

COUNCIL OF THE COUNTY OF MAUI

PARKS AND RECREATION COMMITTEE

November 16, 2001

Committee
Report No.

01-230

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 October 3, 2001, October 17, 2001 and October 31, 2001, makes reference to County Communication No. 01-176, from the Council Chair, transmitting correspondence dated May 9, 2001, from a concerned citizen, relating to sanctions for individuals and organizations that misuse County parks and facilities.

By correspondence dated July 13, 2001 and August 28, 2001, your Committee Chair requested that the Department of the Corporation Counsel draft a proposed bill granting the Director of Parks and Recreation the authority to apply sanctions for the misuse of County parks and facilities.

By correspondence dated September 28, 2001, the Department of the Corporation Counsel transmitted a legal opinion stating that the Director of Parks and Recreation has certain authority pursuant to Section 13.04.050, Maui County Code, to take actions to address concerns at parks and facilities, and further requested more time to research the matter.

At its meeting of October 3, 2001, your Committee met with the Planning Development Chief for the Department of Parks and Recreation, the Chief of Police, and a Deputy Corporation Counsel.

The Deputy Corporation Counsel provided your Committee with an overview of the matter. He stated that the Department of the Corporation Counsel, in cooperation with the Department of Parks and Recreation, is attempting to revise Chapter 13 of the Maui County Code and develop administrative rules to incorporate certain changes in governing County parks, facilities and ocean recreational activity permits. He indicated that within the above-stated revisions, the Department of the Corporation Counsel was planning to include granting the Director, authority to impose sanctions for the misuse of County parks and facilities.

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In response to an inquiry by your Committee, the Deputy Corporation Counsel stated that the process for revising Chapter 13 of the Maui County Code and the administrative rules could take approximately three to four months.

Your Committee expressed concerns that the Director would not have the authority to act on certain misuses of County parks and facilities during the three to four months required to draft and review the administrative rules and revisions to the Code. As a result, your Committee requested that a proposed bill be drafted that would grant the Director certain authority to apply sanctions for misuses at County parks and facilities.

Your Committee also requested a copy of the agreement between Rudy Huber of the Hawaii Elite Track Team and the Department of Parks and Recreation, relating to removing sanctions for use of the Satoki Yamamoto Track and Field Stadium.

Your Committee deferred the matter pending the receipt of the proposed bill granting the Director of Parks and Recreation certain authority to apply sanctions for misuses at County parks and facilities.

By correspondence dated October 8, 2001, your Committee Chair requested that the Director of Parks and Recreation transmit a copy of the agreement between the Department of Parks and Recreation and Rudy Huber, Hawaii Elite Track Team.

By correspondence dated October 10, 2001, your Committee Chair transmitted a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 13.04.080, MAUI COUNTY CODE, PERTAINING TO FEES AND DEPOSITS" to the Department of the Corporation Counsel for review and approval. The purpose of the proposed bill is to grant the Director of Parks and Recreation the authority to apply sanctions or penalties for misuses at County parks and facilities.

By correspondence dated October 11, 2001, your Committee Chair transmitted a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 13.04.080, MAUI COUNTY CODE, PERTAINING TO FEES AND

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DEPOSITS", to the Department of Parks and Recreation for review and comment.

By correspondence dated October 15, 2001, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 13.04.120, MAUI COUNTY CODE, PERTAINING 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 impose sanctions for the misuse of County parks and facilities by permit holders.

By correspondence dated October 16, 2001, the Director of Parks and Recreation transmitted a copy of the agreement between the Department of Parks and Recreation and Rudy Huber, Hawaii Elite Track Team.

At its meeting of October 17, 2001 your Committee met with the Director of Parks and Recreation and a Deputy Corporation Counsel.

The Deputy Corporation Counsel provided an overview of the revised proposed bill. He explained that the proposed bill: (1) incorporates proposed sanctions and activities in Section 13.04.120 instead of the Section 13.04.080, Maui County Code, as originally proposed; and (2) eliminates certain provisions that appear to be overly broad.

