

ORDINANCE NO. _____

BILL NO. 39, CD1 (2022)

A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 5.30, MAUI COUNTY
CODE, RELATING TO ELECTRIC GUN DEALER LICENSING

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

SECTION 1. The purpose of this Ordinance is to provide for the sale and transfer of electric guns and cartridges in the County, as required and in conformity with Chapter 134, Hawaii Revised Statutes.

SECTION 2. Title 5, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 5.30

ELECTRIC GUN DEALER LICENSING

Sections:

5.30.010	Definitions.
5.30.020	Application for license.
5.30.030	License issuance and renewal.
5.30.040	Department duties.
5.30.050	Legal duties of licensee.
5.30.060	Sale, offer for sale, distribution, or transfer of electric guns or cartridges.
5.30.070	Records retention.
5.30.080	Audit.
5.30.090	Penalties.
5.30.100	Exceptions.

5.30.010 Definitions. Whenever used in this chapter, unless the context otherwise requires:

“Cartridge” means any device or object designed to be used with an electric gun to project a missile. “Cartridge” includes a Taser cartridge.

“Chief” means the chief of police.

“Department” means the department of finance.

“Director” means the director of finance.

“Electric gun” means any portable device that is designed to discharge electric energy, charge, voltage, or current into the body through direct contact or utilizing a projectile. “Electric gun” includes but is not limited to devices commonly referred to as stun guns and Tasers. “Electric gun” does not include any automatic defibrillator used in emergency medical situations.

“Licensee” means a person licensed to sell or distribute electric guns in accordance with this chapter.

“Person” means an individual, firm, corporation, partnership, association, or any form of business or legal entity.

“Transfer” means the granting of possession or ownership to another, and includes the granting of temporary possession to another.

5.30.020 Application for license. Any person desiring to sell, offer for sale, distribute, or otherwise transfer electric guns or cartridges to a person in the County, either at wholesale or retail, must annually file an application for a license with the director. The annual fee for the license is \$50 and must be payable to the director. The application must be in writing, properly verified under oath, and filed with the director. A. If the applicant is an individual, the application and supporting documentation must establish the following:

1. The individual’s legal name, date of birth, and the last four digits of the individual’s social security number.
2. The individual’s street address, telephone number, fax number, and email address.
3. The name and location of the individual’s principal place of business and, if applicable, each additional designated place of business where electric guns or cartridges will be sold.
4. The individual's Hawaii tax identification number.
5. Certification that the individual has no convictions for a felony offense or misdemeanor offense involving the use of electric guns or firearms.
6. Within the last three years, the individual has completed an electric gun safety or training course approved by the chief.

7. The name, address, and telephone number of the owner, and if applicable, the property manager of the identified locations where electric guns or cartridges will be sold, and if the location is leased, the name, address, and telephone number of the lessor and lessee.

8. The individual has obtained the insurance policy or policies required.

B. If the applicant is an entity, the application and supporting documentation must establish the following:

1. The name of the applying entity and any other name under which the applying entity does business, if applicable.

2. The street address, telephone number, fax number, and email address of the applying entity.

3. The legal name, date of birth, and the last four digits of the social security number of each of the principals or members, and authorized agents of the applying entity.

4. The street address, telephone number, fax number, and electronic mail address of each of the principals or members, and authorized agents of the applying entity.

5. The name and location of the principal place of business of the applying entity and, if applicable, each additional designated place of business where the applying entity desires to sell electric guns or cartridges.

6. The name and address of the owner, and if applicable, the property manager of the identified locations where electric guns or cartridges will be sold, and if the location is leased, the name, address and telephone number of the lessor and lessee.

7. That the applying entity is registered to do business in the State of Hawai'i.

8. That the applying entity is composed of principals or members, and authorized agents who have had no convictions for any felony offense.

9. The applying entity's Hawai'i tax identification number.

10. The applying entity's federal employer identification number.

11. Within the last three years, at least one principal or member of the applying entity has completed an electric gun safety or training course approved by the chief.

12. The length of time the applicant has been in business.

13. The applying entity has obtained the insurance policy or policies required by this chapter.

C. The applicant must certify compliance at all times with all provisions of law relative to the acquisition, possession, storage, and sale of electric guns or cartridges, and must also certify that it is responsible for compliance by its employees of all provisions of law relative to the acquisition, possession, and sale of electric guns or cartridges.

