

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

BILL NO. \_\_\_\_\_ (2010)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.88, MAUI COUNTY CODE,  
RELATING TO THE CULTURAL RESOURCES COMMISSION, AND TITLE 19,  
ARTICLE III, MAUI COUNTY CODE, RELATING TO MAUI COUNTY HISTORIC  
DISTRICTS

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

SECTION 1. Section 2.88.020, Maui County Code, is amended to read as follows:

**"2.88.020 Definitions.** A. For purposes of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain terms and words are defined as follows:

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

["County" means the county of Maui, a political subdivision of the State.]

"Department" means the department of planning [department] of the county.

"Director" means the planning director of the county.

"Historic preservation" means the research, protection, restoration, rehabilitation and interpretation of districts, sites, buildings, structures, areas or objects, significant to the history, architecture, archaeology or culture of the county, [State] state or nation.

"Historic properties" means any prehistoric or historic district, site, building, structure, area or object significant in the history, architecture, archaeology, or culture of the county, state and nation, including those listed on the Hawaii or national register of historic places.

["Mayor" means the mayor of the county.]

"Professional" means a person with those qualifications enumerated in Appendix A of the Code of Federal Regulations, 36CFR61.

["State" means the State of Hawaii.]"

SECTION 2. Section 2.88.030, Maui County Code, is amended to read as follows:

**"2.88.030 Commission--Established.** A. There is established a commission to be known as the "Maui County cultural resources commission," hereinafter referred to as the "commission."

B. The commission shall consist of nine [appointed] members[. The members shall be] appointed by the mayor with the approval of the council [and shall be chosen from professionals and person with special interest in the following disciplines: architecture, history, archaeology, planning, architectural history, Hawaiian culture, and ethnic history and culture of the county]. The mayor shall solicit lists of two or more persons, recommended by community and professional organizations, such as the Maui Historical Society, and the AIA Maui, a chapter of the American Institute of Architects, as well as the state office of Hawaiian affairs, for

**EXHIBIT "A"**

consideration in making commission appointments. Commission members should have a demonstrated interest, competence and knowledge in historic preservation.

C. The majority of the commission members shall be professionals in the disciplines of archaeology, planning, architecture or architectural history, or Hāawaiian culture or history, each having professional representation on the commission to the extent such professionals are available in the community. The commission shall also include members from different areas of the county, with at least one representative from each island, who possess a knowledge and interest in local area history. When one of the [aforementioned] disciplines is not professionally represented, the commission shall seek, through appropriate means, the expertise of professionals in the disciplines when considering national register nominations and other actions that will impact properties which are normally evaluated by a professional in such a discipline.

D. Section 13-2 of the [Maui County charter] Revised Charter of the County of Maui (1983), as amended, shall apply to the commission [in the same manner as said provisions apply to boards and commissions recognized by the charter].

E. All future appointments to the commission shall be made in such a manner as will ensure that the terms of the members of the commission shall conform to subsections C and D of this section. No provision of this section shall be deemed to extend or shorten the term of any current member of the commission.”

SECTION 3. Section 2.88.060, Maui County Code, is amended to read as follows:

**“2.88.060 Powers and duties.** A. The commission shall advise and assist federal, state and county government agencies in carrying out their historic preservation responsibilities.

B. The commission shall provide public information, education, training and technical assistance relating to the [national] federal, state and county historic preservation programs.

C. The commission shall initiate, accept, review and recommend to the state historic preservation officer, historic properties nominations for inclusion on the Hawaii and national registers of historic places.

D. The commission shall maintain a system for the survey, inventory and nomination of historic properties and archaeological sites within the county, as well as a system of site monitoring, that [is] are compatible with that of the state historic preservation office.

E. The commission shall administer the certified local government program of federal assistance for historic preservation within the county.

F. The commission shall provide design review for projects affecting any building or structure, site or district eligible for listing on the national or Hawaii register of historic places and shall request and consider the state historic preservation [officers] officer's review and comment on all county undertakings, including the granting of permits. In its review, the commission shall consider the cultural significance of the site and its surroundings along with the Secretary of the United States Department of the Interior's standards for rehabilitation, as amended.

