

COUNCIL OF THE COUNTY OF MAUI  
**WATER RESOURCES COMMITTEE**

March 20, 2009

**Committee**

**Report No.**    09-33

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

Chair and Members:

Your Water Resources Committee, having met on February 12, 2009, makes reference to County Communication No. 05-46, from former Councilmember Michelle Anderson, relating to the rules and governing policies of the Department of Water Supply (Department).

Your Committee notes that in 2002, the Charter of the County of Maui (1983) was amended to transfer the authority to adopt rules and regulations having the force and effect of law relating to the County's water systems, from the Board of Water Supply to the Director of Water Supply. In order to accommodate this change, the Department of the Corporation Counsel eventually offered a proposed bill to incorporate many of the rules into the Maui County Code.

Your Committee considered a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.01, MAUI COUNTY CODE, RELATING TO WATER". The purposes of the draft bill are to clarify the Director's authority to promulgate rules and to codify the Department's rules and regulations relating to definitions.

Your Committee recommended that the definitions of "dedicated water system improvements", "service lateral", "storage tank", "subdivision", and "unit" be revised to conform with the Department's current procedures.

Your Committee voted 5-0 to recommend passage of the draft bill, as revised. Committee Chair Victorino, Vice-Chair Pontanilla, and members Baisa, Mateo, and Molina voted "aye". Committee members Kaho'ohalahala and Medeiros were excused.

Your Committee is in receipt of a proposed bill, approved as to form and legality by the Department of the Corporation Counsel, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.01, MAUI COUNTY CODE, RELATING TO WATER", incorporating its revisions.

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Your Committee also considered a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 14, MAUI COUNTY CODE, RELATING TO THE WATER METER ISSUANCE PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM". The purpose of the draft bill is to codify the Department's rules and regulations relating to water meter issuance for the Upcountry water system.

Your Committee notes that the Water Meter Issuance Rule for the Upcountry Water System is currently the Department's Administrative Rule, Title 16, Chapter 106 and has been in effect since October 4, 2002.

Your Committee voted 5-0 to recommend passage of the draft bill. Committee Chair Victorino, Vice-Chair Pontanilla, and members Baisa, Mateo, and Molina voted "aye". Committee members Kaho'ohalahala and Medeiros were excused.

Your Committee is in receipt of a proposed bill, approved as to form and legality by the Department of the Corporation Counsel, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 14, MAUI COUNTY CODE, RELATING TO THE WATER METER ISSUANCE PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM".

Your Committee notes that enactment of the two proposed bills will codify only a portion of the Department's rules and regulations. Your Committee further notes that the intent of your Committee is to codify additional rules and regulations of the Department as draft bills are transmitted for consideration.

Your Water Resources Committee RECOMMENDS the following:

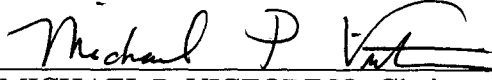
1. That Bill No. \_\_\_\_\_ (2009), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.01, MAUI COUNTY CODE, RELATING TO WATER", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That Bill No. \_\_\_\_\_ (2009), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 14, MAUI COUNTY CODE, RELATING TO THE WATER METER ISSUANCE PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM", be PASSED ON FIRST READING and be ORDERED TO PRINT.

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**WATER RESOURCES COMMITTEE**

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Committee  
Report No. 09-33

Adoption of this report is respectfully requested.

  
MICHAEL P. VICTORINO, Chair

wr:cr:09001ba:kcw

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

BILL NO. \_\_\_\_\_ (2009)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.01,  
MAUI COUNTY CODE, RELATING TO WATER

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

SECTION 1. Section 14.01.030, Maui County Code, is amended to read as follows:

**"14.01.030 Administration.** Except as otherwise provided in this article, the director shall administer, implement, and enforce the provisions herein. [Any] All powers granted to, or duties imposed upon, the director may be delegated by the director to [other County] personnel[.] within the department. The director may promulgate administrative rules pursuant to the Hawaii Administrative Procedures Act to implement the provisions of this article."

SECTION 2: Section 14.01.040, Maui County Code, is amended to read as follows:

**"14.01.040 Definitions.** [For the purpose of this article, unless it is] Unless otherwise expressly provided in separate provisions of this article, or unless plainly evident from the context that a different meaning is intended, [certain words and phrases used herein are] for the purposes of this article the following words, terms, and phrases shall be defined as follows:

"Applicant" means any person who causes, or applies to cause, land to be [divided into a subdivision.] subdivided. It also means any person applying for water service or additional water service.

