

ORDINANCE NO. _____

BILL NO. 86 (2023)

A BILL FOR AN ORDINANCE RELATING TO
MAUI WILDFIRES DEBRIS REMOVAL

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

SECTION 1. **Findings and Declarations.**

A. Pursuant to Hawaii Revised Statutes Section 46-1.5(13) each County shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of the County and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute where the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State; in addition, Hawaii Revised Statutes Section 46-17 states that the council of any County may adopt and provide for the enforcement of ordinances regulating or prohibiting noise, smoke, dust, vibration, or odors which constitute a public nuisance.

B. Beginning on August 8, 2023 and continuing thereafter, several large wildfires have burned thousands of acres on Maui Island in Lahaina, Kula and Olinda, resulting in the death of an as yet unconfirmed number of people totaling over one-hundred, as well as the destruction of over two-thousand two-hundred structures (the “Maui Wildfires”)

C. Acting Governor Sylvia Luke’s Proclamation Relating to Wildfires declared a state of emergency in the counties of Maui and Hawai’i on August 8, 2023. The Emergency Proclamation currently in effect is Governor Josh Green’s Sixth Proclamation Relating to Wildfires issued on August 19, 2023. Among other actions, the Governor declared in the Sixth Proclamation that disaster-generated debris on private property in impacted areas constitutes an immediate threat to life, public health, and safety, and to the economic recovery of the community at large.

D. Maui Mayor Richard T. Bissen’s Emergency Proclamation declared a state of emergency for the County of Maui

on August 8, 2023. The Emergency Proclamation currently in effect is Mayor Bissen's Third Proclamation issued on August 15, 2023.

E. In destroying private structures, the Maui Wildfires have created an accumulation of fire debris, much of which has been determined to be contaminated with heavy metals and asbestos.

F. The potential for widespread toxic exposures and threats to public health and the environment exists in the aftermath of a major fire disaster. Debris and ash from residential structure fires contain hazardous substances that may lead to acute and chronic health problems and may have serious environmental impacts.

G. The combustion of building materials such as siding, roofing tiles, and insulation results in dangerous ash that may contain asbestos, heavy metals, and other hazardous materials, and household hazardous waste such as paint, gasoline, cleaning products, pesticides, and other chemicals that may have burned in the fire also produces hazardous materials.

H. Exposure to hazardous substances may lead to acute and chronic health effects, and may cause long-term public health and environmental impacts.

I. Uncontrolled hazardous materials and debris pose significant threats to public health through inhalation of dust particles and contamination of drinking water supplies, and improper handling of hazardous materials can expose workers to toxic materials and improper transport and disposal of fire debris can spread hazardous substances throughout the community.

J. Dead and dying trees damaged by Maui Wildfires and at risk of falling may threaten the health, safety and welfare of workers conducting debris removal and residents of the affected properties, as well as the general public if the trees are at risk of falling onto a public right of way or public infrastructure.

K. There is an urgent need to mitigate the harm to public health and the environment from the improper disturbance, removal, transport and/or disposal of hazardous waste, fire debris and hazard trees resulting from the Fire, to create and implement clear standards and procedures for removal of fire debris and hazard trees, and to facilitate coordinated, timely, and effective mitigation of the risks to public health and the environment from the health hazards generated by the Maui Wildfires. The County is acting pursuant to its authority under the Maui County code and in coordination with the United States Government and the State of Hawaii, and under all lawful County authority and authority

conveyed thereby, at present and in the future, to remediate the harms done to the community

SECTION 2. **Definitions.** For the purposes of this article, the following terms will have the following definitions:

"Alternative program" means the requirements for inspections, clean up and disposal of structural debris established by the County for property owners that opt out of or are disqualified from the government program.

"Council" means the Maui County Council.

"County" means the County of Maui.

"County building official" means the director of Public Works.

"Director" means the director of Department of Environmental Management or his or her designate.

"Eligible parcel(s)" means a parcel that is an improved public property.

"Eligible road(s)" means a public road or right-of-way.

"Eligible road(s) or parcel(s)" means eligible roads or eligible parcels.

