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COUNTY COUNCIL
COUNTY OF MAUI
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September 9, 2021

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2021 SEP -9 AM 11:01
OFFICE OF THE
COUNTY CLERK

The Honorable Alice L. Lee
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair Lee:

SUBJECT: **BLASTING PERMITS** (PAF 21-125)

May I request the attached proposed bill, entitled "BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 20.09, MAUI COUNTY CODE, RELATING TO BLASTING PERMITS," be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in black ink, appearing to read "Shane M. Sinenci", is written over a horizontal line.

SHANE M. SINENCI
Councilmember

paf:lma:21-125g

COUNTY COMMUNICATION NO. 21-446

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 20.09, MAUI COUNTY
CODE, RELATING TO BLASTING PERMITS

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

SECTION 1. The Council finds unregulated blasting causes undue psychological, physical, or nuisance damage to the people and environment of Maui County and endangers cultural and historical resources. This Ordinance prohibits blasting except when controlled blasting is approved by a blasting permit.

SECTION 2. Title 20, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 20.09

BLASTING PERMITS

Sections:

20.09.010	Purpose.
20.09.020	Definitions.
20.09.030	Permit required.
20.09.040	Permit application.
20.09.050	Fee.
20.09.060	Corrections and restoration.
20.09.070	Permit denial.
20.09.080	Permit expiration.
20.09.090	Permit suspension or revocation.
20.09.100	Bond requirement.
20.09.110	Bond conditions.
20.09.120	Bond term.

20.09.130	Permit requirements.
20.09.130	New violation.
20.09.140	Administrative rules.

20.09.010 Purpose. This chapter's purpose is to allow controlled blasting by permit and prohibit other blasting.

20.09.020 Definitions. Wherever used in this chapter, unless the context otherwise requires:

"Applicant" means an applicant for a blasting permit.

"Blasting" means any activity entailing the use of explosives for the purpose of producing an explosion to demolish structures or to fragment rock for mining, quarrying, excavation, and construction.

"Blasting permit" means a permit issued for controlled blasting.

"Controlled blasting" means blasting that only includes the use of blasting methods that minimize the effects of blasting on the surrounding environment, including structures, the natural environment, and cultural and historic resources. explosive charges to minimize stressing and fracturing of the rock behind the neat excavation line.

"Permittee" means the holder of a blasting permit.

20.09.030 Permit required. Unless otherwise provided in this chapter, no person may commence or perform any controlled blasting with the use of explosive materials without a blasting permit issued by the County's principal archaeologist, and other blasting is prohibited. A blasting permit does not obviate the need to obtain other permits or approvals.

20.09.040 Permit application. The principal archaeologist must prepare and make available for public review an application form for a blasting permit. A completed application for a blasting permit must include the following:

1. The applicant's name and address.
2. The name and address of the blaster or of the person who will supervise the blasting.
3. The name and address of the legal owner of the property where the blasting will occur.
4. A copy of a current explosive material permit under section 16.04C.160 or an explanation as to why one is not needed.
5. A copy of a grading and grubbing permit under section 20.08.04 of this code or an explanation as to why one is not needed.

6. Other information required by the County's principal archaeologist.

20.90.050 Fee. A. Before issuing a blasting permit, the principal archaeologist must collect a permit fee as set forth in the annual budget, except that the principal archaeologist must waive the fee when controlled blasting is performed by or on behalf of the County or when the controlled blasting is for a residential development in which 100 percent of the units qualify as residential workforce housing units, as defined in section 2.96.020.

B. Revenue from blasting permit fees must be deposited into the general fund.

20.90.060 Corrections and restoration. The permittee must be responsible for correcting any damages done by the blasting as follows.

A. Off-site corrections and restoration must include repair of damages to improvements within the public right-of-way to any portions of the County-owned sewer systems and to private drain systems and must include the removal of any sediment and debris from the public right-of-way and drainage facilities.

B. On-site corrections and restoration must include covering of exposed soil surfaces with planting and correction of improper blasting and drainage.

20.09.070 Permit denial. If the principal archaeologist finds that the work as proposed by the applicant is likely to endanger any culturally sensitive property or to unduly endanger public health or the natural environment, the principal archaeologist must deny the blasting permit. Factors to be considered in determining probability of endangerment include potential damage to archeological, natural environment or culturally relevant sites.

