

COUNCIL OF THE COUNTY OF MAUI
PUBLIC SERVICES COMMITTEE

July 2, 2010

Committee
Report No. _____

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

Chair and Members:

Your Public Services Committee, having met on June 2, 2010, and June 16, 2010, makes reference to County Communication No. 09-337, from Council Vice-Chair Michael J. Molina, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 6.04, MAUI COUNTY CODE, PERTAINING TO ANIMAL CONTROL". The purpose of the proposed bill is to regulate the protection of aquatic life.

By correspondence dated May 27, 2010, Councilmember Wayne K. Nishiki transmitted a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 5, MAUI COUNTY CODE, PERTAINING TO AQUATIC LIFE OPERATIONS". The purpose of the draft bill is to establish a licensing system for aquatic life operations.

Your Committee recognized the importance of protecting aquatic life in light of the diminishing reef fish population in Hawaii. Your Committee also recognized the need to consider the impact of the proposed bill on individual and commercial fishermen who use their catch for consumption, or for sale for consumption. Your Committee noted that the County's largely tourism-based economy, and the thousands of residents that the industry employs, are dependent on the natural beauty of the islands.

Your Committee received testimony in opposition to the proposed bill relating to animal control from members of the public, and from business owners currently conducting aquatic life operations in Maui County. The testimony expressed views that the current language of the proposed bill is overly restrictive and would jeopardize the continued operation of their businesses.

A majority of testimony was in support of both bills. The testifiers urged your Committee that the protection of Maui County's resources and the humane treatment of aquatic life held for aquarium purposes must be addressed. The testifiers also opined that the profit of a few should not come at the expense of the entire community and that regulation of these operations is needed.

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After considering extensive public testimony, your Committee recommended that both bills be revised.

With regard to the proposed bill amending Chapter 6.04, Maui County Code, relating to animal control, your Committee recommended that Section 6.04.010 be revised to delete the phrase “for these purposes” from the definition of “Aquarium purposes,” and to add a second sentence to the definition that reads, “The term ‘aquarium purposes’ shall not include the collection of aquatic life for consumption or for sale for consumption.” This revision addresses the concerns from the public that the current language would impact fishermen who fish for the purposes of consumption or for sale for consumption.

Under the proposed bill, withholding food for more than 12 hours is considered inhumane treatment of aquatic life. Testimony of aquarists, both commercial and private, indicated that feeding of aquatic life prior to shipment would result in increased mortality as a result of the fish swimming in water contaminated by their own waste. Your Committee noted that enforcing this provision would be difficult. Therefore, your Committee recommended that proposed Subsection 6.04.040(G)(2)(a), pertaining to withholding of food for more than 12 hours, be deleted.

Your Committee further recommended that proposed Subsection 6.04.040(G)(2)(b) be revised to delete the phrase “exposing to air” and to insert in its place, “Negligent exposure to air, which results in the death of aquatic life.” In that same subsection, your Committee recommended that the phrase “exposing to temperature fluctuations of more than two degrees difference from the water they were collected in”, be deleted. The amendments were in response to testimony that the current language, which regards exposing aquatic life to air or exposing them to temperature fluctuations of more than two degrees difference from the water they were collected in as inhumane treatment, is an unrealistic standard that no one, regardless of their care or skill level, could achieve.

Your Committee recommended that proposed Subsection 6.04.040(G)(2)(c) be revised to insert the word “intentionally” at the beginning of the phrase so that the subsection reads, “Intentionally causing the death of aquatic life.” This amendment was in response to testimony that the current language regards even the accidental death of aquatic life as inhumane treatment.

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With regard to the draft bill amending Title 5, Maui County Code, relating to aquatic life operations, your Committee recommended that proposed Section 5.26.020 be revised to define "Enforcement departments" and "Financial interest", clarify the permit application requirements, and make nonsubstantive revisions. These revisions were in response to public testimony.

Your Committee notes that its recommended revisions to both bills would increase operational clarity for both the Administration and applicants, remove ambiguous and overly restrictive language, and clarify that collection of aquatic life for consumption or for sale for consumption shall not fall within the purview of the legislation.

Your Committee voted 4-0 to recommend passage of both bills, as revised, on first reading, and filing of the communication. Committee Chair Nishiki and members Johnson, Medeiros, and Mateo voted "aye". Committee Vice-Chair Pontanilla and members Kaho'ohalahala and Victorino were excused.

Your Committee is in receipt of the revised proposed bills, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions, as well as nonsubstantive revisions, which include clarification of your Committee's intent in describing examples of inhumane treatment of aquatic life.