"Fire debris" means structural debris and hazard trees.

"Government program" means the fire debris cleanup program operated by the Federal Emergency Management Agency and the United States Army Corps of Engineers in conjunction with the County and other State and Federal agencies.

"Hazard trees." The term "hazard trees" means wildfire-damaged trees that have been so damaged by the fires that their structural integrity is compromised, and they pose an immediate threat of falling onto work crews or obstructing their access to the debris clearance site, or of falling onto a public right of way or a public improved property.

"Maui Wildfires" means those fires occurring on or about August 7, 2023 and continuing through August 2023 causing extensive property damage and loss of life in the Kula and Lahaina regions.

"Phase I" means the household hazardous waste cleanup performed by the United States Environmental Protection Agency on certain properties impacted by the Maui Wildfires.

"Phase II" means the ash and debris cleanup work performed pursuant to the government program and/or the alternative program.

"Private action" means the removal of fire debris from private property damaged by the Maui Wildfires by persons disqualified from or opting out of the government program and participating in the alternative program.

"Qualifying structure" means a structure of 120 square feet and over.

"Removal of fire debris and hazard trees" as used in this article includes all cleanup of debris from structures and hazard trees resulting from the Maui Wildfires, including removal, transport and disposal of fire debris and hazard trees, but it does not include the removal of personal property from residential sites unless such removal of personal property involves cleanup and the removal of ash from the property.

"Right-of-entry permit" means the right-of-entry permit for debris and/or hazard tree removal on private property approved by the County of Maui for use in the cleanup after the Maui Wildfires.

"Structural debris" means the wildfire-generated debris including but not limited to burned or partially burned structures of 120 square feet or greater, ash, concrete foundations, contaminated soil, vehicles, trailers, waste or other debris from the property including any clearly destroyed structures, structures that pose an immediate threat to the general public, or structures where there is an imminent threat of collapse of the structure as determined by the director of public works.

SECTION 3 **Duration.**

This ordinance shall take effect immediately upon approval and shall remain in effect until the later of the cleanup of all fire debris

on all fire-damaged properties from the Maui Wildfires or the completion of all enforcement matters related to this ordinance, if any.

SECTION 4 Prohibition on removal of structural debris from private property.

Any removal of structural debris caused by the Maui Wildfires from private property is prohibited except pursuant to the requirements of the table below. For purposes of this section, the prohibition refers to the removal, transport and disposal of structural debris, but it does not include the removal of personal property from residential or commercial sites unless such removal of personal property involves cleanup and the removal of ash or other structural debris from the property.

	No structure on burned property	Non-qualifying structures (structures less than 120 square feet only on burned property)	Qualifying structures (structures 120 square feet and over on burned property)
Prior to completion of Phase I cleanup	Owner may remove debris	Debris removal prohibited	Debris removal prohibited
Prior to completion of Phase II cleanup	Owner may remove debris	Owner may remove debris with approval of the Director of Environmental Management	Government or alternative program contractors only may remove debris
Following Phase II cleanup	Owner may remove debris	Owner may remove debris with approval of the Director of Environmental Management	Owner may remove remaining debris not removed during Phase II with certificate from the Director of Environmental Management

For the purposes of this article, the requirement to enter into the government program or the alternative program shall apply only to properties that contained a qualifying structure under the government program. The requirement shall not apply to properties that only contained non-qualifying structures, including, but not

limited to, sheds, canopies, carports, well houses, greenhouses, chicken coops or fencing. Whether fire debris derived from a qualifying or non-qualifying structure shall be determined by the director, or his or her designee, in consultation with the United States Government and the State of Hawaii.

SECTION 5 Removal of structural debris and hazard trees through the government program.

A. The government program will remove fire debris at no out-of-pocket cost to the owner. As required by federal law, owner will be required to assign any insurance proceeds for debris or hazard tree removal to the government to avoid duplication of benefits. If an owner does not participate in the government program and there is fire debris on their property, the owners are required to remove such fire debris at their own cost.

