

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ENVIRONMENT," BY CREATING ARTICLE VIII THEREOF, TO BE ENTITLED "SALE OF SUNSCREEN PRODUCTS," TO PROHIBIT THE SALE OF SUNSCREEN PRODUCTS CONTAINING OXYBENZONE OR OCTINOXATE, OR BOTH; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and the City Commission of the City of Miami Beach find that two chemicals contained in many sunscreens, oxybenzone and octinoxate, have significant harmful impacts on Florida's marine environment and residing ecosystems, including coral reefs that protect Florida's shoreline; and

WHEREAS, research has shown that oxybenzone and octinoxate cause mortality in developing coral; increase coral bleaching—an indicator of extreme stress, even at temperatures below 87.8 degrees Fahrenheit; cause genetic damage to coral and other marinorganisms; degrade the resiliency and ability of corals to adjust to climate change factors; and, inhibit the growth of new coral; and

WHEREAS, oxybenzone and octinoxate appear to increase the probability of hormonal disruption in sea life, and scientific studies show that both chemicals can induce feminization in adult male fish and increase reproductive diseases in marine invertebrate species, such as sea urchins, in vertebrate species, such as wrasses, eels, and parrotfish, and in mammals; and

WHEREAS, oxybenzone and octinoxate also induce deformities in the embryonic development of fish, sea urchins, coral, and shrimp and induce neurological behavioral changes in fish, all of which threaten the welfare of fish populations; and

WHEREAS, species that are listed as endangered pursuant to the federal Endangered Species Act and that inhabit this state's waters, including sea turtle species, marine mammals, and migratory birds, may also be exposed to oxybenzone and octinoxate contamination; and

WHEREAS, in 2018, the state of Hawaii passed the first bill in the country banning the sale or distribution of over-the-counter sunscreens containing oxybenzone and octinoxate, which will take effect on January 1, 2021; and

WHEREAS, on February 5, 2019, the City of Key West became the first city in the country to ban the sale of sunscreens containing oxybenzone and octinoxate, which will take effect on January 1, 2021; and

WHEREAS, on February 5, 2019, Florida Senator Linda Stewart filed legislation (Senate Bill 708), which would ban the sale or distribution of sunscreens in Florida containing oxybenzone and octinoxate unless the user has a prescription from a licensed medical professional; and

WHEREAS, the Mayor and the City Commission of the City of Miami Beach find that preserving the City's marine life and ecosystems, including coral reefs, by prohibiting the sale of

sunscreen skin care products containing oxybenzone and octinoxate, which are harmful to coral reefs and our marine environment, is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. Chapter 46 of the Code of the City Miami Beach is hereby amended to create Article VIII thereof, to be entitled "Sale of Sunscreen Products," as follows:

**CHAPTER 46
ENVIRONMENT**

* * *

ARTICLE VIII. SALE OF SUNSCREEN PRODUCTS

Sec. 46-212. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cosmetic product refers to products intended to be rubbed, poured, sprinkled, or sprayed on; introduced into; or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance.

Octinoxate refers to the chemical ((RS)-2-Ethylhexyl (2E)-3-(4-methoxyphenyl)prop-2-enoate under the International Union of Pure and Applied Chemistry chemical nomenclature registry; that has a chemical abstract service registry number 5466-77-3; whose synonyms include, but are not limited to, ethylhexyl methoxycinnamate, octyl methoxycinnamate, Eusolex 2292, Neo Heliopan AV, NSC 26466, Parsol MOX, Parasol MCX, Parsol MOX, 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 SPF sunscreen protection personal care product.

Oxybenzone refers to the chemical (2-Hydroxy-4-methoxyphenyl)-phenylmethanone under the International Union of Pure and Applied Chemistry chemical nomenclature registry; that has a chemical abstract service registry number 131-57-7; whose synonyms include, but are not limited to, benzophenone-3, Escalol 567, Eusolex 4360, KAHSCREEN BZ-3, Uvasorb MET/C, Syntase 62, UV 9, Uvinul 9, Uvinul M-40, Uvistat 24, USAF Cy-9, Uniphenone-3U, 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 SPF sunscreen protection personal care product.

SPF sunscreen protection personal care product includes, but is not limited to, lotion, paste, balm, ointment, cream, solid stick applicator, brush applicator, roll-on applicator, aerosol spray, non-aerosol spray pump, and automated and manual mist spray.

Sunscreen means a product marketed or intended for topical use to prevent sunburn. Sunscreen does not include products marketed or intended to be used predominantly as a cosmetic product.

Sec. 46-213. Sale of sunscreen products containing oxybenzone or octinoxate, or both; prohibition; Penalties.

- (a) It shall be unlawful to sell, offer for sale, or distribute for sale in the City Miami Beach any SPF sunscreen protection personal care product that contains oxybenzone or octinoxate, or both, without a prescription from a licensed medical professional.
- (b) Beginning July 1, 2019, the City shall engage in public education efforts to inform stores and shops within the City of Miami Beach that offer sunscreen products for sale of the provisions of this article and to provide assistance with identifying alternative sunscreen products.
- (c) Beginning July 1, 2020, the City shall provide for a six-month warning period through and including December 31, 2020, during which the Code Compliance Department shall issue written warnings for violations of this article.
- (d) Beginning January 1, 2021, the code compliance department shall enforce the provisions in this article.
- (e) If a Code Compliance officer finds a violation of this article, except as otherwise provided during the warning period in subsection (c), the Code Compliance officer shall issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten days after service of the notice of violation, and that the failure to appeal the violation within ten days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
- (f) A violator who has been served with a notice of violation must pay the following civil fine:
 - (1) First violation within a 12-month period \$250.00;
 - (2) Second violation within a 12-month period \$500.00;
 - (3) Third or subsequent violation within a 12-month period \$1,000.00; or
 - (4) Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten days of the service of the notice of violation. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
- (g) Failure to pay the civil fine, or to timely request an administrative hearing before a special master, shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.
- (h) A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be

deemed to be a court judgment except for enforcement purposes. After three months following the recording of any such lien that remains unpaid, the city may foreclose or otherwise execute upon the lien for the amount of the lien plus accrued interest.

- (i) The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten days of the service of the notice of violation. The special master shall not have discretion to alter the penalties prescribed in this article. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2019.

PASSED AND ADOPTED this ____ day of _____, 2019.


ATTEST:


Dan Gelber, Mayor

Rafael E. Granado, City Clerk

Underlines denote additions
Strikethrough denotes deletions

(Sponsored by Commissioner Michael Góngora)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney 
3-12-19

Date