Your Public Services Committee **RECOMMENDS** the following:

1. That Bill No. _____ (2010), attached hereto, entitled, "A BILL FOR AN ORDINANCE AMENDING TITLE 5, MAUI COUNTY CODE, PERTAINING TO AQUATIC LIFE OPERATIONS", be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That Bill No. _____ (2010), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 6.04, MAUI COUNTY CODE, PERTAINING TO ANIMAL CONTROL", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
3. That County Communication No. 09-337 be FILED.

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This report is submitted in accordance with Rule 7 of the Rules of the Council.



WAYNE K. NISHIKI, Chair

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ORDINANCE NO. _____

BILL NO. _____ (2010)

A BILL FOR AN ORDINANCE AMENDING TITLE 5,
MAUI COUNTY CODE, PERTAINING TO AQUATIC LIFE OPERATIONS

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

SECTION 1. Title 5, Maui County Code, is amended by adding a
new chapter to be appropriately designated and to read as follows:

"Chapter 5.26

AQUATIC LIFE OPERATIONS CODE

Sections:

5.26.010	Title and purpose.
5.26.020	Definitions.
5.26.030	Exemptions.
5.26.040	Permits.
5.26.050	Reporting required.
5.26.060	Term of permit.
5.26.070	Renewal of permit.
5.26.080	Inspection of permit.
5.26.090	Violation--penalty.
5.26.100	Citation.
5.26.110	Other requirements.
5.26.120	Appeals.

5.26.010 Title and purpose. This chapter shall be known as the "Aquatic Life Operations Code". The Council acknowledges and affirms that the regulation of aquatic life operations is necessary to protect health, life, and property and to preserve the order and security of the County and its inhabitants, and hereby establishes a policy that regulates aquatic life operations within the County.

5.26.020 Definitions. For purposes of this chapter, unless it is plainly evident from the context that a different meaning is intended, the following words and phrases are defined:

"Applicant" means a person applying for a permit.

"Aquarium purposes" means the intention to hold or transport live aquatic life, for compensation, in a state of captivity as pets; for public exhibition or display;

or for sale. The intention to hold aquatic life in a state of captivity as food for human consumption is not an aquarium purpose.

"Aquatic life" means any type of species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the marine environment and includes any part, product, egg, or offspring thereof; and marine plants, including seeds, roots, and other parts thereof.

"Aquatic life operations" means the maintenance of an office, vehicle, boat, equipment, or other business activity conducted by a person in the County for aquarium purposes.

"Director" means the director of finance.

"Effective date" means the date that the permit is issued or renewed.

"Enforcement departments" means the department of parks and recreation, the department of police, and the department of housing and human concerns.

"Financial interest" means an interest held by an individual, or the individual's spouse or dependent children, which is:

1. An ownership interest in a business;
2. A creditor interest in an insolvent business;
3. An employment, or prospective employment for which negotiations have begun;
4. An ownership interest in real or personal property;
5. A loan or other debtor interest; or
6. A directorship or officership in a business.

"Operator" means a person engaged in aquatic life operations.

"Permit" means a permit issued pursuant to this chapter.

5.26.030 Exemptions. This chapter shall not apply to:

1. Persons who catch, net, trap, or collect aquatic life to be used only for bait for fishing or crabbing;
2. Persons exercising those rights customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, as protected by article XII, section 7, of the Hawaii State Constitution; or
3. Organizations that specialize in the holding of aquatic life in a state of captivity within the County for education or scientific study and do not sell or

distribute aquatic life for compensation.

5.26.040 Permits. A. An operator shall obtain a permit issued by the director in accordance with this chapter. Application forms for permits shall be provided and prescribed by the director.

B. The application for a permit or renewal of an existing permit shall be in writing, properly verified under oath and filed with the director, and shall set forth and include the following:

1. The business name, business physical and mailing address, and business telephone number of the applicant;

2. The names and addresses of all persons with a financial interest in the business;

3. The locations where the applicant's financial and other related transactions will take place;

4. Written verification from the department of planning that the property where the applicant will conduct business is appropriately zoned;

5. A list stating the number, type, description, and gross vehicle weight of all motor vehicles to be used by the applicant to conduct the aquatic life operation;

6. Any other information that may be required by rules adopted by the director to enforce the requirements of this chapter;

7. An application fee as established in the annual County budget;

8. The number of certified copies needed for the business to comply with section 5.26.080;

9. State and federal tax clearance certificates; and

10. Any other information required by applicable rules.

C. Within ten business days upon a receipt of a complete application for permit or renewal of an existing permit, the director may submit a copy of the complete application or permit renewal to the enforcement departments. Within twenty business days from receipt thereof, the enforcement departments may submit to the director a written report with any recommendations or special conditions that may be necessary or desirable. An application shall be approved or denied within thirty business days from the date it is filed.

