

ORDINANCE NO. 5373

BILL NO. 39, CD1, FD1 (2022)

A BILL FOR AN ORDINANCE ESTABLISHING A
NEW 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 that is designed to be used with an electric gun to project a missile. “Cartridge” includes but is not limited to a Taser cartridge.

“Chief” means the chief of the department 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 to do so with the director. The annual fee for the issuance of such license is \$50 and must be payable to the director. The application shall 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 legal name, date of birth, and the last four digits of the social security number of the individual.

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

3. The name and location of the principal place of business of the applicant and, if applicable, each additional designated place of business from which the applicant desires to sell electric guns.

4. The applicant's Hawaii tax identification number.

5. A certification that the applicant has had no convictions for any felony offense or a misdemeanor offense involving the use of electric guns or firearms.

6. Within the last three years, the applicant has completed an electric gun safety or training course that complies with the requirements of this chapter.

7. The name, address, and telephone number of the owner, and if applicable, the property manager, of the

locations identified by the applicant as locations from which the applicant desires to sell electric guns or cartridges, and if such location is leased, the name, address, and telephone number of the lessor and lessee of the premises.

B. If the applicant is not an individual, 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 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 from which 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 locations identified by the applying entity as locations from which the applying entity desires to sell electric guns or cartridges, and if such location is leased, the name, address and telephone number of the lessor and lessee of the premises.

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 or a misdemeanor offense involving the use of electric guns or firearms.

9. The applying entity's Hawaii 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 that complies with the requirements of this chapter.

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

C. The applicant must certify that the applicant will comply at all times with all provisions of law relative to the acquisition, possession, storage, and sale of electric guns, 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.

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.

E. A license issued hereunder 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 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 pursuant to 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 under this chapter to the chief.

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

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

A. 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.

B. The licensee must initiate a criminal background check 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.

C. 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.

D. Licensees must comply with all county, state, and federal laws and licensing requirements related to electric gun sales and possession. Failure to comply shall 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 shall post the license to sell, offer to sell, distribute, or otherwise transfer electric guns or cartridges, or a certified copy thereof, in a location readily visible to customers at each designated place of business. For internet sales by a licensee, the license number shall be prominently displayed and an electronic copy of the license shall be readily accessible to the customer.

B. An individual licensee shall complete at least once every three years an electric gun safety or training course offered or approved by the director 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; and
3. Education on the existing state laws on electric guns.

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

C. A licensee shall 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 shall 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 shall 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 shall keep records for all electric guns and cartridges received into inventory within the county, including:

1. Information identifying the seller, distributor, or transferor of the electric gun or cartridge; and

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 shall conduct a criminal history background check of the recipient. At minimum, the criminal history background check shall be a name-based search of the adult criminal conviction records maintained by the Hawaii criminal justice data center. The licensee or employee of the licensee shall require the recipient to review a printed copy of the results of the background check. After the review, the recipient shall sign and date a declaration. The declaration shall 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 shall 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 shall 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 shall provide an informational briefing to the recipient that includes but is not limited to 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 shall 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 shall 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 shall be as provided by the county office that issued the license to the licensee.

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

2. A licensee shall keep records of all sales, distributions, and other transactions of electric guns and 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; and

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 shall keep a record of the licensee's current inventory of electric guns and cartridges.

3. During normal business hours, a licensee shall 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 and 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 shall 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 shall be turned over to the chief.

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

6. During normal business hours, a licensee shall allow the chief or designee to physically inspect all electric guns and 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 cartridges:

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 shall be guilty of a misdemeanor, and upon conviction shall 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 and 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 shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:



KEOLA R. WHITTAKER
Deputy Corporation Counsel
County of Maui
2021-1833

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Mrs. K. Lee". The signature is written in black ink and is positioned above a horizontal line.

Upon the request of the Mayor.

WE HEREBY CERTIFY that the foregoing BILL NO. 39, CD1, FD1 (2022)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 6th day of May, 2022, by the following vote:

Alice L. LEE Chair	Keani N. W. RAWLINS-FERNANDEZ Vice-Chair	Gabriel JOHNSON	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 9th day of May, 2022.

DATED AT WAILUKU, MAUI, HAWAII, this 9th day of May, 2022.

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OFFICE OF THE CLERK

ALICE L. LEE, CHAIR
Council of the County of Maui

KATHY L. KAOHU, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 11 DAY OF May, 2022.

MICHAEL P. VICTORINO, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 5373 of the County of Maui, State of Hawaii.

KATHY L. KAOHU, COUNTY CLERK
County of Maui

Passed First Reading on April 1, 2022
Effective date of Ordinance May 11, 2022

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OFFICE OF THE COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 5373, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui