

July 27, 2021

MEMO TO: GREAT-29 File

F R O M: Alice L. Lee, Council Chair



SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO  
ILLEGAL FIREWORKS IN MAUI COUNTY** (GREAT-29)

The attached legislative proposal pertains to Item 29 on the Committee's agenda.

paf:dmr:21-145b

Attachment

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2021)

A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 9.41, MAUI COUNTY  
CODE, RELATING TO ILLEGAL FIREWORKS HOST LIABILITY

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

SECTION 1. The Council finds that under Chapter 132D, Hawai‘i Revised Statutes, it is illegal for the parents, guardian, and other persons having the custody or control of any minor to knowingly permit the minor to possess, purchase, or set off, ignite, or otherwise cause to explode any fireworks or articles pyrotechnic, except that the parents or guardian may allow the minor to use consumer fireworks while under the immediate supervision and control of the parent or guardian or under the supervision and control of another adult. This Ordinance imposes strict liability upon a responsible person who is found to have hosted a gathering where a minor sets off, ignites, or otherwise causes to explode any fireworks or articles pyrotechnic in violation of Chapter 132D, Hawai‘i Revised Statutes.

SECTION 2. Title 9, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

**“Chapter 9.41**

**ILLEGAL FIREWORKS HOST LIABILITY**

**Sections:**

**9.41.010 Purposes.**

**9.41.020 Definitions.**

- 9.41.030 Prohibition.**
- 9.41.040 Administrative enforcement.**
- 9.41.050 Appeals.**
- 9.41.060 Administration.**
- 9.41.070 Rules.**
- 9.41.080 Review requirements.**

**9.41.010 Purposes.** The purposes of this chapter are to:

A. Protect public health, safety, and general welfare by imposing strict liability upon a responsible person who is found to have hosted a gathering where a minor set off, ignited, or otherwise caused to explode any fireworks or articles pyrotechnic in violation of chapter 132D, Hawai‘i Revised Statutes.

B. Reduce the costs of providing police, fire, and other emergency response services to such gatherings by requiring a responsible person to reimburse response costs.

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

“Articles pyrotechnic” means the same as in chapter 132D, Hawai‘i Revised Statutes.

“Chief” means the fire chief or the chief’s designee.

“Gathering” means a group of two or more persons at or on a residence or other private property.

“Fireworks” means the same as in chapter 132D, Hawai‘i Revised Statutes.

“Minor” means any person under eighteen years of age.

“Response costs” mean the costs associated with response by police, fire, and other emergency response providers to a gathering where a minor possesses, purchases, or sets off, ignites, or otherwise causes to explode any fireworks or articles pyrotechnic, such as: salaries and benefits of law enforcement, fire, or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with such a gathering, and the administrative costs attributable to the response; the cost of any medical treatment to or for any law enforcement, fire, or other emergency response personnel injured responding to, remaining at, or leaving the scene of such a gathering; the cost of repairing any County equipment or property damaged; and the cost of the use of any County equipment, in responding to, remaining at, or leaving the scene of such a gathering.

“Responsible person” means a person with a right of possession to the residence or other private property on which a gathering occurs, such as a property owner, tenant, or lessee, who conducts, aids, allows, permits, or facilitates a gathering.

**9.41.030 Prohibition.** A. A gathering where a minor illegally sets off, ignites, or causes to explode fireworks or articles pyrotechnic is prohibited.

B. A responsible person will be strictly liable and subject to this chapter's civil penalties where a minor illegally sets off, ignites, or causes to explode fireworks or articles pyrotechnic.

**9.41.040 Administrative enforcement.** A. In addition to any enforcement by criminal prosecution, if the chief determines that a responsible person violated any provision of this chapter, the chief must serve the responsible person, by mail with proof of mailing or personal delivery, with a notice of violation and order in accordance with this chapter and such administrative rules as the chief may adopt.

B. The notice of violation and order must include at least the following information:

1. Date of the notice.
2. Name and address of the person noticed.
3. The section number of the provision or rule that has been violated.
4. The nature of the violation.
5. The location and date of the violation.
6. The order must require the person to cease and desist of the violation and pay a civil fine of \$200 for a first violation, \$500 for a second violation, and \$1,000 for a third violation within a twelve-month period. Only a single notice of violation and order may be issued for any incident within a twenty-four-hour period.
7. In addition to the civil fine, for subsequent violations occurring within the same twelve-month period, the order may require reimbursement of response costs.
8. If the responsible person is a minor, the minor's parents or legal guardians will be liable for the civil penalties imposed under this section.
9. The order must advise the person that the order will become final unless an appeal is filed with board of variances and appeals within thirty days after the date of its mailing or delivery.

C. The order will become final unless an appeal is filed with the board of variances and appeals within the thirty-day period. An appeal to the board of variances and appeals will not stay any provision of the order.

D. 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 imposed in accordance with this chapter to any County taxes, fees, or charges, except for residential water or sewer charges.

E. The chief may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued in accordance with this section. Where the civil action has been instituted to enforce the civil fine imposed by the order, the chief 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 civil fine imposed has not been appealed in a timely manner or paid.

**9.41.050 Appeals.** A. Any person aggrieved by a determination of the chief may appeal such determination by filing a written notice of appeal with the board of variances and appeals within thirty days after notice of such determination.

B. An appeal may be granted only if the commission finds one of the following:

1. The subject decision or order was based on an erroneous finding of a material fact or erroneously applied the law.
2. The subject decision or order was arbitrary and capricious in its application.
3. The subject decision or order was a manifest abuse of discretion.

**9.41.060 Administration.** The chief will administer this chapter; except the chief may designate an illegal fireworks host administrator, who may exercise the chief's authority under this chapter, to the extent authorized by the chief.

**9.41.070 Rules.** In accordance with chapter 91, Hawaii Revised Statutes, the chief may promulgate administrative rules for the administration and enforcement of this chapter.

**9.41.080 Review requirements.** A. The council must review this chapter every two years.

B. The chief must provide an annual report to the council on the status of this chapter that includes the following information:

1. The number of citations and notices of violations and orders issued.
2. The number of appeals filed, granted, and denied.
3. The number of individuals who received a notice of violation and order, grouped by area median income, if available.
4. Whether the person who received the notice of violation and order owns or rents the property where the notice of violation and order was issued.

C. Within the ninety days of the ordinance establishing this chapter, the chief must report to the council on progress in developing an illegal fireworks reporting app similar to the app used by the County of San Bernardino, California.”

SECTION 3. This Ordinance takes effect on its approval.

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