G. The commission shall develop and implement a comprehensive countywide historical preservation planning process, consistent with the state historical preservation plan, which includes the submitting of information pertaining to the state inventory of historic places to the state historic preservation officer.

H. The commission shall make recommendations to the council [for the expenditure of] relating to the acceptance of gifts and [grants] donations [accepted by the council] for projects connected with the identification, rehabilitation, restoration and reconstruction of historic properties, the historic preservation planning process, and the promotion of exhibits and other information activities[in connection therewith]. The department shall transmit the commission's recommendations with a proposed resolution, pursuant to Section 3.56.030 of this code.

I. Pursuant to section 19.52.020, of this code, [The] the commission shall [, upon dissolution of the Maui historic commission,] have the authority to administer the provisions of the historic districts established in title 19 of this code, and shall advise the mayor, the council and the county planning commissions on the establishment of historic districts and regulations thereof.

J. The commission shall adopt rules and regulations of procedure and conduct, pursuant to chapter 91, Hawaii Revised Statutes.

K. The commission [may] shall review and comment on archaeological reports submitted as part of development proposals to various county agencies.

L. The commission [may] shall undertake any other action or activity necessary or appropriate towards the implementation of its powers or duties or towards the implementation of the purpose of this chapter. More specifically, these may include [, but not be limited to,] the following:

1. Recommend new ordinances establishing [special treatment districts] historic and archaeological districts;
2. Review and recommend amendments to current policies and laws [on the enforcement of existing codes] relating to historic sites;
3. Continually reevaluate building code requirements and [enact] recommend amendments that are more sympathetic to preservation or provide exemptions for historic properties;
4. Encourage the county, state and federal governments, and the private sector to implement appropriate management strategies, curatorships and meaningful interpretive programs at significant historical and archaeological structures, sites and districts; and
5. Assist in and organize programs of historic preservation including presentations, films, exhibits, conferences, publications and other educational means which increase public awareness and participation in preserving the past.”

SECTION 4. Section 19.04.040, Maui County Code, is amended by adding a definition for “cultural resources commission,” adding a definition for “view plane,” and amending the definition for “director,” to be appropriately inserted and to read as follows:

““Cultural resources commission” means the Maui County cultural resources commission.”

““Director” means the director of the department of public works [and waste management] or [his] the director’s authorized representative.”

““View plane” means open space and significant vistas, particularly toward the ocean.”

SECTION 5. Section 19.48.020, Maui County Code, is amended to read as follows:

**“19.48.020 Establishment or modification of districts--Report and hearing.** Historic districts may be modified or extended and new historic districts established, provided in all such cases there shall be a report from the [historic] cultural resources commission to the state department of land and natural resources, state historic preservation division, and [a] at least one public hearing shall be held by the [historic] cultural resources commission.”

SECTION 6. Section 19.48.040, Maui County Code, is amended to read as follows:

**“19.48.040 Administration.** The planning director shall provide planning, architectural, engineering, secretarial and other services as may be required by the cultural resources commission.”

SECTION 7. Section 19.48.050, Maui County Code, is repealed.

[**“19.48.050 Enforcement.** It shall be the duty of the department of public works, through its director of public works, to enforce the provisions of this article.”]

SECTION 8. Section 19.48.060, Maui County Code, is repealed.

[**“19.48.060 Violation—Penalty.** Any person, firm, or corporation violating the provisions of this article, whether in connection therewith a penalty is referred to or not, for which violation no penalty is specifically prescribed, shall be fined in a sum not exceeding \$500.”]

SECTION 9. Section 19.52.010, Maui County Code, is amended to read as follows:

**“19.52.010 Architectural style. A.** The exterior of all new buildings constructed within a historic district must be in keeping with the architectural style of the district so as not to impair the value or the view plane of other buildings, structures, or parks in the immediate vicinity in order that the general character of the district shall not be injured.