Your Committee expressed concerns about granting the Director expanded authority without setting administrative standards or an appeals process for any decision rendered. Your Committee requested that the proposed bill be revised to include an appeals process for any decision by the Director, and that a provision be included that would either allow the County Board of Variances and Appeals ("BVA") to hear appeals or create an interim appeals board or process.

Your Committee deferred the matter pending further discussion and receipt of a revised proposed bill.

By correspondence dated October 19, 2001, your Committee Chair requested the Department of the Corporation Counsel to further revise the

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proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 13.04.120, MAUI COUNTY CODE, PERTAINING TO THE AUTHORITY OF THE DIRECTOR OF PARKS AND RECREATION" as recommended by your Committee.

By correspondence dated October 26, 2001, the Department of the Corporation Counsel transmitted two draft bills entitled: (1) "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO THE AUTHORITY OF THE DIRECTOR OF PARKS AND RECREATION, AND THE APPEAL OF THE DIRECTOR'S DECISION OR ORDER". The purpose of Draft No. 1 is to grant the Director of Parks and Recreation the authority to impose sanctions for the misuse of County parks and facilities, and to authorize the BVA to hear appeals. The purpose of Draft No. 2 is to grant the Director of Parks and Recreation the authority to impose sanctions for the misuse of County parks and facilities, and to create a Parks and Recreation Appeals Board.

At its meeting of October 31, 2001, your Committee met with the Director of Parks and Recreation, a Staff Planner with the Department of Planning, and a Deputy Corporation Counsel.

The Deputy Corporation Counsel provided an overview of the draft bills. He stated that the Department of the Corporation Counsel prepared two versions of the revised proposed bill. Draft No. 1 grants the authority to the BVA to hear any appeals from decisions rendered by the Director of Parks and Recreation. Draft No. 2 creates a new Parks and Recreation Appeals Board to hear and determine appeals from any person aggrieved by a decision or order of the Director of Parks and Recreation.

The Staff Planner expressed concerns about increasing the workload of the BVA, as proposed in Draft No. 1, because staffing is very limited. He also stated that in order to accept the additional responsibility, the BVA would have to modify its rules and regulations to include: (1) appeals from the Department of Parks and Recreation, and (2) a fourth "standard of appeal", which sets guidelines for affirming, reversing or modifying decisions.

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In response to the concerns raised by the Staff Planner, the Deputy Corporation Counsel indicated that by Section 8-8.7 of the Charter, the BVA may “hear and determine all other matters which the board may be required to pass on pursuant to ordinances.” He further stated that Draft No. 1 would conform to the Charter requirement. He also stated that the fourth item added to Subsection 13.04.125 B., “Standard of appeal” was included in the draft bills as a public safety matter.

In response to an inquiry by your Committee, the Deputy Corporation Counsel stated that the \$300 filing fee for appeals is set by ordinance and can only be modified by ordinance. He further indicated that the fee is not refundable.

The Director of Parks and Recreation stated in response to your Committee that the number of potential appeals is minimal. He further stated that the Department could only think of one appeal that has occurred during the last year. Your Committee concurred that appeals have been very limited over the last six years.

Your Committee noted its preference for Draft No. 1, which gives the authority to the BVA to hear appeals from decisions rendered by the Director of Parks and Recreation. Your Committee expressed its concern about creating a new appeals board, which would have a minimal number of cases to review.

Your Committee voted to recommend passage of Draft No. 1 and filing of the communication.

Your Committee is in receipt of a proposed bill, approved as to form and legality, by the Department of the Corporation Counsel.

Your Parks and Recreation Committee RECOMMENDS the following:

1. That Bill No. _____ (2001), attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO THE AUTHORITY OF THE DIRECTOR OF PARKS AND RECREATION, AND THE APPEAL

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OF THE DIRECTOR'S DECISION OR ORDER" PASS FIRST
READING and BE ORDERED TO PRINT; and

2. That County Communication No. 01-176 be FILED.

Adoption of this report is respectfully requested.

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JO ANNE JOHNSON Chair

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ROBERT CARROLL Vice-Chair

CHARMAINE TAVARES Member

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