

A BILL FOR AN ORDINANCE AMENDING CHAPTER 22, ARTICLE 15, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO GENERAL PROVISIONS RELATING TO PUBLIC HEALTH, SAFETY AND WELFARE (OBNOXIOUS SUBSTANCES)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Council of the County of Kaua'i finds that Chapter 22, Article 15, Kaua'i County Code 1987, as amended, was created to regulate the use and possession of devices capable of emitting gases or obnoxious substances. Although primarily used to regulate the use of pepper spray; Article 15 did not specifically reference pepper spray. Over time, the use of pepper spray has proven to be an effective means of protection when used properly. The purpose of this Ordinance is to repeal the existing Chapter 22, Article 15 in its entirety, and to provide a new Chapter 22, Article 15, entitled "Possession and Use of Pepper Spray for Self-Defense or Defense of Others." The new Article 15 allows for the sale and use of pepper spray in volumes no greater than two (2) ounces when contained in a device that prevents accidental release and is nonflammable. This Article also allows for the use of pepper spray for self-defense, defense of others, and for the protection of property. Exceptions for certain government entities and private organizations are provided, as well as penalties for violations.

SECTION 2. Chapter 22, Article 15, Kaua'i County Code 1987, as amended, is hereby repealed and all other prior ordinances or parts of ordinances in conflict herewith are hereby repealed as follows:

"[Article 15. Obnoxious Substances

Sec. 22-15.1 Findings and Purpose.

Sec. 22-15.2 Definitions.

Sec. 22-15.3 Prohibitions.

Sec. 22-15.4 Exceptions.

Sec. 22-15.5 Permits to Acquire.

Sec. 22-15.6 Ownership or Possession Prohibited, When.

Sec. 22-15.7 Vendor to Obtain License.

Sec. 22-15.8 Violation—Penalty.

Sec. 22-15.9 Severability.

Sec. 22-15.1 Findings and Purpose.

The Council finds that the use and possession of devices capable of emitting gases or obnoxious substances by unauthorized persons creates a potential danger to the peace and well-being of the community at large, but that such devices when used by proper authorities, serve a useful purpose. Therefore, pursuant to the power granted in Article II of the Charter and Sec. 46-1.5, H.R.S., this Article is enacted to regulate and license the use and dissemination of devices emitting obnoxious substances. The terms of this Article shall be liberally construed to effectuate the purpose stated herein.

Sec. 22-15.2 Definitions.

As used in this Article, unless the context clearly requires otherwise:

“Agency” means all such organizations, public and private, whose operations are determined by the Chief of Police to require the use of obnoxious substances to accomplish a proper purpose.

“Chief of Police” means the Chief of Police of the County of Kaua‘i or the Chief of Police’s authorized subordinate.

“Devices” means all shells, cartridges, bombs, guns, or aerosol capable of emitting obnoxious substances in gas, vapor, liquid or solid form.

“Employee” means all officers, agents and employees of an agency whether or not such officer, agent or employee has been issued a permit.

“Gun” means all revolvers, pistols, rifles, fountain pen guns, riot guns, shot guns and cannons portable or fixed except those regularly manufactured, and used with firearm ammunition.

“Obnoxious substances” means chloracetophenone (CN), o-chlorobenzalmalonitrile(CS), oleo resin capsicum (OC), or any derivative thereof.

“Person” means the same as defined in Sec. 1-3.1, Kaua‘i County Code 1987.

“Shell, cartridge or bomb” means all shells, cartridges or bombs capable of being discharged or exploded by the use of percussion caps, fuses, electricity or other means to cause or permit the release or emission of obnoxious substances.

Sec. 22-15.3 Prohibitions.

(a) No person shall use any obnoxious substance device which is injurious to person or property, or which is nauseous, sickening, irritating or offensive to any of the senses, in order to injure, molest, discomfort, discommode or coerce another in the use or control of the individual's person or property.

(b) No person shall sell or offer for sale any obnoxious substance device to a person who does not have a permit issued in accordance with this Article.

(c) No person shall give or transfer any obnoxious substance device to a person who does not have a permit issued in accordance with this Article.

Sec. 22-15.4 Exceptions.

(a) Government Law Enforcement Agencies. Notwithstanding the prohibitions and permit requirement established herein, government law enforcement agencies may purchase, possess, discharge, use or transport such shells, cartridges, bombs, guns, or other devices emitting obnoxious substances in carrying out their duties.

