

COUNCIL OF THE COUNTY OF MAUI

PARKS AND RECREATION COMMITTEE

March 2, 2001

**Committee
Report No.**

01-43
As Amended

NOTE: The committee report was amended by the Council at its meeting on March 16, 2001, by substituting pages 4 through 7. This committee report was then adopted as amended.

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Parks and Recreation Committee, having met on February 14, 2001, makes reference to County Communication No. 97-328, from Councilmember Wayne K. Nishiki, relating to the effectiveness of Section 18.16.320, Maui County Code, regarding park dedications.

Your Committee notes that County Communication No. 97-328 was referred to the Council's Parks and Recreation Committee (1997-1998 Council term) at the Council meeting of October 17, 1997.

At its meeting of December 2, 1998, the Parks and Recreation Committee met with the Director of Parks and Recreation.

The Parks and Recreation Committee met to discuss the disposition of all items on its agenda and recommended that County Communication No. 97-328 be referred to the Council Chair for the term beginning January 2, 1999.

At its meeting of December 18, 1998, the Council referred County Communication No. 97-328 to the Council Chair for the term beginning January 2, 1999 (Committee Report No. 98-236).

At its meeting of January 11, 1999, the Council referred County Communication No. 97-328 to the former Council's Human Services and Parks Committee.

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By memorandum dated January 20, 1999, the Council Chair transmitted a letter dated January 14, 1999, from the County Clerk, relating to the matter of evaluating the County's park assessment provisions to consider the establishment of privately owned and maintained parks within project districts.

By letter dated June 1, 1999, the Committee requested the Director of Parks and Recreation to provide a status report relating to proposed legislation generated by the Department.

By letter dated June 24, 1999, the Director of Parks and Recreation stated that his Department had no plans to submit proposed legislation.

By memorandum dated April 17, 2000, Councilmember Hokama transmitted a draft bill entitled "A BILL FOR AN ORDINANCE TO AMEND SECTION 18.16.320 OF THE MAUI COUNTY CODE RELATING TO PARKS AND PLAYGROUNDS". The purpose of the draft bill is to allow full credit for privately owned and maintained parks and playgrounds.

By memorandum dated August 21, 2000, the Committee Chair transmitted a draft bill entitled "A BILL FOR AN ORDINANCE TO AMEND SECTION 18.16.320 OF THE MAUI COUNTY CODE RELATING TO PARKS AND PLAYGROUNDS". The purpose of the draft bill is to allow park dedications to occur in either the community plan district of the proposed subdivision, or in an adjacent community plan region.

At its meeting of August 30, 2000, the Committee met with the Director of Parks and Recreation, the Director of Public Works and Waste Management, and a Deputy Corporation Counsel.

The Committee Chair asked Committee members for any revisions to the two draft bills.

Without discussing the proposed bills, the Committee recommended that the matter be deferred until other Committee members had the opportunity to provide their own revisions. The Committee further requested that all of the proposed changes be incorporated into one bill.

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The Committee deferred action on this matter.

By memorandum dated September 14, 2000, Councilmember Nishiki transmitted a copy of a memorandum dated May 21, 1996, from a Deputy Corporation Counsel relating to the park assessment ordinance. The Deputy made several points, including the following: (1) According to Section 18.20.280, it is not necessary to exempt family subdivisions from the park assessment requirement because they are already exempted by this section; (2) Housekeeping revisions should be made to clarify the intent of the ordinance; and (3) Corporation Counsel Opinion No. 96-01 which defined "special circumstances" as used in Subsection 46-6(e), Hawaii Revised Statutes (HRS), should be reviewed.

Corporation Counsel Opinion No. 96-01 states that Subsection 46-6(e), HRS, expands the counties' flexibility to address special problems that are "peculiar to their districts". However, neither Subsection 46-6(e), HRS, or the legislative history explain what constitutes "special circumstances".

By memorandum dated November 9, 2000, the Committee Chair requested written recommendations and revisions to Section 18.16.320, Maui County Code.

By letters dated November 9, 2000, to the Director of Parks and Recreation and the Director of Public Works and Waste Management, the Committee Chair requested written recommendations and revisions to the proposed bills.

At its meeting of November 15, 2000, the Committee met with the Director of Parks and Recreation, the Director of Public Works and Waste Management, and a Deputy Corporation Counsel.

The Committee received a copy of Section 46-6, HRS, relating to parks and playgrounds for subdivisions, from Madelyn D'Enbeau.

Ms. D'Enbeau pointed out that the County's park assessment ordinance for cash payments differs from the State law in two ways. First, she noted that

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the County's laws were passed in 1987 in response to a severe affordable housing crisis, during which housing prices were escalating. Because of concerns that the park assessment, as required by State law, would cause housing prices to go even higher, the County gave developers a 55 percent cash discount. Second, the County's current law is based on a system of averaging the assessed value of the wide variety of residential properties in Maui County, rather than on the fair market value of the land, a practice that was in place until 1987 and is currently required by State law. She further noted that the legal opinions distributed by Councilmember Nishiki on September 14, 2000 state that the County does have the right to vary from State law, based on special circumstances, and that those special circumstances were the lack of affordable housing.