B. To participate in the government program, owners must complete and submit a right of entry permit. The right of entry permit shall function as the sole permit and authorization for participation in the government program. Notwithstanding any contrary provision in the Maui County code, no County approvals or permits for the removal of fire debris are required for properties participating in the government program, other than the right-of entry permit. The director shall administer the collection of the right of entry permit in conjunction with other federal, state and county agencies and contractors. Such right of entry permit must be submitted to the director by the deadline as provided by the director. The director may extend this deadline as necessary and appropriate to facilitate the cleanup, avoid undue hardship, and to protect public health and safety, and to the extent any such extensions are approved by the government program.

C. Any property owner who executes a right of entry permit in a form approved by the County prior to the effective date of this ordinance shall be considered enrolled in the government program.

D. If a property contains fire debris and the owner of the property does not participate in the government program, the alternative program or the private tree program (as applicable), the County will enforce this article and charge the owners with any administrative and abatement costs related to such enforcement as described below. The costs of the alternative program and private tree program are paid by the property owner.

SECTION 6 Owner's removal of fire debris through the alternative program.

A. The County shall administratively adopt and administer the alternative program by administrative rules adopted by the director pursuant to Hawaii Revised Statutes Chapter 91.

B. Property owners that are not eligible for the government program or who elect not to participate in the government program for the removal of the fire debris on their properties must comply with the requirements of the alternative program. Under the alternative program, before any fire debris is removed from a property, the owner shall submit an application as adopted by the director to the director. Work shall not begin until the director approves the application. The work performed under the Alternative Program must conform to all requisite guidelines as adopted by the Director.

C. The director shall establish an end date or deadline by which properties in the alternative program must be cleaned up. Upon the completion of the removal of fire debris and hazard trees under the alternative program, the property owner shall submit to the director documentation that demonstrates the removal of fire debris and hazard trees was completed in compliance with applicable standards and requirements as established by the director.

D. The director shall establish an end date or deadline by which property owners who are not participating in the government program must submit an alternative program application to the director in accordance with this ordinance. Such properties that have fire debris from structures damaged or destroyed in the Maui Wildfires, or hazard trees damaged or destroyed in the Maui Wildfires that have not submitted an application for the alternative program by that date are hereby declared a public nuisance and health hazard and shall be subject to nuisance abatement pursuant to this ordinance.

E. The director may extend deadlines under the alternative program as necessary and appropriate to facilitate the cleanup, avoid undue hardship, and to protect public health and safety.

F. Notwithstanding any contrary provision in the Maui County code, no building permit for demolition shall be required for private fire debris removal work for which the Alternative Program has issued an approval to allow such work to proceed.

SECTION 7 Hold on building permits.

No new building permits pursuant to the Maui County code shall be issued until structural debris cleanup is completed on the affected property and completion is confirmed to the County building official, either through the government program or the alternative program, as applicable. Any issued building permit to repair or reconstruct a fire damaged structure or private infrastructure shall be held in abeyance and not acted upon until structural debris cleanup is completed on the affected property and completion is confirmed to the County building official, either through the government program or the alternative program, as applicable.

SECTION 8 **Enforcement.**

A. The director may set a deadline for filing an acceptable application for the alternative program and/or private tree program.

B. Properties that have fire debris from the Maui Wildfires and that have not submitted an approved (1) Right of Entry permit for the government program or (2) application for the alternative program (for structural debris by the deadline(s) set by the director are declared a nuisance and health hazard and such properties may be abated pursuant to this chapter.

C. The director may set deadlines for the completion of work in the alternative program. Properties that have fire debris from the Maui Wildfires after the deadline set by the director are declared a nuisance and health hazard and such properties may be abated pursuant to this chapter.

D. The Council's intent is to facilitate orderly remediation of a large-scale disaster. Nothing in these deadlines shall limit the authority of the County to abate hazards more quickly where required by exigent circumstances. Nothing in this article or in these deadlines shall limit the authority of the County to take enforcement action through other remedies pursuant to the Maui County code or laws of the State of Hawaii or the United States.

