

October 27, 2021

MEMO TO: GREAT-29 File

F R O M: Keani N.W. Rawlins-Fernandez, Council Vice-Chair



SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO  
ILLEGAL FIREWORKS IN MAUI COUNTY** (PAF 21-171)

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

paf:lma:21-171g

Attachment

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

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

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8.16, MAUI COUNTY  
CODE, RELATING TO FIREWORKS

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

SECTION 1. The Council finds that under Chapter 132D, Hawai‘i Revised Statutes, and Chapter 8.16, Maui County Code, it is illegal to set off, ignite, discharge, or otherwise cause to explode fireworks or articles pyrotechnic under certain circumstances. This Ordinance imposes strict liability upon a responsible person who is found to have hosted a gathering where a person set off, ignited, discharged, or otherwise caused to explode any fireworks or articles pyrotechnic. This Ordinance also exercises the Council’s authority under Chapter 132D to enact ordinances that are at least as stringent in the control and prohibition of fireworks as State law.

SECTION 2. Chapter 8.16, Maui County Code, is amended to read as follows:

**“Chapter 8.16**

**FIREWORKS**

Sections:

<u>8.16.005</u>	<u>Purposes.</u>
<u>8.16.010</u>	<u>[Defined.] Definitions.</u>
<u>8.16.015</u>	<u>Permissible uses of consumer fireworks.</u>
<u>8.16.016</u>	<u>Permissible uses of display fireworks, articles pyrotechnic, and aerial devices.</u>

8.16.020	Permit generally.
8.16.030	[Wholesaling fireworks—] Restrictions in chapter's scope.
8.16.040	Violation[—Penalty].
8.16.050	Illegal fireworks social host prohibition.
8.16.060	Illegal fireworks social host administrative enforcement.
8.16.070	Illegal fireworks social host appeals.
8.16.080	Illegal fireworks social host administration.
8.16.090	Illegal fireworks social host administrative rules.
8.16.100	Review requirements.

**8.16.005 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 person set off, ignited, discharged, or otherwise caused to explode any fireworks or articles pyrotechnic in violation of chapter 132D, Hawai‘i Revised Statutes, or of this chapter.

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.

C. Control and prohibit fireworks at least as stringently as chapter 132D, Hawai‘i Revised Statutes.

**8.16.010 [Defined] Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Aerial device” means any fireworks containing one hundred thirty milligrams or less of explosive materials that produces an audible or visible effect and is designed to rise into the air and explode or detonate in the air or to fly about above the ground, and that is prohibited for use by any person who does not have a permit for display issued under section 8.16.020.

“Articles pyrotechnic” means pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 by the United States Department of Transportation.

“Consumer fireworks” means any fireworks designed primarily for retail sale to the public during authorized dates and times, that produces visible or audible effects by combustion, and that is designed to remain on or near the ground and, while stationary or spinning rapidly on or near the ground, emits smoke,

a shower of colored sparks, whistling effects, flitter sparks, or balls of colored sparks, and includes combination items that contain one or more of these effects. “Consumer fireworks” must comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission as noted in Title 16 Code of Federal Regulations and fireworks classified as UN0336 and UN0337 by the United States Department of Transportation as noted in Title 49 Code of Federal Regulations. “Consumer fireworks” include firework items commonly known as firecrackers that are single paper cylinders not exceeding one and one-half inches in length excluding the fuse and one-quarter of an inch in diameter and contain a charge of not more than fifty milligrams of pyrotechnic composition, snakes, sparklers, fountains, and cylindrical or cone fountains that emit effects up to a height not greater than twelve feet above the ground, illuminating torches, bamboo cannons, whistles, toy smoke devices, wheels, and ground spinners that when ignited remain within a circle with a radius of twelve feet as measured from the point where the item was placed and ignited, novelty or trick items, combination items, and other fireworks of like construction that are designed to produce the same or similar effects.

“Display fireworks” means any fireworks designed primarily for exhibition display by producing visible or audible effects and classified as display fireworks or contained in the regulations of the United States Department of Transportation and designated as UN0333, UN0334, or UN0335, and includes salutes containing more than two grains (one hundred and thirty milligrams) of explosive materials, aerial shells containing more than forty grams of pyrotechnic compositions, and other display pieces that exceed the limits of explosive materials for classification as “consumer fireworks.” This term also includes fused set pieces containing components, which together exceed fifty milligrams of salute power. The use of display fireworks is prohibited for use by any person who does not have a display permit issued under section 8.16.020.

“Fireworks” means [and includes blank cartridges, toy pistols, toy cannons, toy canes and toy guns in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, sky rockets, Roman candles, Daygo bombs, and other fireworks of like construction, and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance; except, that fireworks shall not include sparklers, nor shall such term be construed to include] any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation and that meets the definition of aerial device or consumer

or display fireworks as defined by section 132D-2, Hawai'i Revised Statutes, and contained in the regulations of the United States Department of Transportation as noted in Title 49 Code of Federal Regulations. The term "fireworks" does not include any explosives or pyrotechnics regulated under chapter 396, Hawai'i Revised Statutes, automotive safety flares, or toy pistols, toy cannons, toy guns, or other devices [in which paper caps, manufactured in accordance with the United States Interstate Commerce Commission regulations for packing and shipping of toy paper caps, are used, and toy pistol paper caps manufactured as provided therein, the sale and use of which shall be permitted at all times] that contain twenty-five hundredths of a grain or less of explosive substance.

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

"Pyrotechnic composition" means the combustible or explosive component of fireworks.

"Response costs" mean the costs associated with response by police, fire, and other emergency response providers to a gathering where a responsible person is found to have hosted a gathering where a person set off, ignited, discharged, or otherwise caused 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.