D. The applicant shall notify the director within five calendar days of a change of any information required to be included in the application after the application is submitted for approval or after the permit has been issued.

E. The director shall issue the permit or renew the permit, upon payment of any required fee, with or without special conditions or requirements as may be appropriate. Violations of this chapter or unfavorable recommendations from the enforcement departments, including violations of section 711-1109, Hawaii Revised Statutes, or the failure to comply with the reporting requirements of section 5.26.050, shall be grounds for denial of a permit or the renewal of an existing permit. If the director denies the permit or renewal application, the director shall notify the applicant in writing setting forth the reasons for denial.

F. The director shall, upon the issuance of a permit, notify the enforcement departments of the newly granted or renewed permit and its expiration date, for the purpose of providing an updated inventory of active permits to those with citation authority as described in section 5.26.100.

5.26.050 Reporting required. A. Each operator shall submit to the director two reports within the permit term, the first report within one hundred eighty days of the effective date and the second report within one hundred eighty days of the first report. Each report shall include two parts:

1. Collection summary for the reporting period.
 - a. Total quantity of aquatic life collected, by species;
 - b. Total quantity of aquatic life sold, by species;
 - c. Total quantity of aquatic life that expired while in possession, by species;
 - d. Number of collection trips; and
 - e. Immediate destination of aquatic life collected.
2. Individual collection trip details.
 - a. Date of collection;
 - b. Species and quantity of aquatic life collected;
 - c. General geographic area and island where collection occurred; and
 - d. Collection method, including barrier net, scoop net, slurp device, and traps.

B. The director shall keep on file the submitted reports of a licensed operator and shall make the reports available to the council upon request.

C. On at least an annual basis, the director shall submit to the council a summarized report of all the collection activity of permitted aquatic life operations for that calendar year.

5.26.060 Term of permit. A. Any permit issued pursuant to this chapter shall expire, unless otherwise revoked or canceled, without notice to the operator one year after the effective date of the permit.

B. The director may suspend, revoke, or deny renewal of any permit issued pursuant to this chapter for failure to comply with the reporting requirements of section 5.26.050 or of any rule, ordinance, or statute related to the conduct permitted under the permit.

5.26.070 Renewal of permit. A. A permit may be renewed on or before its expiration date.

B. Applications for renewal shall be processed in accordance with section 5.26.040.

5.26.080 Inspection of permit. An operator shall at all times keep the permit in a prominent place, convenient for inspection at any location where aquatic life operations are being conducted.

5.26.090 Violation--penalty. A. Any person who violates this chapter, except for sections 5.26.050 and 5.26.080, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$1,000 and not more than \$2,000, or imprisoned not more than one year, or both.

B. Any person who violates section 5.26.080 shall be fined not less than \$100 and not more than \$250.

C. The failure of a permittee to file a report in accordance with section 5.26.050 may result in suspension or revocation of the permit by the director.

5.26.100 Citation. A. Police officers, park security officers, animal control officers, authorized law enforcement personnel, and other authorized enforcement department personnel may issue citations for violations of this chapter.

B. There shall be provided for use by the individuals authorized to issue citations under subsection A, a form of summons or citation for use in citing violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district courts of the second circuit, and shall be so designed to include all necessary information to make the same valid within the laws of the State. In every case when a citation is issued, the original of the citation shall be given to the violator.

C. Every citation shall be consecutively numbered, and each copy shall bear the number of its respective original.

5.26.110 Other requirements. Any and all other governmental approvals and licenses necessary to conduct aquatic life operations shall be secured by an operator. A granting of a permit under this chapter shall not relieve the operator of the responsibility of complying with all applicable laws.

5.26.120 Appeals. A. Any person aggrieved by a decision or order of the director may file an appeal with the board of variances and appeals pursuant to chapter 19.520 of this code and the rules of practice and procedure as adopted by the board of variances and appeals.

B. Pursuant to the rules of the board of variances and appeals, a contested case hearing shall be held on the appeal. The department, through the director, shall be a party to the proceedings.

C. In accordance with its rules and applicable law, the board of variances and appeals may affirm the decision or order of the director; or it may reverse or modify the decision or order, in whole or in part, provided the board of variances and appeals finds the decision or order is:

1. Based on a clearly erroneous finding of material fact or erroneous application of the law; or
2. Arbitrary and capricious in its application; or
3. A clearly unwarranted abuse of discretion; and
4. A reversal or modification of the decision or order will not jeopardize life, limb, or property."