E. The director may issue a notice of violation and order to any property owner or person in violation of this ordinance or doing so in violation of the terms of their permit approval, including for failure to remove fire debris as required by this ordinance, by serving the person by personal delivery or by posting the notice of violation and order in a conspicuous place on the property where the violation is occurring or occurred as follows:

1. Contents of the notice of violation. The notice shall include at least the following information:

a. Date of the notice.

- b. The name and address of the person noticed.
 - c. The provision of this ordinance that has been violated.
 - d. The nature of the violation.
 - e. The location and date of the violation.
2. Contents of the order.
- a. The order shall require the person to do one or more of the following:
 - i. Cease and desist from the violation.
 - ii. Correct the violation at the person's own expense before a date specified in the order.
 - iii. Pay a civil fine not to exceed \$1,000 in the manner, at the place, and before the date specified in the order.
 - iv. Pay a civil fine not to exceed \$1,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order..
3. The order shall advise the person that the order shall become final unless an appeal is filed with the board of variances and appeals within thirty days after the date of its mailing or delivery.
4. Effects of order; right to appeal. The provisions of the order issued by the director of public works, the director of environmental management, the director of water supply, or the planning director under this section shall become final unless an appeal is filed with the board of variances and appeals within the thirty-day period. However, an appeal to the board of variances and appeals shall not stay any provision of the order.
5. Collection of unpaid civil fines. In addition to any other procedures for the collection of civil fines available to the County by law or rules of the court, the County may add unpaid civil fines as herein defined to any County taxes, fees or charges except for residential water or sewer charges.
6. Judicial enforcement of order. The director of Environmental Management may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section, including an order to authorize the County to remove the fire debris from the property and charge such costs to the owner, or any other injunctive relief to mitigate any on-going damage or threat to public health.. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director or agency need only show that the notice of violation and order

were served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been appealed in a timely manner nor paid.

F. Summary Abatement. In addition to any other enforcement procedures provided by law, if the director finds that the property constitutes an immediate threat to public health or safety, the director may summarily abate the nuisance upon satisfaction of the summary abatement procedures set forth below, as applicable.

1. Pre-Abatement Notice. Unless emergency conditions preclude doing so, the director shall issue a summary Abatement Notice and Order with property owner(s) as listed in the most recent County real property tax records. A summary of the Notice and Order shall be posted in a conspicuous location on the property to be abated at least ten days prior to the summary abatement action.

2. Appeal and Waiver. The property owner(s) or any person or entity having a legal interest in the property may submit a written appeal of the director's order to the director or the director's designee, by United States mail, overnight mail, or personal delivery, no later than fifteen days from the date the director mailed or delivered the Notice and Order. The written appeal shall state the basis for the appeal. The director or the director's designee shall review the appeal, if the appeal is timely, and shall issue a written decision no later than ten days after receipt. The director's or the designee's decision on the appeal shall uphold, rescind or modify the determination of the Notice and Order. The director's or the designee's decision on the appeal shall be final. A copy of the director's or the designee's determination shall be delivered, promptly upon its issuance, to the appellant by United states mail or personal delivery at the address listed on the last equalized tax roll or such other address provided by the appellant. Failure to appeal with in the time prescribed shall constitute a waiver of the right to contest the summary abatement.

3. Post-Abatement Notice. After the summary abatement is completed, the director shall promptly deliver to the property owner(s) a post-abatement notice indicating: (a) the action taken by the County; (b) the reasons for the actions; (c) the costs of the abatement and a request that the costs be paid by the property owner(s) to the County within sixty days; and (d) that a lien will be recorded against the property if the property owner(s) fail(s) to pay the requested abatement costs within sixty days. The post-abatement notice shall be delivered by Untied States mail or personal delivery.

G. Judicial Enforcement Action. The Department of the Corporation Counsel is authorized to initiate judicial enforcement as to a violation of any provision of this ordinance.

SECTION 9. This ordinance takes effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

/s/ Michael J. Hopper
MICHAEL J. HOPPER
Department of the Corporation Counsel
County of Maui
LF2023-1401
2023-09-06 Maui Wildfires Debris Removal Ord

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Alice L. Lee".

ALICE L. LEE

Upon the request of the Mayor.