D. The department must review the application and may issue a license to the applicant if it determines that the applicant meets all the requirements of this section. If requested by the licensee, the department must also provide certified copies of the license to the licensee. Within three working days upon receipt of a duly completed application, the director must submit a copy of the application to the chief to determine compliance with all applicable provisions. Within twenty working days of receipt, the chief must submit to the director a written report together with any recommendations to approve, deny, or require special conditions which may be necessary or desirable.

E. An issued license expires on June 30 following the date of issuance of the license unless sooner terminated. Application for renewal of license must be filed on or before June 1 of each year.

5.30.030 License issuance and renewal. A license or a renewal of a license issued under this chapter must be denied or revoked for any of the following reasons: A. The applicant's license under this chapter, or any other license for the sale, manufacture, use, or possession of electric guns or cartridges has been revoked for cause.

B. The applicant or licensee makes any false, misleading, or fraudulent statement or misrepresents any fact in the license application or renewal, or uses any scheme or subterfuge for the purpose of evading any provision of this chapter or chapter 134, Hawai'i Revised Statutes.

C. The applicant or licensee at the time of application or renewal of any license issued in accordance with this chapter would not be eligible for such license upon a first application.

5.30.040 Department duties. A. The department must forward any application for a license to the chief.

B. The director may promulgate administrative rules necessary to implement this chapter.

C. The chief may promulgate rules and regulations necessary to implement this chapter relating to the electric gun safety or training course required of applicants.

5.30.050 Legal duties of licensee. All licenses issued in accordance with this chapter are subject to the following conditions:

A. Each licensee must obtain and keep current at all times throughout the duration of the license period a commercial general liability policy with the following minimum limits and coverages placed with an insurance carrier authorized to do business in the State of Hawai'i with a minimum AM Best credit rating of A-VII.

1. The commercial general liability policy must be written on an occurrence form, and defense costs must be outside the limits of liability, must not erode or dilute the required limits of liability provided by the policy, and must provide the following coverages:

- a. Bodily injury and property damage on a combined single limit.
- b. Independent contractors.
- c. Blanket contractual liability.
- d. Personal injury.
- e. Employees named as additional insureds.
- f. Severability of interest.

2. The commercial general liability policy must have the following limits of liability:

a. A primary commercial general liability policy with \$2,000,000 per occurrence and \$3,000,000 annual aggregate, which must include a duty to defend the County if the County is sued as a result of the licensee's business operations.

b. An umbrella policy written on a "following form" basis with \$2,000,000 per occurrence and \$3,000,000 annual aggregate.

3. The licensee's policies must be endorsed to respond on a primary basis, and any policies procured by the County must be noncontributory and in excess of the licensee's insurance policies.

4. The County, its officers, and employees must be named as an additional insured under the licensee with a duty to defend the County from any claims arising from the license to sell and the use of electric guns or cartridges.

5. The license effective date may be nonconcurrent with the licensee's insurance policy's effective date. If the required insurance coverage expires during the license term, then the licensee must immediately deliver a renewed certificate of insurance evidencing the required coverage and limits are still in full force and effect. Any insurance coverage procured by the licensee that is not renewed or allowed to lapse will be deemed a material breach of the terms of the license. The licensee must immediately provide written notice to the County if any of the required policies are canceled, nonrenewed, or terminated. The licensee must furnish the

County with a certificate of insurance and the required endorsements verifying insurance coverage upon the issuance of the license. The licensee is prohibited from conducting any sales or distribution of electric guns or cartridges during any period in which the required insurance is not in effect. Failure to comply with this subsection will be grounds for the suspension or revocation of the license for a single offense.

B. Each licensee must not permit any employee to handle, sell, or possess an electric gun unless the employee:

1. Is 21 years of age or older.
2. Has never been convicted of a felony.
3. Has never been convicted of a misdemeanor involving an electric gun, or any other violation of law concerning the manufacture, use, possession, or sale of electric guns or firearms.

C. The licensee must initiate a State and FBI fingerprint-based record search of every employee who will handle, sell, or possess electric guns to verify the employee's background. If a licensee acquires any subsequent or independent knowledge that an employee who handles, sells, or possesses stun guns or tasers does not meet the qualifications of subsection B, the licensee must take immediate steps to ensure that such employee does not have access to the electric guns.

