

APT Committee

From: Melody Andrion <Melody.Andrion@co.maui.hi.us>
Sent: Friday, May 28, 2021 2:08 PM
To: APT Committee
Cc: Jocelyn Moniz; Richelle Thomson; Stephanie Chen; Kasie M. Takayama
Subject: Transmittal re APT-11 Chapter 20.08.031
Attachments: Closing APT-11 2021-05-21 RAFL Takayama.pdf; APT-11 2021-05-28 Memorandum rev'd.pdf

Dear Committee Chair Sinenci,

Please see attached two signed proposed amendments to Chapter 20.08.031, Maui County Code, for the Committee's consideration. Consistent with our discussion on May 25, 2021, I've attached a memorandum explaining the proposed amendment that would repeal subsection D. As always, please do not hesitate to contact me if you have any questions.

Thanks,

Stephanie

NOTICE: The information in this transmittal (including attachments, if any) is privileged and confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this transmittal is prohibited except by or on behalf of, the intended recipient. If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal. Thank you.

REQUEST FOR LEGAL SERVICES

RECEIVED

By Dept. of the Corporation Counsel at 12:33 pm, May 21, 2021

Date: May 21, 2021

From: Shane M. Sinenci, Chair

Agriculture and Public Trust Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Stephanie Chen, Esq.

Subject: A BILL FOR AN ORDINANCE TO AMEND THE EXCLUSION FOR GRADING AND GRUBBING PERMITS FOR TRENCHING FOR UNDERGROUND UTILITIES (APT-11)

Background Data: Please see the attached bill.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

| | |
|--|--|
| Requestor's signature  Shane M. Sinenci | Contact Person <u>Kasie Apo Takayama</u> (Telephone Extension: <u>7665</u>) |
|--|--|

☐ ROUTINE (WITHIN 15 WORKING DAYS)

☐ RUSH (WITHIN 5 WORKING DAYS)

☐ PRIORITY (WITHIN 10 WORKING DAYS)

☐ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): May 26, 2021 at 4:30 p.m.

REASON: For posting on June 4, 2021 Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

| | | |
|------------------|--------------------------|-----------------|
| ASSIGNED TO: SMC | ASSIGNMENT NO. 2021-0010 | BY: maa for jcm |
|------------------|--------------------------|-----------------|

TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)

☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): Please see attached.
Please note the word "sensitive" was changed to "burial site or historic
property, as defined by Hawaii Revised Statutes chapter 6E".

DEPARTMENT OF THE CORPORATION COUNSEL

Date 5/28/2021

By Stephanie M. Chen

(Rev. 7/03)

apt:ltr:011acc01:kmat

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING SECTION 20.08.031, MAUI COUNTY CODE, REGARDING LIMITED EXCLUSIONS FOR GRADING AND GRUBBING PERMITS AND AMENDING THE CATEGORICAL EXCLUSION FOR TRENCHING FOR UNDERGROUND UTILITIES

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

SECTION 1. Section 20.08.031, Maui County Code, is amended to read as follows:

“20.08.031 Limited exclusions. Sections 20.08.040 through 20.08.160 regarding permit applications and requirements [shall] do not apply to the following[;]; however all other provisions of this chapter, including the provision of minimum bmps as required by section 20.08.035, [shall] remain applicable to all work performed, and the following [shall] exclusions do not affect the applicability of section 20.08.040.C relating to cut or fill activity in special management areas:

A. Subsurface excavations and backfill for buildings and other structures authorized by a valid building permit issued by the land use and codes administration or excavations and backfill for cesspools and septic tanks authorized by the state department of health. This [exception shall] exclusion does not affect the applicability of this chapter to the placing of fill materials obtained from the excavations on other premises[;].

B. Excavation, fill, or stockpiling [which] that does not alter the general drainage pattern with respect to abutting properties and [which] that does not exceed one hundred cubic yards of material on any one site and does not exceed four feet in vertical height at its highest point; [provided] except that the slope face may not be steeper in slope and be located a minimum distance from neighboring properties, as enumerated in sections 20.08.170 through 20.08.210[;].

C. Grubbing [which] that does not alter the general drainage pattern with respect to abutting properties and does not exceed one acre[;].

D. Trenching for underground utilities, involving trenches less than two feet deep and less than fifty cubic yards, provided [when] the trenches are backfilled[,] and the surface restored to its pre-existing grade and ground cover[.], except that this exclusion does not apply in an area determined by the County archaeologist as likely to involve a burial site or historic property, as defined by Hawaii Revised Statutes chapter 6E.”

SECTION 2. 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 3. This Ordinance takes effect November 1, 2021.

