RICHARD T. BISSEN, JR.
Mayor

KATHLEEN ROSS AOKI
Planning Director

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DEPARTMENT OF PLANNING
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WAILUKU, MAUI, HAWAI'I 96793

November 3, 2023

Honorable Richard T. Bissen Jr.
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

11/7/23

Mayor Date

For Transmittal to:

Honorable Tom Cook, Chair
Water and Infrastructure Committee
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Cook:

SUBJECT: BILL 90 (2023) FOR AN ORDINANCE AMENDING SECTION 18.20.140.B, MAUI COUNTY CODE, RELATING TO UTILITY LINES AND FACILITIES

Thank you for your October 23, 2023 inquiry requesting input from the Department of Planning on proposed Bill 90, which would amend Section 18.20.140.B of the Maui County Code, pertaining to the undergrounding of utility lines. I understand that it is your intent to place this item on the agenda for the Water and Infrastructure Committee for consideration at their meeting on November 27, 2023. Please let this letter serve as comment on the proposed bill from the Planning Department.

Per the proposed Ordinance, it appears that the intent of the amendment is to revise the existing code to strengthen various requirements pertaining to the undergrounding of utilities. Amongst some relatively minor changes, it appears that there are five significant changes to the existing ordinance, which are summarized as follows:

1) Removing the text, "*but not limited to*", which would then mean that the ordinance will only apply to "*electric, telephone, street lighting, cable television services, and internet services*".
2) To add "*internet services*" as one of the utilities within this ordinance that would be required to be installed underground;
3) Removing the existing text, which indicates that this section applies only to subdivisions in the "*industrial, business, hotel, apartment and duplex areas*". As a

result, under the draft Ordinance, undergrounding would apply to all subdivisions in any area of the County with exception to where a subdivision consists of three or fewer lots as currently exempted;

4) Removing reference that the *"director may require the installation of underground utilities serving the subdivision in other urban areas in order to assure compatibility with neighboring developments"*; and,
5) Adding text that the *"Utility lines and related facilities installed under this section must not interfere with other underground utilities or proposed locations of other underground utilities"*.

In regard to 1) above, the Planning Department would recommend leaving the existing text, *"but not limited to"*, within the Ordinance. While it appears that the proposed addition of *"internet services"* captures all types of current utilities that would need to be undergrounded, removing the statement *"but not limited to"* would exclude all future types of utilities that may be unknown at this time. Leaving the existing text intact will avoid a potential conflict in the future, and/or need to re-amend the Ordinance to include any other type of future utility not currently listed.

In regard to 2) above, which would add *"internet services"* to the list of utilities required to be undergrounded, the Planning Department does not have any comment on and is generally supportive of this change that would address any internet services provided via hard line.

In regard to 3) above, while the existing ordinance requires the undergrounding of utilities in subdivisions only located in the areas of *"industrial, business, hotel, apartment and duplex"*, the proposed amendment would require all subdivisions to underground utilities, despite what area they are located in. This would include other areas not currently mandated to underground utilities, such as subdivisions in Residential, Agricultural, and Rural Districts, amongst others.

The Maui County General Plan 2030 and Maui Island Plan provide guidance on the undergrounding of utilities through the following:

- <u>Maui County General Plan 2030</u>
  Objective 5J: Promote the undergrounding of utility and other distribution lines for health, safety, and aesthetic reasons.

- <u>Maui Island Plan</u>
  Implementing Action 2.5.2-Action 3(2): Develop and adopt standards and processes to: (2) Require utilities to be placed underground, whenever feasible.

  Implementing Action 6.10.4-Action 2: Underground existing power transmission and distribution systems wherever possible or feasible when upgrades or new systems are needed.

Importantly, while the policies identified above clearly promote the importance of undergrounding utilities, they do so with the caveat of doing so whenever/wherever feasible. While undergrounding utilities is important for aesthetic, and health and safety reasons, there may

be instances when undergrounding of utilities may not be feasible in residential, agricultural or rural areas. For example, undergrounding utilities is a significant expense that would increase development costs when considering the development of affordable housing projects. Further, for subdivisions in Agricultural or Rural Districts, the undergrounding of utilities may not be feasible due to topography, existing cultural resources, or type of surface/sub-surface material.

