

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

November 2, 2012

Committee
Report No. _____

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

Chair and Members:

Your Water Resources Committee, having met on October 2, 2012, makes reference to County Communication 12-133, from the Chair, Board of Water Supply ("Board"), transmitting the Board's recommendation relating to Council Resolution 12-30, referring to the Lanai Planning Commission a proposed bill to establish a Lanai Water Advisory Committee ("LWAC").

Your Committee notes that a certified copy of Resolution 12-30 was transmitted to the Board. The Board recommended that the Council not establish an LWAC by ordinance. According to the Board, the State has adequate regulatory authority over Lanai's private water system and additional oversight by the LWAC is unnecessary.

Your Committee further notes that the LWAC was first established by Board of Water Supply Resolution 5 (1999) ("Resolution 5") to provide public input and involvement during the development of the Lanai Water Use and Development Plan ("LWUDP"), and to monitor its implementation. Resolution 5 stated that the LWAC "shall remain in existence until otherwise determined by the Board by subsequent resolution."

Your Committee further notes that the LWAC currently advises the Department of Water Supply ("Department"). Under the proposed bill, the LWAC will monitor the implementation of the LWUDP, adopted by Ordinance 3885 (2011), and advise the Lanai Planning Commission on water-related matters.

The Planning Director transmitted individual comments from some members of the Lanai Planning Commission ("Commission") on the proposed bill transmitted by Resolution 12-30 entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 2, MAUI COUNTY CODE, TO ESTABLISH A LANAI WATER ADVISORY COMMITTEE". The Planning Director noted that the Commission could not come to an agreement on its recommendation. Comments from some members indicated that the LWAC should remain advisory to the Commission, and the Commission should maintain authority over water-related matters.

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

November 2, 2012
Page 2

Committee
Report No. _____

The Planning Director stated that the Department does not see a need for the LWAC because it does not benefit Lanai's regulatory process. He further stated that it may be difficult for the Department to provide sufficient oversight over the LWAC because the Department does not have experience in water-related matters. He further stated that the Department would not be able to adequately staff LWAC meetings due to the lack of staff training and budget considerations.

The Director of Water Supply informed your Committee that the County does not have a water system on Lanai. The State Commission on Water Resource Management regulates Lanai's private water system. Therefore, the County has no regulatory authority over the private water system.

The Chair of the LWAC testified that the LWAC is necessary to oversee the implementation of the LWUDP and monitor all of Lanai's water-related matters. He said that the LWAC has expertise in Lanai's unique private water system and could advise the Commission on Lanai's water-related matters.

Your Committee expressed concern about insufficient government oversight over Lanai's private water system. Your Committee supported the need for the LWAC and noted that the LWAC exists to serve the community and is committed to protecting Lanai's precious water resources.

Your Committee recommended the proposed bill be revised to: (1) increase the LWACs membership from five to seven, consisting of various members of the community; and (2) include a member from a labor union on Lanai.

Your Committee voted 6-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Victorino, Vice-Chair Pontanilla, and members Baisa, Carroll, Cochran, and Hokama voted "aye". Committee member White was excused.

Subsequently, the Chair of your Committee questioned whether the Council has the authority to pass an ordinance to replace and supersede a Board resolution.

In a written opinion dated October 24, 2012, the Department of the Corporation Counsel advised that Resolution 5 continues to be in full force and effect until repealed or superseded. In 2002, Charter Amendment 9A abolished the Board's authority over the

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

November 2, 2012
Page 3

Committee
Report No. _____

Department and mandated the Board's role as advisory to the Department. Because the amendment stripped the Board of its authority to adopt rules and regulations having the force and effect of law, the Department of the Corporation Counsel advised that the Board no longer has the authority to pass a resolution to abolish the LWAC. Furthermore, the Council may enact an ordinance to establish a LWAC, which would supersede any rule, regulation and/or resolution by the Board.

The First Deputy Corporation Counsel informed your Committee that, if established by ordinance, the LWAC would be subject to Sunshine Law provisions under Chapter 92, Hawaii Revised Statutes.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions, including clarification that the proposed bill, once enacted, will replace and supersede Resolution 5.

Your Water Resources Committee RECOMMENDS the following:

1. That Bill _____ (2012), as revised herein and attached hereto, entitled, "A BILL FOR AN ORDINANCE AMENDING TITLE 2, MAUI COUNTY CODE, TO ESTABLISH A LANAI WATER ADVISORY COMMITTEE" be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 12-133 be FILED.

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

November 2, 2012
Page 4

**Committee
Report No.** _____

This report is submitted in accordance with Rule 8 of the Rules of the Council.



MICHAEL P. VICTORINO, Chair

wr:cr:12016aa:kew/srg

ORDINANCE NO. _____

BILL NO. _____ (2012)

A BILL FOR AN ORDINANCE AMENDING TITLE 2, MAUI COUNTY CODE, TO
ESTABLISH A LANAI WATER ADVISORY COMMITTEE

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

SECTION 1. Chapter 2.28, Maui County Code, is amended by adding a new section to
be appropriately designated and to read as follows:

“2.28.070 Lanai water advisory committee. A. There is established a
Lanai water advisory committee to the Lanai planning commission. Each
member of the committee shall be a resident of the island of Lanai.

B. The committee shall consist of seven voting members appointed by
the mayor with the approval of the council as follows:

1. One member from the Lanai water utility company
regulated by the State public utilities commission;
2. One member from a nonprofit community organization;
3. One member from the business community;
4. One member from a labor union on Lanai; and
5. Three Lanai residents representing the community-at large.

The council member that is a resident of Lanai pursuant to section 3-1,
Revised Charter of the County of Maui, (1983) as amended, shall be an ex-officio
non-voting member of the committee.

C. Terms and operation of the Lanai water advisory committee shall
be pursuant to section 13-2, Revised Charter of the County of Maui, (1983) as
amended, except for the following:

1. Of the seven members initially appointed, two shall serve
for a term of five years; one shall serve for at term of four years; one shall
serve for a term of three years, and three shall serve for a term of two
years.
2. The committee chair and vice chair shall be selected by a
majority vote of the committee annually.

D. The powers, duties, and functions of the committee shall be as
follows:

1. Monitor implementation of the adopted Lanai water use
and development plan.
2. Advise the Lanai planning commission on water-related
matters.”

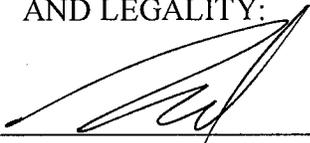
SECTION 2. Chapter 2.40, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

“2.40.220 Lanai water advisory committee. There is established a Lanai water advisory committee to the Lanai planning commission. (See section 2.28.070 of this code.)”

SECTION 3. It is the purpose, understanding, and intent of the Maui County Council that Section 2.28.070 of the Maui County Code, once adopted, replace and supersede that certain “COUNTY OF MAUI BOARD OF WATER SUPPLY RESOLUTION NO. 05 (1999) ESTABLISHING THE LANAI WATER ADVISORY COMMITTEE” dated March 16, 1999.

SECTION 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



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

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