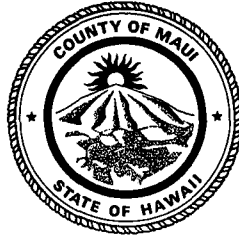


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July 11, 2013

**TO:** Donald G. Couch, Jr., Council Member  
Maui County Council

**FROM:** Scott K. Hanano, Deputy Corporation Counsel

**SUBJECT:** Temporary Suspension of Issuance of Vendor Licenses  
Required by Chapter 5.12, Maui County Code (PAF 12-097)

This memorandum is in response to your memorandum dated April 16, 2012, requesting a written opinion on the following questions:

1. If the Council were to adopt a resolution urging the Director of Finance to temporarily suspend the issuance of vendor licenses required by Chapter 5.12, Maui County Code, would it be within the Director's discretion to do so? In other words, may the Director, absent an ordinance, refuse to accept completed vendor applications, stop the processing of such applications, issue across-the-board denials of such applications, or otherwise suspend the issuance of such licenses? Or, would an ordinance be required to authorize a temporary suspension of such issuance?

2. If an ordinance is required, would it be sufficient or provide that the suspension would apply until an impact study is completed and a updated ordinance enacted? Or would the end of the suspension need to be better defined?

I. County's Power to Regulate Business.

Section 46-1.5(7), Hawaii Revised Statutes ("HRS")<sup>1</sup>, and Chapter 445, HRS authorize the County of Maui ("County") to regulate businesses. Section 445-141, HRS, specifically empowers the County to enact ordinances governing the licensing and regulation of persons peddling merchandise within the County.<sup>2</sup>

II. Licensing and Regulation by Ordinance.

State law is specific in requiring the enactment of ordinances governing the licensing and regulation of vendors. We would recommend that a bill for an ordinance, as opposed to a resolution, be the vehicle for the temporary suspension of issuance of vendor licenses.

III. Suspension of Issuance of Licenses

The vendor licenses issued in accordance with the Maui County Code are annual licenses and we would not recommend any suspension of rights relating to licenses that have already been issued and that have not yet expired. An overview of relevant case law has shown that Courts have upheld the suspension of the issuance of licenses where there is a rational basis, reasonably related to a public purpose, for the suspension and where the period of suspension is clearly defined.

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<sup>1</sup>Each county shall have the power to exercise regulatory powers over business activity as are assigned to them by Chapter 445 or other general law.

<sup>2</sup>The County has enacted Chapter 5.12, Maui County Code ("MCC"), which regulates the licensing of vendors along with Section 19.52.090(E), MCC, which regulates vending in the Lahaina Historic Districts One and Two, and 19.52.100(H), MCC, which regulates vending in the Wailuku Historic District.

Donald G. Couch, Jr.  
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Please do not hesitate to contact this office for further clarification or discussion.

APPROVED FOR TRANSMITTAL:

 PATRICK K. WONG  
Corporation Counsel

S:\ALL\Advisory\SKH\2013.07.11 Adv. to Couch re PAF 12-097 Vendor Licenses (7.10.13 Revisions).wpd

xc: Alan M. Arakawa, Mayor  
Keith A. Regan, Managing Director  
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