B. For historic district no. 1 and historic district no. 2, the styles of architecture are defined as follows:

1. Native Hawaiian style characterized by thatched construction;
2. 19th century New England style, tempered by the availability of materials, tools and skills, as exemplified by the Baldwin house;
3. "Monterey" or western type, defined as one or two-story structure with wooden balcony or overhanging wooden or corrugated iron roof awning;
4. For single-family dwellings, any architectural style prevalent during the 19th century in Lahaina or which evolved from 1900 to the present in Lahaina, being unpretentious in style and painted in muted tones.

C. For historic district no. 3, all new buildings or structures shall be of an architectural style [that shall be] compatible with the architectural styles of those historic buildings listed in Section 19.50.030. The architectural style shall not be limited to any particular style or styles; however, certain architectural styles and certain architectural elements that shall not be allowed in historic district no. 3 are as follows:

1. European and Asian styles in general;
2. Excessively decorated styles;
3. Flat-roofed, modernistic styles;
4. Styles, forms, colors and lighting that is gaudy;
5. Large areas of reflective materials such as glass and aluminum, unless completely in the shade at all times."

SECTION 10. Section 19.52.020, Maui County Code, is amended to read as follows:

**"19.52.020 Review of plans.** A. Within any historic district established in this article, the cultural resources commission shall have the power to approve all plans[, and the superintendent of building inspection of the county shall not issue a building permit until a certificate of approval has been issued by the historic commission].

B. Application for an appropriate permit to construct, alter, repair, move or demolish any structure, or modification of existing structures and appurtenances [thereto,] in the historic districts shall be made to the [superintendent of building inspection, referred to in this article as the "superintendent."] director. The [superintendent] director shall immediately notify the [chairman or acting chairman of the historic] chair of the cultural resources commission of the receipt of [such] the application and shall transmit it together with accompanying plans and other information to the cultural resources commission.

C. The [historic] cultural resources commission shall meet within [fifteen says] sixty days after notification by the [superintendent] director of the filing of the application, unless otherwise mutually agreed upon by the applicant and cultural resources commission, and shall review the plans according to procedures as set forth in this article.

D. The cultural resources commission shall approve or disapprove such plans and, if approved, shall issue a [certificate] letter of approval [, which is to be] signed by the [chairman] chair of the cultural resources commission and attached to the application for a building permit, and immediately transmit it to the [superintendent] director.

E. If the cultural resources commission disapproves such plans, it shall state its reasons for doing so and shall transmit a record of such action and reasons [therefor] in writing to the council, the [superintendent] director and the applicant. The cultural resources commission may advise the applicant what it thinks is proper if it disapproves the plans submitted. The applicant[, if he so desires,] may make modifications to [his] the plans and shall have the right to resubmit [his] the application at any time after so doing.

F. The failure of the [historic] cultural resources commission to approve or disapprove such plans within [forty-five] ninety days from the date of application for the building permit, unless otherwise mutually agreed upon by the applicant and the cultural resources commission, shall be deemed to constitute approval and the [superintendent] director shall proceed to process the application without regard to a [certificate] letter of approval.

G. Within any historic district established in this article, the director shall not approve a building permit application unless:

1. A letter of approval has been issued by the cultural resources commission or the plans have been deemed approved pursuant to subsection 19.52.020(F); and

2. For premises that are within both historic district boundaries and special management areas, all the provisions relating to special management areas have been met."

SECTION 11. Section 19.52.050, Maui County Code, is amended to read as follows:

**“19.52.050 Demolition or movement of buildings or structures.** A. [The demolition or moving of structures of historic or architectural worth shall be discouraged, and the commission shall not issue a certificate for demolition except when a structure is deemed a hazard to public health or safety by the superintendent or the state department of health's authorized representative. The commission may, at its own discretion, issue a certificate of approval for demolition or for moving a structure within the historic districts, but shall be guided by the following:] The cultural resources commission shall not issue a letter of approval for the demolition or moving of a building or structure of historic significance, except in one or more of the following instances:

1. The [superintendent] director or the state department of health deems [such] the building or structure to be a hazard to public safety or health and repairs are impossible[.];

2. [Such] The building or structure is a deterrent to a major historic restoration or preservation program[.]; or

3. The retention of [such] the building or structure would not be in the interest of the community as a whole.

In each instance, a letter of explanation must accompany the letter of approval.