The Committee also received a draft bill entitled "A BILL FOR AN ORDINANCE TO AMEND SECTION 18.16.320 OF THE MAUI COUNTY CODE RELATING TO PARKS AND PLAYGROUNDS". The draft bill contained color-coded revisions proposed by Councilmembers Enriques, Hokama, and Tavares as follows: (1) to provide for consistency between Subsections B and C, by listing the options of paying the County a sum of money or providing improvements to a park within the community plan region of the proposed development (Section 18.16.320.B, Tavares); (2) to allow park dedications to occur in either the community plan district of the proposed subdivision, or in an adjacent community plan region, excluding Molokai and Lanai (Section 18.16.320.B.2, Enriques); (3) to clarify that the Director of Parks and Recreation, rather than the subdivider, shall select one of several methods by which the park dedication requirement may be fulfilled (Section 18.16.320.C, Tavares); (4) to revise the formula for payment of money in lieu of providing park lands by multiplying 100 percent of the assessed valuation of the subdivision lands that are classified as either improved residential, apartment, or unimproved residential (Section 18.16.320.C.1, Tavares); (5) to provide full credit for privately owned and maintained parks and playgrounds (Section 18.16.320.E, Hokama); (6) to require subdividers that provide land to the County to install automatic irrigation to the site (Section 18.16.320.E.5, Tavares); (7) to clarify that the Director of Parks and Recreation (previously referred to as "the director") can make recommendations as to whether any of the required improvements should be waived because similar features are available nearby, or because the improvements are impractical or unnecessary (Section 18.16.320.E.5, Tavares); and (8) to clarify that although the Director of Parks

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and Recreation and Director of Public Works and Waste Management may make recommendations to the Council, the Council has the ultimate authority in determining whether any of the required improvements shall be waived (Section 18.16.320.E.5, Tavares).

The Committee noted that since it was the last meeting of the term, there was insufficient time to thoroughly discuss the proposals, and that the matter should therefore be referred to the Council Chair for the term beginning January 2, 2001, for a recommendation as to referral or other disposition.

The Committee deferred action on this matter.

At its meeting of January 12, 2001, the Council referred County Communication No. 97-328 to your Parks and Recreation Committee (County Communication No. 01-20).

By memorandum dated February 2, 2001, your Committee Chair requested written recommendations relating to the color-coded draft bill entitled "A BILL FOR AN ORDINANCE TO AMEND SECTION 18.16.320 OF THE MAUI COUNTY CODE RELATING TO PARKS AND PLAYGROUNDS" which incorporates revisions as recommended by the former Human Services and Parks Committee.

By letters dated February 2, 2001 to the Director of Parks and Recreation and the Director of Public Works and Waste Management, your Committee Chair requested written recommendations relating to the color-coded draft bill entitled "A BILL FOR AN ORDINANCE TO AMEND SECTION 18.16.320 OF THE MAUI COUNTY CODE RELATING TO PARKS AND PLAYGROUNDS" which incorporates revisions as recommended by the former Human Services and Parks Committee.

By letter dated February 8, 2001, the Director of Public Works and Waste Management responded to your Committee's request for comments on the proposed revisions by requesting additional time to review the proposed bill.

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At its meeting of February 14, 2001, your Committee met with the Director of Parks and Recreation, the Director of Public Works and Waste Management, and a Deputy Corporation Counsel.

The Director of Parks and Recreation indicated that the many implications involved in the park dedication ordinance must be carefully considered. Thus, he recommended that the Administration establish an ad hoc committee to clarify ambiguities, to receive input and to provide a vehicle for further discussions.

The Director noted that during the Department's consideration of the park dedication ordinance, several issues were brought to light. Some of the issues are as follows: (1) acceptance or non-acceptance of retention basins to fulfill park dedication requirements; (2) requiring minimal improvements (i.e. fencing and automatic irrigation) to dedicated lands; (3) amending the definition of time share units; and (4) rectifying inconsistencies between the project district ordinance and the park dedication ordinance.

Your Committee expressed support for amending Subsection "C" of the park dedication ordinance to grant the Director of Parks and Recreation the discretion, rather than the subdivider, to determine whether the developer must dedicate land, pay a sum of money, or an equivalent combination thereof.

Your Committee briefly discussed the proposed revision to increase the percentage rate, from 45 to 100 percent, used in the formula to calculate the sum of money required in lieu of land.

The Deputy Corporation Counsel advised your Committee to proceed with caution in considering an increase to the percentage rate. Although other counties within the State of Hawaii calculate the sum of money based on a 100 percentage rate, the assessment may be considered an impact fee.

Your Committee agreed that the matter relating to park dedication is worthy of the establishment of a subcommittee. Your Committee also agreed to recommend the passage of a proposed bill incorporating an amendment to Section 18.16.320 to grant the Director of Parks and Recreation the authority to determine whether a subdivider shall (1) provide land in perpetuity or dedicate land for park or playground purposes; or (2) pay the County a sum of money; or

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(3) provide improvement to a park in the community plan region; or (4) provide an equivalent combination thereof.

Your Committee is in receipt of a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND SUBSECTIONS B AND C OF SECTION 18.16.320, MAUI COUNTY CODE, RELATING TO THE AUTHORITY OF THE DIRECTOR OF PARKS AND RECREATION". The purpose of the proposed bill is to grant the Director of Parks and Recreation the authority to determine how a subdivider is to fulfill the park dedication requirement.

Your Parks and Recreation Committee RECOMMENDS that Bill No. _____ (2001), as attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND SUBSECTIONS B AND C OF SECTION 18.16.320, MAUI COUNTY CODE, RELATING TO THE AUTHORITY OF THE DIRECTOR OF PARKS AND RECREATION" PASS FIRST READING and BE ORDERED TO PRINT.

Adoption of this report is respectfully requested.

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JO ANNE JOHNSON Chair

MICHAEL J. MOLINA Member

ROBERT CARROLL Vice-Chair

CHARMAINE TAVARES Member

PATRICK S. KAWANO Member