"Application" means a request for water service or additional water service.

"Approved engineering report" means a report prepared by a licensed professional engineer, experienced in such fields as water resources, hydrogeology, water supply, or environmental engineering, and approved by the director of the state department of health pursuant to department of health rules, for non-County water service.

"Board" means the board of water supply of the County of Maui.

"Building permit" means the official document or certificate issued by the County of Maui authorizing the construction of any structure.

"Commission" means the commission on water resource management of the State of Hawaii.

"Consolidated metering system" means [the means by which] water that is furnished to multiple dwellings through a centralized [metering system to multiple consumer units.] or single meter.

"Construction" means any work associated with development of a new water source.

"Consumer" means the person, firm, corporation, association, or governmental entity, whether owner or tenant, whose name appears on the records

of the department as the party responsible and liable for receiving water service from the department.

"Consumer's supply pipe" means the pipe extending from the consumer's end of the service connection.

"Cost of service lateral" means the sum of the cost of the labor, materials, meter box, transportation, equipment, and road repair, if any, and other charges necessary for the complete installation of a service lateral, but excluding the cost of the meter.

"Council" means the council of the County of Maui.

"County" means the County of Maui.

"Cumulative impact" means the impact on the environment and water supply that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

"Dedicated water system improvements" means water system improvements that are privately designed, constructed, and dedicated to the department for operation.

"Department" means the department of water supply of the County [of Maui], excluding the board of water supply unless the context so indicates.

"Department of health" means the State of Hawaii department of health.

"Department of health rules" means Hawaii administrative rules, title 11, chapter 20, entitled "Rules Relating to Potable Water Systems."

"Director" means the director of the department of water supply of the County [of Maui or an authorized representative of the director].

"Dwelling unit" means [any building, addition, extension, or any portion thereof, which is designated or intended for occupancy by one family or persons living together or by a person living alone.] a dwelling unit as defined in title 19 of this code.

"Groundwater" means any water found beneath the surface, whether in perched supply, dike confined, flowing or percolating in underground channels or streams, under artesian pressure or not, or otherwise.

"Irrigation" means the use of water for grazing, [and] agricultural, or landscaping purposes.

"Long-term, reliable supply of water" means:

1. [a] A County water meter reservation, as established by a receipt for payment of a County water meter reservation verifying that the proposed subdivision will be provided source and service; or

2. [the] The total water supplies from a private, non-County source that will meet the projected demand associated with a proposed development, in addition to existing and planned future demand, as established by an approved engineering report.

"Main" or "main pipe" means the department's supply or distribution pipe from which service connections are made.

"Off-site water improvements" means that portion of a subdivision water system from the point of adequacy to the point of entry of such system into the subdivision or premises boundaries.

"On-site water improvements" means that portion of the subdivision water system constructed within the property limits of the subdivision or development, to include all fire hydrant assemblies and service laterals whether on or off [said] the property and as required by the department.

"Plan" means the water use and development plan.

"Point of adequacy" means that point in the public water system, as determined by the director or the director's duly authorized representative, where there is adequate pressure, storage, and pipeline size to supply water to meet the fire flow, domestic, and irrigation demands for water without detriment to the existing consumers.

"Potable water" means water that has been certified by the department of health as suitable for cooking or drinking purposes.

"Premises" means [the] a parcel of [land, lot or lots, on which the development, improvement, or service is planned.] real property and any structures thereon which have water service, will require water service, or requires additional water service.

"Private water system" means a water system constructed, owned, operated, and maintained by private individuals, corporations, or organizations.

"Public water system" means the water system owned, operated, and maintained by the [County of Maui.] department of water supply.

"Run" means the distance of water main and appurtenances to be installed from the point of adequacy to the point in question.

"Service lateral" means the [main tap,] connection to a water main, pipes, fittings, [and] valves, and other appurtenances from the water main [to and including the meter box.] up to and including the consumer shut-off valve and water-meter box, but not including the water meter.

"Source development" means the construction of any structure to capture, convey, store, and treat currently unutilized, non-potable surface waters; or the construction of facilities for currently unutilized ground water and its treatment, including pumps, motor control stations, pump control, or disinfection contact time tanks; or the construction of desalination facilities; or any other technique which provides or recaptures water acceptable by the State of Hawaii department of health, together with any easements required for the improvements.