D. A licensee or employee must not:

1. Display an electric gun in any window.
2. Sell or otherwise transfer an electric gun unless the purchaser is qualified to obtain and possess an electric gun under State law.

E. Licensees must comply with all county, state, and federal laws and licensing requirements related to electric gun sales and possession. Failure to comply will be a material breach of the license and may result in immediate suspension or revocation of the license.

5.30.060 Sale, offer for sale, distribution, or transfer of electric guns or cartridges. A. A licensee must post the license to sell, offer to sell, distribute, or otherwise transfer electric guns or cartridges, or a certified copy, in a location readily visible to customers at each designated place of business. For internet sales by a licensee, the license number must be prominently displayed and an electronic copy of the license must be readily accessible to the customer.

B. An individual licensee must complete at least once every three years an electric gun safety or training course offered or approved by the chief that focuses on:

1. The safe use and handling of electric guns.
2. Current information about the effects, dangers, risks, and limitations of electric guns.
3. Education on the existing State laws on electric guns.

A licensee must keep copies of the certificates of completion of these training courses in the licensee's business records.

C. A licensee must not allow any employee to participate in the sale or transfer of electric guns or cartridges unless the employee completes at least once every three years the training courses described in subsection B. The licensee must keep copies of the certificates of completion of the training courses for each employee in the licensee's business records.

D. If there is no manufacturer serial number on an electric gun or cartridge received into inventory by a licensee, then the licensee must engrave on the electric gun or cartridge a legible unique serial number that begins with the licensee's license number, followed by a hyphen and a unique identifying number.

E. A licensee must keep records for all electric guns or cartridges received into inventory within the County, including:

1. Information identifying the seller, distributor, or transferor of the electric gun or cartridge.
2. The transaction record for the electric gun or cartridge, including the date of receipt, a description of the electric gun or cartridge, the manufacturer's serial number or the unique identifying serial number engraved by the licensee, and, if available, the manufacturer and the model number.

F. Before completing a sale, distribution, or other transfer of an electric gun, the licensee or an employee of the licensee must conduct a criminal history background check of the recipient. At minimum, the criminal history background check will be a name-based search of the adult criminal conviction records maintained by the Hawaii criminal justice data center and a national database to the extent permitted by law. The licensee or employee of the licensee must require the recipient to review a printed copy of the results of the background check. After the review, the recipient must sign and date a declaration. The declaration must be in the following form: "I, (name of recipient), declare under penalty of law that the attached document accurately reflects my adult criminal conviction history in Hawaii. I further declare that I do not have any convictions or charges pending against me that disqualify me from owning an electric gun. I further declare under penalty of law that I am not disqualified from owning an electric gun." The licensee or employee of the licensee must witness the recipient sign the declaration and sign the declaration as a witness. If the recipient is disqualified from owning an electric gun, or refuses or is unable to sign or make the

declaration, the licensee must immediately terminate the sale, distribution, or transfer.

G. Before completing a sale, distribution, or other transfer of an electric gun, the licensee or an employee of the licensee must provide an informational briefing to the recipient that includes the following:

1. The safe use and handling of electric guns.
2. Current information about the effects, dangers, risks, and limitations of electric guns.
3. Education on the existing State laws on electric guns.
4. The proper disposal of electric guns.

H. Upon completion of the informational briefing, the licensee must provide a certification of informational briefing that is signed and dated by the recipient and the person who provided the informational briefing acknowledging that the briefing was completed and that the recipient understood the briefing. The certification must include the names of the recipient and the person who provided the informational briefing and the date of the briefing. The form of the certification must be as provided by the County office that issued the license to the licensee.

1. A licensee must keep a record of the information provided to recipients during the informational briefing.

2. A licensee must keep records of all sales, distributions, and other transactions of electric guns or cartridges sold in the County or to a recipient in the County, including:

a. The recipient's name, date of birth, address, and telephone number.

b. A copy of the recipient's government-issued identification card or document.

c. The transaction record for the electric gun or cartridge, including the date of the transaction; a description of the electric gun or cartridge; if available, the name of the manufacturer and serial and model numbers; and, if necessary, the unique serial number engraved by the licensee.

d. The criminal history background check and declaration signed by the recipient and the licensee or licensee's employee as a witness.

e. A copy of the certification of informational briefing signed and dated by the recipient and the person who provided the briefing.

f. A licensee must keep a record of the licensee's current inventory of electric guns or cartridges.