B. For the purpose of this article, buildings and structures of historic significance shall be deemed to be those within any historic district [constructed prior to the year 1910] that are more than fifty years old when a request to demolish or move the building or structure is made.”

SECTION 12. Section 19.52.070, Maui County Code, is amended to read as follows:

**“19.52.070 Variances and Appeals.** [In any particular case where strict compliance with the provisions of this article would cause practical difficulty or unnecessary hardship, the commission may grant a variance from the restrictions set forth in this article; provided, that such variance is approved by the county council.] Requests for variances and appeals shall be heard pursuant to chapter 19.52 of this code.”

SECTION 13. Section 19.52.080, Maui County Code, is repealed.

[**“19.52.080 Appeals.** Any action of the commission may be appealed to the county council within a period of fifteen days from the date of notice to the aggrieved party. The council may override any action of the commission by a majority vote.”]

SECTION 14. Section 19.52.090, Maui County Code, is amended to read as follows:

**“19.52.090 Regulations for historic districts no. 1 and 2.** A. [Establishment of Plan.] For historic district no. 1 and historic district no. 2, the plans, reports, manuals and guidelines set forth in subsection 2.88.080 of this code on file with the department of planning shall be used as a guide [to] for the determination of the required land use, height of buildings, style of

architecture, parking requirements, yard spaces and lot areas, and any other matter pertaining to that particular historic district[:].

B. [Use Regulations.] Within historic district no. 1 and historic district no. 2, no building, structure or premises shall be used, and no structure shall hereafter be erected, structurally altered, replaced or enlarged, except for one or more of the following uses:

1. [One-Family Dwellings] Single-family dwellings. There may be accessory buildings located on the same lot, the use of which is customary and incidental to that of the residence. These may include servants' quarters or guest house; provided, that the servants' quarters or guest house shall not have a floor area of more than five hundred square feet and the lot size shall be seven thousand five hundred square feet, or greater;
2. Greenhouses;
3. Parks and [Playgrounds--Community, Public or Privately Operated] playgrounds—community, public, or privately operated. Recreation, refreshment, amusement and service buildings or structures may be permitted in public parks and playgrounds when under the supervision of a government agency charged with the duties and responsibilities of maintaining and operating the parks and playgrounds;
4. Churches and dwellings of the clergy connected [therewith] as an incidental use to that of the church;
5. Schools;
6. Day care centers, nurseries, preschools, kindergartens;
7. Substations used by public utilities for the purpose of furnishing electricity, gas or telephone services, which are not and will not be hazardous, dangerous or a nuisance to the surrounding areas;
8. Buildings or premises used by the [Federal] federal, [State] state, or [County] county government for public purposes that are authorized by law;
9. Two-family dwellings (duplex);
10. Amusement enterprises, including [billiard halls or poolhalls] pool halls;
11. Antique shops;
12. Art galleries;
13. Auditoriums and theaters;
14. Banks;
15. Barber or beauty shops;
16. Baths--Turkish and the like[, including masseurs];
17. Automobile service stations, without auto repairing;
18. Book, stationery, or gift stores;
19. Business offices and agencies;
20. Catering establishments;
21. Clinics, medical or dental;
22. Clothes cleaning agencies or pressing establishments;
23. Custom dressmaking or millinery shops;
24. Dancing studios, hula studios;
25. Delicatessens;
26. Drugstores;
27. Dry goods and/or department stores;
28. Grocery stores and meat markets;
29. Haberdasheries and women's apparel shops;

30. Hardware and garden supply stores;
31. Hotels;
32. Jewelry stores or fine art shops, including interior decorating;
33. Laundry agencies or self-service laundries;
34. Museums;
35. Music conservatories or studios;
36. Newsstands and magazine stands;
37. Photography shops;
38. Physical culture establishments;
39. Private clubs or fraternal and sororal organizations;
40. Professional buildings;
41. Religious, benevolent, philanthropic societies or functions;
42. Restaurants, cafes, or bars;
43. [Shoestores] Shoe stores;
44. Tailor, clothing or wearing apparel shops;
45. Apartments, boardinghouses or [lodginghouses] lodging houses;
46. Auctioneer establishments;
47. Block printing establishments;
48. Printing, lithography or publishing shops;
49. Public parking areas; provided, that none shall abut Front Street;
50. Radio transmitting and television stations; provided, that antenna is not located in this district;
51. Retail stores or businesses;
52. Sign-painting shops, if conducted wholly within completely enclosed buildings;