APPROVED AS TO FORM AND LEGALITY:

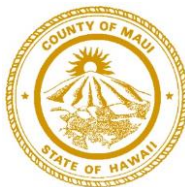
/s/ Stephanie M. Chen
STEPHANIE M. CHEN
Department of the Corporation Counsel
County of Maui
2021-0010
APT-11 2021-05-28 Ord Amd 20.08.031

MICHAEL P. VICTORINO
Mayor

MOANA M. LUTEY
Corporation Counsel

RICHELLE M. THOMSON
First Deputy

LYDIA A. TODA
Risk Management Officer



DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
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TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

May 28, 2021

To: Shane Sinenci, Chair, Agriculture and Public Trust Committee

SUBJECT: A Bill for An Ordinance Amending Section 20.08.031, Maui County Code, Regarding Limited Exclusions for Grading and Grubbing Permits and Repealing the Categorical Exclusion for Trenching for Underground Utilities (APT-11)

Dear Committee Chair Sinenci,

I hope this memorandum finds you well and am writing in response to your request for legal services regarding the proposed bill to amend the categorical exclusions included in Chapter 20.08.031, Maui County Code ("MCC"). In response to your request for legal services, I offer the following comments. Also attached, please find a signed clean copy of the bill with revisions, as well as the red-lined document for reference. Thank you for the opportunity to work on this.

After reviewing the bill submitted to our office, and consistent with the initial language considered by the Agriculture and Public Trust Committee at its May 18, 2021 meeting, our office recommends repealing Subsection 20.08.031(D), MCC ("subsection D"). The repeal of subsection D will result in departmental review and oversight of projects involving trenching for underground utilities that exceed one hundred cubic yards of material on any one site and exceed four feet in vertical height at the highest point. Please note, "trenching" has been added to Subsection 20.08.031(B), MCC, for clarity.

Please do not hesitate to contact me with additional questions.

Committee Chair Sinenci
May 28, 2021
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Sincerely,

/s/ Stephanie M. Chen

STEPHANIE M. CHEN
Deputy Corporation Counsel

SMC:jcm

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING SECTION 20.08.031, MAUI COUNTY CODE, REGARDING LIMITED EXCLUSIONS FOR GRADING AND GRUBBING PERMITS AND REPEALING THE CATEGORICAL EXCLUSION FOR TRENCHING FOR UNDERGROUND UTILITIES

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

SECTION 1. Section 20.08.031, Maui County Code, is amended to read as follows:

“20.08.031 Limited exclusions. Sections 20.08.040 through 20.08.160 regarding permit applications and requirements [shall] do not apply to the following[;]; however all other provisions of this chapter, including the provision of minimum bmps as required by section 20.08.035, [shall] remain applicable to all work performed, and the following [shall] exclusions do not affect the applicability of section 20.08.040.C relating to cut or fill activity in special management areas:

A. Subsurface excavations and backfill for buildings and other structures authorized by a valid building permit issued by the land use and codes administration or excavations and backfill for cesspools and septic tanks authorized by the state department of health. This [exception shall] exclusion does not affect the applicability of this chapter to the placing of fill materials obtained from the excavations on other premises[;].

B. Excavation, trenching, fill, or stockpiling [which] that does not alter the general drainage pattern with respect to abutting properties and [which] that does not exceed one hundred cubic yards of material on any one site and does not exceed four feet in vertical height at its highest point; [provided] except that the slope face may not be steeper in slope and be located a minimum distance from neighboring properties, as enumerated in sections 20.08.170 through 20.08.210[;].

C. Grubbing [which] that does not alter the general drainage pattern with respect to abutting properties and does not exceed one acre[;].

[D. Trenching for underground utilities when the trenches are backfilled, and the surface restored to its pre-existing grade and ground cover.]

SECTION 2. 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 3. This Ordinance takes effect November 1, 2021.

APPROVED AS TO FORM AND LEGALITY:

/s/ Stephanie M. Chen

STEPHANIE M. CHEN
Department of the Corporation Counsel
County of Maui
2021-0010
APT-11 2021-05-26 Ord Amd 20.08.031

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING SECTION 20.08.031, MAUI COUNTY CODE, REGARDING LIMITED EXCLUSIONS FOR GRADING AND GRUBBING PERMITS AND REPEALING THE CATEGORICAL EXCLUSION TO AMEND THE EXCLUSION FOR GRADING AND GRUBBING PERMITS FOR TRENCHING FOR UNDERGROUND UTILITIES

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

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A. Subsurface excavations and backfill for buildings and other structures authorized by a valid building permit issued by the land use and codes administration or excavations and backfill for cesspools and septic tanks authorized by the state department of health. This [exception shall] exclusion does not affect the applicability of this chapter to the placing of fill materials obtained from the excavations on other premises[;].

B. Excavation, trenching, fill, or stockpiling [which] that does not alter the general drainage pattern with respect to abutting properties and [which] that does not exceed one hundred cubic yards of material on any one site and does not exceed four feet in vertical height at its highest point; [provided] except that the slope face may not be steeper in slope and be located a minimum distance from neighboring properties, as enumerated in sections 20.08.170 through 20.08.210[;].

C. Grubbing [which] that does not alter the general drainage pattern with respect to abutting properties and does not exceed one acre[;].

[D. Trenching for underground utilities when the trenches are backfilled[,] and the surface restored to its pre-existing grade and ground cover[.] in areas not identified as sensitive by the County archaeologist, based on data provided by the state historic preservation division under Hawaii Revised Statutes chapter 6E, and less than two feet deep and less than fifty cubic yards."]

SECTION 2. 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 3. This Ordinance takes effect November 1, 2021.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

apt:misc:011abill01:kmat