SECTION 2. This ordinance shall take effect on January 1, 2011.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY WEOKA
Deputy Corporation Counsel
County of Maui

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ORDINANCE NO. _____

BILL NO. _____ (2010)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 6.04,
MAUI COUNTY CODE, PERTAINING TO ANIMAL CONTROL

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

SECTION 1. Section 6.04.010, Maui County Code, is amended by amending the definition of "animal" to read as follows:

"Animal" means any fowl, reptile, aquatic life, or mammal other than a human being."

SECTION 2. Section 6.04.010, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

"Aquarium purposes" means to hold salt water fish, freshwater nongame fish, or other aquatic life alive in a state of captivity as pets, or for public exhibition or display, or for sale. The term 'aquarium purposes' shall not include the collection of aquatic life for consumption or for sale for consumption.

"Aquatic life" means any species or type of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof."

SECTION 3. Section 6.04.040, Maui County Code, is amended to read as follows:

"6.04.040 Animal regulations--general. A. An owner of a dog shall keep the dog under restraint, except the following:

1. A dog being used by law enforcement agencies for law enforcement purposes;
2. A dog used during hunting; accompanied by its owner, and used with the consent of the owner of the real property upon which the hunting occurs;
3. A dog used during organized competitions, or during training for such competitions, accompanied by its owner, and used with the consent

of the owner of the real property upon which the dog is used; and

4. A dog being monitored by its owner or handler within the confines of an authorized dog park.

B. An owner of an animal shall treat the animal in a humane manner.

C. An owner of a dog shall not allow the dog to cause a nuisance. The owner shall be held responsible for every behavior of such dog under the provisions of this chapter.

D. No person shall abandon an animal.

E. An owner of a dog shall not intentionally, knowingly, recklessly, or negligently permit the dog to:

1. Attack a person or domestic animal; or
2. Behave in a manner that a reasonable person would believe poses an imminent threat of bodily injury to a person or serious injury or death to a domestic animal. The terms "negligently", "intentionally", "knowingly", and "recklessly" shall have the same meaning as are ascribed to the terms in section 702-206, Hawaii Revised Statutes.

F. No person shall own, harbor, train, or use any dog for the purpose of dog fighting.

G. Any person that collects aquatic life for aquarium purposes shall:

1. Obtain any necessary permits from the division of aquatic resources, department of land and natural resources.

2. Treat aquatic life in a humane manner. For the purposes of this section, inhumane treatment of aquatic life includes:

a. Intentionally, knowingly, recklessly, or negligently causing injury, including: piercing or deflating a fish's swim bladder; fin or spine trimming;; carrying, or causing to be carried, in or upon any vehicle or other conveyance, in a manner resulting in injury to the aquatic life; and

b. Negligent exposure to air, which results in the death of aquatic life; and

c. Intentionally causing the death of aquatic life.

3. Document the mortality rates and disposal methods of all aquatic life collected."

SECTION 4. Section 6.04.110, Maui County Code, is amended to read as follows:

"6.04.110 Penalties. A. Any person convicted of a violation of any section or provision of this chapter, except the provisions relating to excessive barking dogs and dangerous dogs, shall be fined not more than \$500. The minimum fine shall be as follows: for a first violation, a fine of not less than \$50; for a second violation within five years after a prior violation under this section, a fine of not less than \$100; and, for a third violation within five years after two prior violations under this section, a fine of not less than \$200.

B. Any person convicted of a violation of any section or provision of this chapter relating to excessive barking dogs shall be fined not more than \$500. The minimum fine shall be as follows: for a first violation, a fine of not less than \$100; for a second violation within five years after a prior violation under this section, a fine of not less than \$200; and, for a third violation within five years after two prior violations under this section, a fine of not less than \$500.

C. Any person convicted of a violation of any section or provision of this chapter relating to dangerous dogs shall be fined not more than \$1,000 and imprisoned not more than thirty days. The minimum sentence shall be as follows: for a first violation, a fine of not less than \$200; for a second violation within five years after a prior violation under this section, a fine of not less than \$500; and, for a third violation within five years after two prior violations under this section, a fine of not less than \$1,000. In addition, a court may require restitution for damages caused by a dangerous dog; provided, that this section shall not preclude a person damaged by a dangerous dog from pursuing a civil remedy.

D. The portion of the fine equal to the minimum fine shall not be suspended.

E. A successive violation of the same owner involving different dogs shall be considered a subsequent and not a first violation.

F. For purposes of this [Section] section 6.04.110, a violation is defined to include the payment of a fine directly to the district court or the finding of guilt by a court after a contested hearing.

G. Any person convicted of a violation of section 6.04.040.G shall be guilty of a misdemeanor subject to a fine of not less than \$500 and not more than \$2,000, or imprisonment for not more than one year, or both."

SECTION 5. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 6. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui
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