"State water code" means chapter 174C, Hawaii Revised Statutes.

"Storage tank" means a reservoir to store water.

"Structure" shall have the same meaning as defined in the building code as amended and adopted by the County.

"Subdivider" means a subdivider as defined in title 18 of this code.

"Subdivision" means improved or unimproved land or lands divided into two or more lots, parcels, sites, or other divisions of land for the purpose, whether immediate or future, of sale, lease, rental, transfer of title to or interest in, any or all of such parcels[.], and includes the process of consolidation and resubdivision, and, when appropriate to the context, shall relate to the process of subdividing the land. Easements for roadway or access purposes shall be construed as subdivided land. The term also includes a building or group of buildings, other than a hotel, containing or divided into three or more dwelling units. All planned unit developments and condominium projects shall be considered subdivisions. [Except as otherwise permitted by law, for purposes of this article, a development consisting of four or more dwelling units on a lot, parcel, or site, including planned unit developments and condominiums reviewed, approved and established pursuant to Hawaii Revised Statutes, shall be deemed a subdivision.]

"Subdivision water system" means that water system from the point of adequacy, as determined by the director or the director's duly authorized representative, to and within any subdivision, including mains, valves, hydrants, laterals, pumps, tanks, reservoirs, and all appurtenances necessary to provide water and fire protection for such subdivision.

"Surface water" means both contained surface water, that is, water upon the surface of the earth in bounds created naturally or artificially, including, but not limited to, streams, other watercourses, lakes, reservoirs, and coastal waters

subject to state jurisdiction, and diffused surface water, that is, water occurring upon the surface of the ground other than in contained water bodies. Water from natural springs is surface water when it exits from spring onto the earth's surface.

"Sustainable yield" means the maximum rate at which water may be withdrawn from a water source without impairing the utility or quality of the water source, as determined by the commission, and set forth in the plan.

"Temporary meter" means any meter connected to a fire hydrant or a service lateral used less than one year in accordance with an agreement with the department.

"Traditional and customary native Hawaiian rights and practices" means the rights of ahupuaa tenants who are descendents of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, including the cultivation or propagation of taro on one's own kuleana and the gathering of hihiwai, opae, oopu, limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural, and religious purposes, as set forth in article XII, section 7 of the Hawaii State Constitution, and [Section] section 174C-101, Hawaii Revised Statutes.

"Transmission pipeline" means a pipeline that delivers water from a source development to a storage tank or distribution system, including any booster pump stations and appurtenances to the transmission pipeline system to increase its capacity, and any easements required for the improvements.

"Water meter" means a device that measures the volume of water delivered to any premises.

"Water service" means the complete installation of pipes, fittings, appurtenances, and meter necessary to provide service to a consumer. This term also refers to the delivery of water to [consumers.] any premises.

"Water system" means a network of pipelines, storage, facilities, pumps, and other appurtenances, wells, water filtration treatment facilities, or other sources which furnishes a supply of water to the [consumer.] premises.

"Water system development fee" ("WSDF") means a monetary [charge] rate imposed on [an] any applicant to fund a portion of costs to construct water system improvements or to recover the cost of existing water system improvements made in anticipation of additional demand on the water system.

"Water system improvements" means improvements or developments which will construct facilities to provide additional source development capacity, additional transmission or distribution pipeline capacity, or additional storage tank capacity for any of the department's water systems."

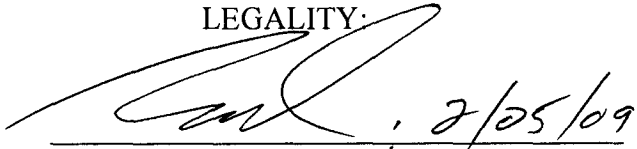
SECTION 3. Section 14.01.060, Maui County Code, is repealed

**["14.01.060 Rules.** The director may adopt, amend, and repeal rules for administration and enforcement of this article, which shall have the force and effect of law, as provided in chapter 91, Hawaii Revised Statutes."]

SECTION 4. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND  
LEGALITY:

A handwritten signature in black ink, appearing to read 'EK', followed by the date '2/25/09'. The signature and date are written over a horizontal line.