3. During normal business hours, a licensee will allow the chief or designee to inspect the licensee's books and records for all records required to be kept by the licensee for electric guns or cartridges. At the discretion of the chief or designee, the inspection of the records may be conducted via facsimile transmittal of the records.

4. A licensee must keep records required by this section for a minimum of ten years. If a licensee, as a result of death or dissolution, cannot maintain the records, the records must be turned over to the chief.

5. When displaying or storing electric guns or cartridges at a designated place of business, a licensee must display or store the electric guns or cartridges in a locked cabinet or area not accessible to the general public.

6. During normal business hours, a licensee must allow the chief or designee to physically inspect all electric guns or cartridges in the possession and control of the licensee wherever they may be located within the County.

7. A license may be suspended or revoked for a violation of any of the requirements of this section.

5.30.070 Records retention. A. In addition to any other applicable county, state, and federal law requiring records and record retention, the licensee must maintain a copy of the fingerprints of every employee who handles, sells, or possesses the electric guns for a period of not less than five years after the employee is no longer an employee.

B. Unless otherwise preempted by state or federal law, all records required to be held by state or federal law must at all times during the licensee's business hours be open for inspection by the director or the director's designee.

5.30.080 Audit. Every licensee must conduct, on an annual basis, a physical inventory audit, which must include, at a minimum, a listing of each electric gun and electric gun cartridge:

A. Acquired or held by the licensee during the twelve-month period.

B. Sold or otherwise transferred during the twelve-month period.

C. Stolen or lost during the twelve-month period.

5.30.090 Penalties. A. In addition to any penalties provided under State law, any person who violates any provision of this chapter, or any rule or regulation promulgated thereunder, will be guilty of a misdemeanor, and upon conviction will be fined a minimum of \$1,000 for each offense and may be imprisoned for up

to one year, or both. Each day that such violation exists constitutes a separate and distinct offense.

B. Every act or omission constituting a violation of this chapter by any officer, director, manager, employee, or agent of the licensee must be deemed to be the act or omission of such licensee and such licensee is liable for all penalties and sanctions provided by this chapter in the same manner as if such act or omission had been done or committed by the licensee personally.

5.30.100 Exceptions. The licensing requirement of this chapter does not apply to the sale of electric guns or cartridges by the electric gun manufacturers distributing directly to law enforcement agencies, or the army or air national guard or to the extent that it conflicts with state or federal law.”


SECTION 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:



KEOLA R. WHITTAKER
Deputy Corporation Counsel
LF2021-0014
HCP-54 2022-03-22 Ord Amd Ch 5.30
hcp:misc:054abill01:gap

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "John Lee", is written above a horizontal line.

Upon the request of the Mayor.

DIGEST

ORDINANCE NO. _____
BILL NO. 39, CD1 (2022)

A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 5.30, MAUI COUNTY
CODE, RELATING TO ELECTRIC GUN DEALER LICENSING

This bill proposes to amend the Maui County Code, by adding a new Chapter 5.30, Electric Gun Dealer Licensing, to provide for the sale and transfer of electric guns and cartridges in the County, as required and in conformity with Chapter 134, Hawaii Revised Statutes.

I, KATHY L. KAOHU, County Clerk of the County of Maui, State of Hawaii, DO
HEREBY CERTIFY that the foregoing BILL NO. 39, CD1 (2022) was passed on First
Reading by the Council of the County of Maui, State of Hawaii, on the 1st day of April,
2022, by the following vote:

AYES: Councilmembers Gabriel Johnson, Natalie A. Kama, Kelly T. King,
Michael J. Molina, Tamara A. M. Paltin, Shane M. Sinenci,
Yuki Lei K. Sugimura, Vice-Chair Keani N. W. Rawlins-Fernandez,
and Chair Alice L. Lee.

NOES: None.

DATED at Wailuku, Maui, Hawaii, this 4th of April, 2022.



KATHY L. KAOHU, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk,
County of Maui, for use and examination by the public.