20.09.080 Permit expiration. Every blasting permit will expire one year after its date of issuance unless the permit specifies an earlier expiration or unless the principal archaeologist grants a time extension for good cause.

20.09.090 Permit suspension or revocation. A. The principal archaeologist may, in writing, suspend or revoke a permit issued under this chapter whenever the controlled blasting is not being performed in accordance with the permit, including the conditions stated or shown in the application for a blasting permit.

B. The principal archaeologist must, in writing, immediately suspend or revoke a permit issued under this chapter whenever any of the following occurs:

1. The permit was issued on the basis of incorrect information supplied by the permittee.

2. The principal archaeologist has received written notification from a federal, state, or county agency of any warnings or violations of the requirements related to the work.

3. The principal archaeologist has received written notification from the department of land and natural resources' State historic preservation division of any warnings or violations issued applicable to the permitted area, including warnings or violations relating to archaeological monitoring, archaeological preservation, or mitigation plans approved by the State historic preservation division.

4. The principal archaeologist has received written notification from the department of fire and public safety of any warnings or violations issued applicable to the permitted area, including warnings or violations relating to fire control and public safety.

5. The principal archaeologist has received written notification from the department of water supply of any warnings or violations issued applicable to the permitted area, including warnings or violations relating to fire control and public safety.

6. The principal archaeologist has received written notification from the department of planning of any warnings or violations issued applicable to the permitted area, including warnings or violations relating to fire control and public safety.

20.09.100 Bond required. A blasting permit may not be issued for any cut, fill, or stockpiling involving quantities more than five hundred cubic yards or for excavations or fills over fifteen feet in vertical height, or for work being done in increments of five hundred cubic yards or less that is part of a larger development, unless the applicant files a bond for the benefit of the County to the satisfaction of the principal archaeologist, who may consult with the corporation counsel and director finance. The applicant may either file a bond guaranteed by a surety company duly authorized to transact business within the State of Hawaii or may deposit cash in lieu of a bond guaranteed by a surety company. No interest may be paid by the County on any cash deposits. If the blasting is to be performed under an approved subdivision plan and a subdivision bond has been filed, then the principal archaeologist need not require a separate bond.

20.09.110 Bond conditions. A. The amount of the bond must be in an amount as determined by the County's principal archaeologist to be sufficient to cover the costs of completion of blasting, construction of drainage improvements, and implementation of erosion-control measures.

B. The bond must be subject to the condition that the permittee must:

1. Comply with all the terms and conditions of the blasting permit to the satisfaction of the principal archaeologist;
2. Complete all of the work authorized under the permit within the time specified in the permit.

20.09.120 Bond term. The term of each bond must begin no later than the date the blasting permit is issued and must remain in effect until the completion of the work to the satisfaction of the County's principal archaeologist. An amount equal to one-third of the bond may be retained for a period of six months after completion. If the permittee fails to complete the work or to comply with the permit, the principal archaeologist may order the work to be completed as required by the permit and to the satisfaction of the principal archaeologist. The surety executing the bond or the cash depositor must continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the County in causing any and all of the required work to be done.

20.09.130 Permit requirements. A. The permittee must notify the principal archaeologist at least two days prior to beginning any blasting. The principal archaeologist may require a pre-construction meeting prior to commencement of the work.

B. Plans and specifications for controlled blasting bearing the approval of the principal archaeologist must be maintained at the site during the progress of any work.

C. Permittees must comply with:

1. federal, state, and county laws and regulations;
2. the recommendations of the soil and water conservation district, the department of fire and public safety and the department of public works; and
3. the requirements of the department of land and natural resources' State historic preservation division.

D. County and State officials must be allowed onto the property for which a blasting permit has been issued with reasonable notice.

E. The permittee must provide written notice of controlled blasting to neighboring residents or businesses within five hundred feet of the blasting site.

20.09.140 New violation. Each day of noncompliance with this chapter constitutes a new violation.

20.09.150 Administrative rules. The principal archaeologist may adopt rules to implement this chapter.”

SECTION 3. This Ordinance takes effect upon its approval.

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