.20, MAUI COUNTY CODE, RELATING TO PROHIBITING SMOKING AT COUNTY BUS STOPS," approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Housing, Human Services, and Transportation Committee **RECOMMENDS** the following:

1. That Bill _____ (2015), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 8.20, MAUI COUNTY CODE, RELATING TO PROHIBITING SMOKING AT COUNTY BUS STOPS," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 15-205 be FILED.

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



STACY CRIVELLO, Chair

ORDINANCE NO. _____

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8.20, MAUI COUNTY CODE, RELATING TO PROHIBITING SMOKING AT COUNTY BUS STOPS

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

SECTION 1. The purpose of this ordinance is to prohibit smoking at County bus stops. For purposes of this prohibition, “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, and includes the use of an electronic smoking device.

SECTION 2. Section 8.20.020, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

“Electronic smoking device” means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, hookah pipe, or hookah pen, and any cartridge or other component of the device or related product, whether or not sold separately.

“Tobacco product” means any product made or derived from tobacco, that contains nicotine or other substances, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. “Tobacco product” does not include drugs, devices, or combination products approved for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.”

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[, and].

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 [multi-family] 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[; and].

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[; and].

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.”

SECTION 4. Section 8.20.035, Maui County Code, is amended by amending subsection D to read as follows:

“D. The department of fire [control] and public safety shall have the power to formulate any applicable rules and regulations necessary to carry out the provisions of this section.”

SECTION 5. Section 8.020.050, Maui County Code, is amended by amending subsection D to read as follows:

“D. Enforcement of the provisions of section 8.20.035 shall be under the jurisdiction of the department of fire [control,] and public safety, which department is also empowered to enforce the signage requirements of section [328K-4,] 328J-9, Hawaii Revised Statutes, or any successor statute. The fire chief or [his] a duly authorized representative is authorized to issue a summons or citation to any person who violates section 8.20.035 or section [328K-4,] 328J-9, Hawaii Revised Statutes, or any successor statute.”

SECTION 6. Section 8.20.060, Maui County Code, is amended to read as follows:


“8.20.060 Conflict with chapter [328K,] 328J, Hawaii Revised Statutes. A. If any provision of this article conflicts with any provision of [part I of chapter 328K,] chapter 328J, Hawaii Revised Statutes, or any successor statute, the more stringent provision shall control.

B. If any violation of this chapter also constitutes a violation of chapter [328K,] 328J, Hawaii Revised Statutes, or any successor statute, the State statute shall control, and the violator shall be subject to the penalties and procedures set forth thereunder.”

SECTION 7. 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 8. This ordinance shall take effect on November 1, 2015.

APPROVED AS TO FORM AND
LEGALITY:



Jeffrey Ueoka
Department of the Corporation Counsel
County of Maui

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