53. Historical tours; provided, however, that only motor vehicle(s) shall be used, and the same parked or stored in an off-street parking area and that all customer transactions shall be conducted within an enclosed commercial building. As used in this [subdivision] subsection, the following terms are defined:

- a. "Historical tour" means a tour of all or any part of, and which originates or ends in, historic district no. 1 or historic district no. 2.
- b. "Motor vehicle" means motor vehicle as defined in section 10.04.610, and does not include any vehicle propelled by human or animal power.
- c. "Off-street parking area" means a private parking area which meets the requirements of the county's off-street parking ordinance.

C. [Height Regulations.] No building within historic district no. 1 and historic district no. 2 shall be more than two stories high, nor more than thirty-five feet in height. "Story" is defined as that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement or cellar is more than six feet above grade, such basement or cellar shall be considered a story.

D. [Yard Spacing.] Within historic district no. 1 and historic district no. 2, no yard spacing shall be required, except that for [one-family] single-family dwellings, duplexes, guest houses or servants' quarters, a front yard of ten feet, a rear yard of fifteen feet and a side yard of five feet shall be required.



E. [Selling in Public Places.] It is unlawful for any person to carry on or solicit business in any location on any street, highway, or sidewalk. The same is also unlawful in any location, in any park or open space that is owned or maintained by a government agency without the approval of the cultural resources commission, and the responsible government agency having administrative authority over the park or open space.

F. [Drinking in Public.] It is unlawful to consume any intoxicating liquor, [including alcohol, brandy, whiskey, rum, gin, okolehao, sake, beer, ale, porter, wine or other spirituous, vinous, malt, or fermented liquor, liquids and compounds,] whether medicated, proprietary, patented, or not, in whatever form and of whatever constituency and by whatever name called, containing one-half of one percent or more of alcohol by volume, which are fit for use or may be used or readily converted for use for beverage purposes, in any public street, park, or open space that is owned or maintained by a governmental agency, without the expressed approval of the responsible government agency having administrative authority over the public street, park or open space, and the cultural resources commission, or in any street, park, or open space which is privately owned without the expressed approval of the owner of property; provided, however, that recreational areas under the jurisdiction of the department of parks and recreation shall be excluded from the restrictions set forth in this subsection. Any person violating this subsection shall be fined not more than five hundred dollars, or imprisoned for not more than thirty days, or both.

G. Within historic district no. 1 and historic district no. 2, off-street parking facilities shall be provided in accordance with the requirements of chapter 19.36 when any building or structure is:

1. Constructed or increased in size; or
2. Put to an intensified use that results in the need for additional parking space.

No off-street parking facility constructed in compliance with this section shall abut Front Street.

H. To preserve the many fine trees that now exist in the historic area and that are deemed invaluable to the historical setting of these districts, written approval from the cultural resources commission shall be required before any large tree can be removed. A large tree shall be defined in this subsection as any tree with a trunk circumference greater than sixty inches."

SECTION 15. Section 19.52.100, Maui County Code, is amended to read as follows:

**"19.52.100 Regulations for historic district no. 3.** A. [Use Regulations.] Within historic district no. 3, no building, structure, or premises shall be used, and no building or structure shall hereafter be erected, structurally altered, replaced, or enlarged, except for one or more of the following uses:

1. [Single-Family Dwellings] Single-family dwellings. Also, accessory buildings which are customary and incidental to that of the residence may be located on the same lot. Separate servants' quarters or a guest house with a floor area not more than four hundred square feet may be located on the same lot. The minimum allowable lot area shall be ten thousand square feet;

2. Greenhouses;

3. Parks and [~~playgrounds--Community~~] playgrounds--community, public or privately operated;

4. Churches and dwellings of the clergy connected therewith;

5. Buildings or premises used by the federal, [State] state or county government for public purposes;

B. [Special Uses.] The following special uses may be allowed with written approval of the [county historic] cultural resources commission:

1. Museums, art galleries, and book or gift stores; provided, that the use is operated as an accessory to the exhibit and display of the historic structures designated in section 19.50.030;

2. Day care centers, nurseries, preschools, kindergartens;

3. Cultural societies, clubs, or fraternal organizations;

4. Off-street parking areas; provided, that none shall abut any public street;

5. Residential planned developments;

6. Other uses that will enhance the historical and cultural nature of this district.

C. [Building Height and Special Spacing Regulations. The purpose of these regulations is to] To preserve the historical setting and the open space around the historic structures[. All], all new construction shall be limited to building heights of two stories and not more than thirty-five feet in height or one story and not more than twenty feet in height; provided, that they are separated from the historic buildings designated in section 19.50.030 by a distance of at least one hundred feet for two-story buildings and sixty feet for one-story buildings, respectively. The separation distances shall be measured from exterior faces of the walls of each building. Also, all new buildings shall be required to be separated from the historic Kama ditch and aqueduct a distance of twenty feet from each side of said ditch and aqueduct.

D. [Off-street Parking Regulations.] Off-street parking facilities shall be provided in connection with the erection or increase in size of any building or structure in historic district no. 3, as provided for in article II of this title. Parking lots shall be properly landscaped, and one canopy tree shall be planted for every eight parking stalls.

E. [Yard Spacing.] Within historic district no. 3, the required yard spacing shall be as follows:

1. For one-story buildings, a front yard of fifteen feet, side yards of six feet and rear yard of six feet shall be required;

2. For two-story buildings, a front yard of fifteen feet, side yards of ten feet and a rear yard of ten feet shall be required.

F. [Protection of Trees. The purpose of this regulation is to] To preserve the many fine trees that now exist in the historic area and that are deemed invaluable to the historical setting of this district [. Written], written approval from the [county historic] cultural resources commission shall be required before any large tree can be removed. A large tree shall be defined in this subsection as any tree with a trunk circumference greater than sixty inches.

G. [Signs.] Within historic district no. 3, no signs that blink, revolve, or contain lighting from within shall be allowed. One sign no larger than six square feet in area shall be allowed for each legal business entity. The sign may be on a wall or mounted on the ground. All signs shall be compatible with the character of the historic structures, and shall be rustic in design.

H. [Selling in Public Places.] It is unlawful for any vendor, peddler, huckster, or group to either display merchandise or carry on or solicit business in any location on any public street, highway, or sidewalk. The same is also unlawful in any location, in any park or open space that is owned or maintained by a government agency without the approval of the [county historic] cultural resources commission and the responsible government agency having administrative authority over the park or open space.”

SECTION 16. 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 17. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

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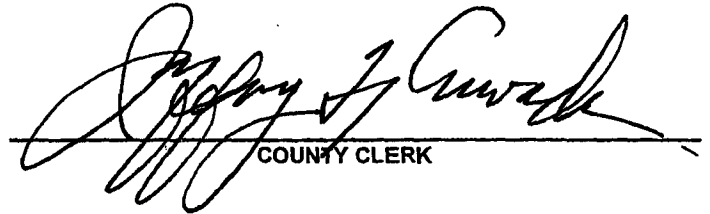
**COUNCIL OF THE COUNTY OF MAUI**

**WAILUKU, HAWAII 96793**

**CERTIFICATION OF ADOPTION**

**It is HEREBY CERTIFIED that RESOLUTION NO. 10-43 was adopted by the Council of the County of Maui, State of Hawaii, on the 24th day of August, 2010, by the following vote:**

<b>MEMBERS</b>	<b>Dennis A. MATEO Chair</b>	<b>Michael J. MOLINA Vice-Chair</b>	<b>Gledys C. BAISA</b>	<b>Jo Anne JOHNSON</b>	<b>Solomon P. KAHO'OHALAHALA</b>	<b>William J. MEDEIROS</b>	<b>Wayne K. NISHIKI</b>	<b>Joseph PONTANILLA</b>	<b>Michael P. VICTORINO</b>
<b>ROLL CALL</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Excused</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>

  
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COUNTY CLERK