(b) Licensed Private Security Agencies. Notwithstanding the prohibitions and permit requirements established herein, private security officers who are employees of licensed private police or security agencies may purchase, possess, discharge, use or transport such shells, cartridges, bombs, guns, or other devices emitting obnoxious substances in carrying out their duties.

(c) Other Agencies. Notwithstanding the prohibitions and permit requirements established herein, employees of government and private organizations who, by necessity of their employment, are required to go on private property to carry out their duties may possess, discharge, use or transport such shells, cartridges, bombs, guns, or other devices emitting obnoxious substances, or animal repellents.

Sec. 22-15.5 Permits to Acquire.

(a) No person shall own or acquire the ownership of an obnoxious substance device, whether usable or unusable, serviceable or unserviceable, either by purchase, gift, inheritance, bequest, or in any other manner, whether procured in the State or imported by mail, express, freight, or otherwise, until the person has first procured from the Chief of Police, a permit to acquire the ownership of an obnoxious substance device.

(b) The permit application form shall include but not be limited to, the applicant's name, address, sex, height, weight, date of birth, place of birth, Social Security number, and information regarding the applicant's mental health history.

(c) An applicant for a permit shall sign a waiver at the time of application, allowing the Chief of Police access to any records that have a bearing on the mental health of the applicant. The permit application form and the waiver form shall be prescribed by the County Attorney.

(d) The permit application form shall be signed by the applicant and by the Chief of Police or designee. One (1) copy of the permit shall be retained by the Chief of Police as a permanent official record.

(e) There shall be a one-time five dollar (\$5.00) fee for the permit.

Sec. 22-15.6 Ownership or Possession Prohibited, When.

(a) No person who is a fugitive from justice shall own, possess, or control any obnoxious substance device.

(b) No person who is under indictment for, or has waived indictment for, or has been bound over to the circuit court for, or has been convicted in this State or elsewhere of having committed a felony, or any crime of violence, or an illegal sale of any drug shall own, possess, or control any obnoxious substance device.

(c) No person who:

(1) Is or has been under treatment or counseling for addiction to, abuse of, or dependence upon any dangerous, harmful, or detrimental drug, intoxicating compound, or intoxicating liquor as defined in H.R.S. Section 712-1240;

(2) Has been committed pursuant to H.R.S. Sections 333F-9 or F-10;

(3) Has been acquitted of a crime on the grounds of mental disease, disorder, or defect pursuant to H.R.S. Section 704-411; or

(4) Is or has been diagnosed as having a significant behavioral, emotional, or mental disorder as defined by the most current diagnostic manual of the American Psychiatric Association or for treatment for organic brain syndromes;

Shall own, possess, or control any obnoxious substance device unless the person has been medically documented to be no longer adversely affected by the addiction, abuse, dependence, mental disease, disorder, or defect.

(d) No person who is less than twenty-five (25) years old and has been adjudicated by the family court to have committed a felony, two (2) or more crimes of violence, or an illegal sale of any drug shall own, possess or control any obnoxious substance device.

(e) No minor under the age of eighteen (18) years shall purchase, possess, or use any obnoxious substance device, and no vendor shall sell, offer for sale, or otherwise furnish any obnoxious substance device to a minor.

(f) Any person disqualified from ownership, possession, or control of an obnoxious substance device by this Article shall dispose of such obnoxious substance device in compliance with this Article.

Sec. 22-15.7 Vendor to Obtain License.

(a) Any person, corporation, partnership or association vending the obnoxious substances enumerated herein shall first obtain a license from the Director of Finance.

(b) The vendor shall keep accurate records of the sale of said obnoxious substances including monthly inventories showing the quantity and type of devices received, inventories showing the quantity of devices on hand, accurate records of the sale of such devices including the name of the purchasing agency, date of purchase, type of obnoxious substances sold and the number of each type and such other records as the Chief of Police may require.

(c) The Chief of Police shall have access to the vendor's books and records pertaining to the purchase and sale of obnoxious substances at reasonable times during business hours.

(d) The sale of obnoxious substances shall be made in case sized units as packaged at the factory and unopened except that the unopened case may be placed in a container provided by the local vendor prior to the sale. Deliveries as provided for herein shall be made only by the personnel of the vendor or the delivery service which is listed on the vendor's permit required by this Section. No permit shall be required for the personnel or delivery service making such deliveries.

(e) The one-time fee for a license under this Section shall be twenty-five dollars (\$25.00), which shall be payable to the Director of Finance.

