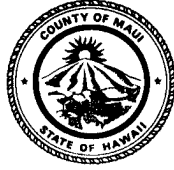


CHARMAINE TAVARES
Mayor



BRIAN T. MOTO
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
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OFFICE OF THE
COUNTY COUNCIL

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RECEIVED

June 8, 2010

MEMORANDUM

T O: Michael P. Victorino, Chair
Water Resources Committee

F R O M: Edward S. Kushi, Jr.
Deputy Corporation Counsel

A handwritten signature in black ink, appearing to be "E. Kushi, Jr.", is written over the "FROM" line of the memorandum.

SUBJECT: WATER SUPPLY RULES (DEFINITION OF AGRICULTURAL CONSUMER)
(WR-1(1))

In response to your request dated June 3, 2010, and subsequent discussions with Council Services staff, attached is the proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ARTICLE 1, TITLE 14, MAUI COUNTY CODE, RELATING TO AGRICULTURAL CONSUMERS". Because our office has concerns regarding the language and resulting implication of proposed section 14.10.015(B), specifically as to the relationship between expenses and annual income, we have not approved the bill as to form and legality.

Should you have any questions, please contact me.

ESK:lk

Enclosure

cc: Brian T. Moto, Corporation Counsel

Jeff Eng, Director, Department of Water Supply

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ORDINANCE NO. _____

BILL NO. _____ (2010)

A BILL FOR AN ORDINANCE AMENDING ARTICLE 1, TITLE 14, MAUI
COUNTY CODE, RELATING TO AGRICULTURAL CONSUMERS

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

SECTION 1. Section 14.01.040, Maui County Code, is amended
by adding new definitions to be appropriately inserted and to
read as follows:

"Agricultural consumer" means a consumer that actively engages in crop production, livestock raising, dairy farming, or aquaculture for commercial production, and whose minimum gross annual income from such activities is \$2,500.

"Community garden" means a parcel of land with a minimum lot size of 22,000 square feet, which is actively cultivated and engaged in crop production collectively by a group of no less than 15 people."

SECTION 2. Section 14.10.010, Maui County Code, is amended
by amending subsection B to read as follows:

"B. Agricultural consumers may qualify for agricultural water rates. Each consumer requesting an agricultural rate for water service shall submit an annual written application [and supply an authorization for the department to obtain a copy of the state's excise tax form G-45 or the federal internal revenue service's schedule F or other federal internal revenue forms showing the consumer's farm income. Existing lands with agricultural rate shall continue with that agricultural rate until the farm income use does not qualify for the agricultural rate.] to the department attaching the following documentation, if applicable, regarding their product or service:

1. A copy of the consumer's filed State of Hawaii, Department of Taxation, General Excise, Use Tax Return, Form G-45, for the period preceding the date of application;

2. A copy of the consumer's filed Internal Revenue Service, Profit or Loss From Farming Schedule F; and

3. A description of the commercial agricultural operation that includes:

a. The type of commercial operation;

b. The anticipated monthly water usage;

c. The age of the crop or stock, if applicable;

d. A five-year timeline of projected annual gross income; and

e. A site plan demarcating the commercial agricultural operation, landscaping, grassy areas, dwellings and other structures, and irrigation system."

SECTION 3. Chapter 14.10, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

"14.10.015 Waiver. A. Consumers who are actively engaged in crop production, livestock raising, dairy farming, or aquaculture for commercial food production, but do not meet the minimum gross annual income requirement to qualify as an agricultural consumer for a given year, because their crop, stock or service did not harvest or produce for that given year, may request a waiver of the income requirement for that year from the director. If approved by the director, the same consumer may request further waivers of the income requirement for up to two more consecutive years.

B. Agricultural consumers who receive agricultural water rates but do not meet the minimum gross annual income requirement due to events or acts of force majeure, or whose expenses result in an annual income of less than \$2,500 for a particular

year, may request a waiver of the income requirement for a period of one year from the director.

C. A nonprofit organization may qualify for agricultural water rates for a given year by submitting an annual written application to the director, with a copy of a filed Internal Revenue Service, Exempt Organization Business Income Tax Return, Form 990-T, showing the organization's annual agricultural charitable donations to be at least \$2,500.

D. The parcel owner of a community garden may qualify for agricultural water rates by submitting an annual written application to the director, with the following information and documentation:

1. The type or types of agricultural operations; and
2. A site plan demarcating the agricultural operations of each person."

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:

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