#### **8.16.015 Permissible uses of consumer fireworks.**

Consumer fireworks may be set off, ignited, discharged, or otherwise caused to explode within the County only:

(1) From 9:00 p.m. on New Year's Eve to 1:00 a.m. on New Year's Day; from 7:00 a.m. to 7:00 p.m. on Chinese New Year's Day; and from 1:00 p.m. to 9:00 p.m. on the Fourth of July; or

(2) From 9:00 a.m. to 9:00 p.m. as allowed by permit under section 132D-10, Hawai'i Revised Statutes, or section 8.16.020 of this chapter, if the proposed cultural use is to occur at any time other than during the periods prescribed in paragraph (1); except

that the purchase of not more than five thousand individual consumer fireworks commonly known as firecrackers may be allowed under each permit.

**8.16.016 Permissible uses of display fireworks, articles pyrotechnic, and aerial devices.** Display fireworks, articles pyrotechnic, and aerial devices may be set off, ignited, discharged, or otherwise caused to explode within the County only from 9:00 a.m. to 9:00 p.m.; except that the fire chief may extend the time period for special events; and except that the time restriction established in this section does not apply to display fireworks, articles pyrotechnic, and aerial devices set off, ignited, discharged, or otherwise caused to explode within the County solely as part of a movie or television production.

**8.16.020 Permit generally.** A. Except as provided in this chapter, it is unlawful for any person[, firm, co-partnership, or corporation] to offer for sale, expose for sale, sell at retail, give away, or use, fire, discharge, or explode, or cause to be fired, discharged, or exploded, any fireworks; [provided,] except that the chief of police, [which term shall include his authorized representative, shall have] has the power to grant permits for supervised public displays of fireworks, or for the use of fireworks in connection with bona fide observance of religious ceremonies, or for the use of fireworks by commercial farmers for the purpose of frightening crop-destroying birds. Every [such] permitted display or use of fireworks [shall] must be under the direct control of a competent operator approved by the chief of police.

B. Application for [such] a permit [shall] must be made in writing to the chief of police, who, after making an investigation and after being satisfied that the [person applying therefor] applicant is competent to display or use fireworks, and that [such] the display or use of fireworks will not be hazardous to property or endanger any person or persons, or disturb the peace because of the time and place of [such] the display or use of [such] fireworks, the manner in which [such] fireworks [shall] may be displayed or used, and the type and quantity, [thereof,] and after [he shall have made such] the chief of police makes other and further inquiry as [in his opinion shall seem] necessary, the chief may issue a permit for the display or use of fireworks. [Such] The permit [shall] must authorize the holder to display or use fireworks only of the type and quantity [therein] specified, and only at the place and at the time [therein] mentioned. The permit [shall] must authorize the holder to purchase and possess the fireworks, which are displayed or used, between the date of the issuance of [such] the permit and the time during which the display or use of [said] fireworks is authorized. After [such privilege shall have been] the permit is granted, sales, possession,

use, gift, and distribution of fireworks for [such] display or use [shall be] are lawful for that purpose only; and all fireworks [shall] must be sold, given away, used, fired, discharged, or exploded [under such permits] only in strict accordance with the [terms and conditions thereof] the permit. A duplicate of [such] the permit [shall] must be retained by any person[, firm, co-partnership, or corporation] selling [such] fireworks to any authorized purchaser. No permit [granted hereunder shall be] is transferable.

**8.16.030 [Wholesaling fireworks—]Restrictions in chapter's scope.** Nothing in this chapter [shall] may be construed to prohibit:

A. [any] Any resident wholesaler, dealer, or jobber [to sell] from selling fireworks at wholesale; [such fireworks, or]

B. [the] The sale of any kind of fireworks, [provided] if the [same] fireworks are to be shipped directly out of the [county, or] County;

C. [the] The use of fireworks by transportation agencies for signal purposes or illumination[.]; or

D. [the] The sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military or police organizations.

**8.16.040 Violation[—Penalty].** Any person[, firm, copartnership, or corporation] violating the provisions of this chapter or any of the terms or conditions of any permit issued for the display or use of fireworks [shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars] is subject to administrative enforcement under 19.530.030 or a criminal fine of \$500, or both.

**8.16.050 Illegal fireworks social host prohibition.** A. A gathering where a person illegally sets off, ignites, discharges, 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 person illegally sets off, ignites, discharges, or causes to explode fireworks or articles pyrotechnic.

**8.16.060 Illegal fireworks social host administrative enforcement.** A. In addition to any enforcement by criminal prosecution, if the fire chief determines that a responsible person violated any provision of this chapter, the fire 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. 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 fire 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.

**8.16.070 Illegal fireworks social host appeals.** A. Any person aggrieved by a determination of the fire chief under section 8.16.050 or section 8.16.060 may appeal the determination by filing a written notice of appeal with the board of variances and appeals within thirty days after notice of the determination.

B. An appeal may be granted only if the board of variances and appeals 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.

**8.16.080 Illegal fireworks social host administration.**  
The fire chief will administer sections 8.16.050 and 8.16.060; except the fire chief may designate a fireworks social host administrator, who may exercise the chief's authority under this chapter, to the extent authorized by the chief.

**8.16.090 Illegal fireworks social host administrative rules.**  
In accordance with chapter 91, Hawai'i Revised Statutes, the fire chief may promulgate administrative rules for the administration and enforcement of sections 8.16.050 and 8.16.060.

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

B. The fire chief must provide an annual report to the council on the status of sections 8.16.050, 8.16.060, and 8.16.070 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."

SECTION 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

---

Department of the Corporation Counsel  
County of Maui

paf:lma:21-171c