EDWARD S. KUSHI, JR.  
Deputy Corporation Counsel  
County of Maui

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

BILL NO. \_\_\_\_\_ (2009)

A BILL FOR AN ORDINANCE AMENDING TITLE 14, MAUI COUNTY CODE,  
RELATING TO THE WATER METER ISSUANCE PROVISIONS FOR  
THE UPCOUNTRY WATER SYSTEM

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

SECTION 1. Title 14, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER 14.13**

**WATER METER ISSUANCE PROVISIONS  
FOR THE UPCOUNTRY WATER SYSTEM**

Sections:

14.13.010	Scope
14.13.020	Purpose
14.13.030	Definitions
14.13.040	Water service requests
14.13.050	Procedure for processing applications for water service from the priority list
14.13.060	Issuance of water meters
14.13.070	Exceptions
14.13.080	Waiver or modification
14.13.090	Partial waiver of water system development fee
14.13.100	Applicability

**14.13.010 Scope.** All areas provided water service from the department's upcountry water system shall be within the scope of this chapter.

**14.13.020 Purpose.** The purpose of this chapter is to provide uniform handling of applications for water service from the priority list.

**14.13.030 Definitions.** For the purpose of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases are defined as follows:

"Priority list" means the compilation of premises in the order received by the department pursuant to a legal notice published in The Maui News, November 2, 1994, for applicants denied new or additional water service.

"Upcountry water system" means all water improvements associated with the department's Upper Kula, Lower Kula, Makawao (including Pukalani, Haliimaile and Maunaolu College area) and Haiku water systems.

**14.13.040 Water service requests.** A. On March 16, 1993, the upcountry water system was found to have insufficient water supply developed for fire protection, domestic, and irrigation purposes to take on new or additional water services without detriment to those already served in the regulated area. Since November 2, 1994, the department has maintained a priority list of premises, organized by the date applications for new or additional water service were received for such premises.

B. The director shall continue to maintain the priority list of premises applying for new or additional water service from the upcountry water system.

C. Premises on the priority list that are unable to fulfill departmental requirements for water service or who refuse water service shall be removed from the priority list. A new application must be submitted in order to be placed back on the priority list.

D. Requests for new or additional water service shall be limited to one meter size upgrade to the next larger meter size or a single 5/8-inch meter per request or planned subdivided lot but shall not exceed the number of lots created by the subdivision.

**14.13.050 Procedure for processing applications for water service from the priority list.** A. An applicant requesting new or additional water service for a premise shall be notified in writing by certified mail, return receipt requested, at the address submitted on the application.

B. The applicant shall be given thirty days from the date the certified mail was received by the applicant to complete and deliver to the department an application for water service or to reserve an allocation of water service in accordance with the department's established rules, regulations, and procedures.

C. Failure to respond or the return of an unsigned return receipt will be treated as a refusal of water service.

**14.13.060 Issuance of water meters.** If additional source for the upcountry water system becomes available, the director shall process applications for water meters in the order of the priority list up to the average day capacity of any additional source with allowance for the department's operational standards.

**14.13.070 Exceptions.** The provisions of this chapter shall not apply to applicants using source credits developed in the upcountry water system through a previous agreement with the board or the department, which agreement was executed before the effective date of this chapter.

**14.13.080 Waiver or modification.** The director may waive or modify the provisions of this chapter when not contrary to the public's health, safety or welfare, and when the director finds:

1. Strict application of the provisions of this chapter would cause an absurd, unfair, or unreasonably harsh result;
2. The director finds the circumstance or condition is unique or exceptional, and the director would grant the same request if made by every similarly situated applicant; and
3. The resulting action of the director will be without detriment to existing users.

**14.13.090 Partial waiver of water system development fee.** Water system development fee rates as of April 1993 will apply to requests of applicants on the priority list as of October 31, 2001 up to a maximum of three lots.

**14.13.100 Applicability.** Prior to the enactment of this chapter, the board promulgated an administrative rule known as the "Water Meter Issuance Rule for the Upcountry Water System", which rule is codified as chapter 106, subtitle 1, title MC-16 of the rules and regulations of the department of water supply, County of Maui. No provisions contained in this chapter shall affect the rights, privileges, remedies, requirements, or duties of any applicant or the department in accordance with said chapter 106 that have accrued prior to the effective date of this chapter."

SECTION 2. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND  
LEGALITY:



EDWARD S. KUSHI  
Deputy Corporation Counsel  
County of Maui

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