Sec. 22-15.8 Violation—Penalty.

Any person violating any provision of this Article shall upon conviction be punished by a fine not exceeding two thousand dollars (\$2,000.00) or by imprisonment not exceeding one (1) year or both, and upon such conviction, any

permit or license issued to any person hereunder shall be revoked. (Ord. No. 691, July 5, 1995)

Sec. 22-15.9 Severability.

If any provision of this Article, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable.]”

SECTION 3. Chapter 22, Article 15, Kaua‘i County Code 1987, as amended, is hereby amended to read as follows and all other and prior ordinances or parts of ordinances in conflict herewith are hereby repealed:

“Article 15. Possession and Use of Pepper Spray for Self-Defense or Defense of Others

Sec. 22-15.1 Definitions.

Sec. 22-15.2 Restrictions on possession and use of pepper spray.

Sec. 22-15.3 Exceptions.

Sec. 22-15.4 Violation—Penalty.

Sec. 22-15.1 Definitions.

As used in this Article:

“Adult” means any natural person other than a minor.

“Chief of Police” means the Chief of Police of the County of Kaua‘i or the Chief of Police’s authorized designee.

“Department” means the Kaua‘i Police Department.

“Minor” means any natural person below the age of 18 years.

“Pepper Spray” means any aerosol container or other device that is capable of emitting chloroacetophenone (CN), orthochlorobenzalmalonitrile (CS), or oleoresin capsicum (OC), or any combination or derivative thereof, in a vapor, gel, foam or liquid form.

“Person” means the same as defined in Sec. 1-3.1, Kaua‘i County Code 1987, as amended.

Sec. 15.2 Restrictions on Possession and Use of Pepper Spray.

(a) No person shall use or possess pepper spray in a volume greater than two (2) ounces.

(b) A person may possess and use pepper spray stored in any aerosol container or other device with a maximum volume of two (2) ounces, which is designed to fit into a handbag or a pants pocket. The container or device must have a mechanism to prevent the accidental release of the spray, and the container or device must use a nonflammable propellant or carrier. It is unlawful for any person to use pepper spray for any purpose, except:

1. Self-defense;
2. Defense of another person; or
3. Protection of property of the person or of another person.

(c) It is unlawful for any person to sell, offer for sale, or otherwise furnish any pepper spray to a minor in the County.

(d) It is unlawful for a minor to purchase, possess, or use any pepper spray in the County.

(e) It is unlawful to sell or offer for sale any pepper spray on a premises where liquor or alcoholic beverages are consumed.

(f) It is unlawful for any person to alter the manufacturer’s name on any pepper spray to be carried or used in the County.

Sec. 15.3 Exceptions.

(a) Kaua‘i Police Department is authorized to use all devices. The Chief of Police or the Chief of Police’s subordinates may purchase, possess, discharge, use, or transport shells, cartridges, bombs, guns, or other devices emitting pepper spray in carrying out their duties.

(b) Private security agencies are authorized to use certain devices. Private security officers who are employees of private police or security agencies may purchase, possess, discharge, use, or transport shells, cartridges, bombs, guns, or other devices emitting pepper spray in carrying out their duties.

(c) Other organizations authorized to use device. Employees of government and private organizations who, by necessity of their employment, are required to go on private property to carry out their duties may possess, discharge, use, or transport shells, cartridges, bombs, guns, or other devices emitting pepper spray.

Sec. 22-15.4 Violation—Penalty.

Any person who violates this Article shall, upon conviction, be punished by a fine not exceeding two thousand dollars (\$2,000) or by imprisonment not exceeding one (1) year, or by both, and the device is subject to forfeiture in accordance with Hawaii Revised Statutes, §712A.

SECTION 6. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION 7. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 8. This Ordinance shall take effect upon its approval.

Introduced by:



KIPUKAI KUALITI



ADDISON BULOSAN

DATE OF INTRODUCTION:

April 26, 2023

Lihu'e, Kaua'i, Hawai'i

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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2898 which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on June 14, 2023, by the following vote:

FOR ADOPTION:	Cowden, Kagawa, Kualii, Rapozo	TOTAL – 4,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bulosan, Carvalho, DeCosta	TOTAL – 3,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i
June 14, 2023


Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

ATTEST:



Mel Rapozo
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

June 14, 2023

Approved this 28 day of

June, 2023.



Derek S.K. Kawakami,
Mayor
County of Kaua'i