Sub-section 18.20.140.D, which falls under the same Section (18.20.140) as sub-section 18.20.140.B that is currently proposed to be amended, provides a process to vary from the requirement of utility undergrounding where it may not be feasible. Specifically, this subsection currently states:

> 18.20.140.D *"Whenever the strict application of the requirements of this section would be impractical because of the nature of the surface, subsurface, or topographical conditions of the property to be subdivided, the board of variances and appeals may approve such modification thereof as is reasonably necessary in the interest of the public and not contrary to the intent and purposes of this chapter. Before making any such modification, the board of variances and appeals shall refer the request for any such modification to the director for a recommendation." (emphasis added)*

While this process may or may not provide relief for those residential, agricultural or rural subdivisions due to the nature of the surface, subsurface or topographical conditions that may preclude undergrounding utilities, obtaining such a variance would be difficult for other circumstances, such as considering costs associated with the development of an affordable housing project or protecting historical and cultural resources. As such, the Committee may wish to consider including an additional provision in 18.20.140.B that provides the Director the discretion to waive the requirement for undergrounding utilities in certain instances. If desired, an additional revision to 18.20.140.B could be included that would add the following text shown as <u>double-underscored</u>:

> *"...<u>except</u> where a subdivision consists of three <u>or fewer</u> lots [or less], <u>or as determined by the director, the subdivision includes cultural or historical areas of significance, an affordable housing component, or topographical, surface/subsurface conditions that would prohibit undergrounding</u>, the subdivider may, upon <u>the director's</u> approval, [of the director] arrange to have [such] utility lines and related facilities installed overhead...*

In regard to 4) above, which proposes to remove a section from the existing ordinance that indicates, *"The director may require the installation of underground utilities serving the subdivision in other urban areas in order to assure compatibility with neighboring developments"*, removing this section makes sense if the revisions proposed in 3) above are adopted as those amendments will require underground utilities in all subdivisions.

In regard to 5) above, which ensures that proposed utilities installed under this sub-section do not interfere with other underground utilities, since this is typical standard practice when installing underground utilities, the Department does not have an opinion on the additional text.

Thank you for the opportunity to provide our input. Should you have any questions, please feel free to contact me.

Sincerely,

KATHLEEN ROSS AOKI
Planning Director

xc: Garrett Smith, Deputy Director (pdf)
Jordan Hart, Planning Program Administrator (pdf)
Jordan Molina, Director of Public Works (pdf)
Gregory Pfost, Administrative Planning Officer (pdf)

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ORDINANCE NO. _____

BILL NO. 90 (2023)

A BILL FOR AN ORDINANCE AMENDING SECTION 18.20.140, MAUI COUNTY CODE, RELATING TO UTILITY LINES AND FACILITIES

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

SECTION 1. This Ordinance's purpose is to implement the General Plan's directives to require the undergrounding of more utility lines.

SECTION 2. Section 18.20.140, Maui County Code, is amended by amending subsection (B) to read as follows:

> "B. Utility lines, including [but not limited to] those required for electric, telephone, street lighting, cable television services, and internet services, and other related facilities[, shall] must be installed underground in all subdivisions [laid out within the industrial, business, hotel, apartment and duplex areas in accordance with] under the applicable standards and methods employed for [such] underground installation by the public utility companies, [involved; provided, however,] except where a subdivision consists of three or fewer lots [or less], the subdivider may, upon the director's approval, [of the director,] arrange to have [such] utility lines and related facilities installed overhead [in accordance with] under the standards and methods employed for [such] overhead installation by the public utility companies. [The director may require the installation of underground utilities serving the subdivision in other urban areas in order to assure compatibility with neighboring developments.] The subdivider [shall be responsible for making] must make the necessary arrangements with government agencies and the public utility companies [concerned] for the installation of [such] utility lines and related facilities [in accordance with the requirements of this chapter.] consistent with this chapter's requirements. Utility lines and related facilities installed under this section must not interfere with other underground utilities or proposed locations of other underground utilities."

SECTION 3. 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 4. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

/s/ Michael J. Hopper

MICHAEL J. HOPPER
Deputy Corporation Counsel
Department of the Corporation Counsel
County of Maui
LF2023-1537
PAF 23-268 2023-09-26 Ord Amd Ch 18.20
paf:ebm:23-268a

INTRODUCED BY:

GABE JOHNSON

WAI Committee

From: Michelle Santos <Michelle.Santos@co.maui.hi.us>
Sent: Tuesday, November 7, 2023 10:11 AM
To: WAI Committee
Cc: Cynthia Sasada; garrett.e.smith@co.maui.hi.us; Gregory Pfost; Jordan Hart; Jordan Molina; Josiah Nishita; joy.paredes@co.maui.hi.us; Kekuhaupio Akana; kathleen.aoki@co.maui.hi.us; Leo Caires; Louise Batoon; Pili Nahooikaika
Subject: MT#10359 Bill 90 For an Ordinance Amending Section 18.20.140.B, Maui County Code, Relating to Utility Lines and Facilities
Attachments: MT#10359-WAI Committee.pdf

NOTE: PLEASE DO NOT FORWARD MY EMAIL TO ANYONE OUTSIDE OF THE COUNTY OF MAUI. YOU MAY CLICK ON THE ATTACHMENT ITSELF AND CREATE YOUR OWN EMAIL TO FORWARD THE DOCUMENT TO ANOTHER PERSON OUTSIDE OF THE COUNTY.

Michelle L. Santos

Office Operations Assistant

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