

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

November 21, 2014

Committee
Report No. _____

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

Chair and Members:

Your Planning Committee, having met on September 5, 2013, September 26, 2013, October 2, 2013, October 3, 2013, October 28, 2013, October 30, 2013, November 5, 2013, November 14, 2013, November 20, 2013, December 3, 2013, September 4, 2014, September 19, 2014, and October 3, 2014, makes reference to County Communication 12-74, from the Planning Director, transmitting a summary of the Lanai, Maui, and Molokai Planning Commissions' comments on a proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, AND SECTION 3.48.305, MAUI COUNTY CODE, RELATING TO HOME-BASED BUSINESSES", as required by Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended. The Council referred the proposed bill to the planning commissions by Resolution 11-97 on September 16, 2011.

The proposed bill establishes Chapter 19.67, Maui County Code ("MCC"), "Home Businesses," as part of the Comprehensive Zoning Ordinance. As revised by your Committee, the proposed bill has the following purposes:

- to regulate commercial activities in residential areas;
- to foster economic development and entrepreneurship by allowing Maui County residents to work from home in appropriate circumstances; and
- to establish standards for home businesses that ensure quiet enjoyment of residential neighborhoods.

The stated purpose of Chapter 19.67 is "to establish procedures for the regulation of home businesses while preserving the character of the existing neighborhood in which they are operating."

Your Committee notes the proposed bill implements the following General Plan policies:

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- “Support home-based businesses that are appropriate for and in character with the community.” (Countywide Policy Plan, page 60.)
- “Adequately buffer and mitigate noise and air pollution in mixed-use areas to maintain residential quality of life.” (Countywide Policy Plan, page 76.)
- “Encourage, nurture, and reward entrepreneurship and innovation.” (Maui Island Plan, page 4-6.)
- “Facilitate self-sufficient communities and shorten commutes by: . . . (3) Allowing home occupations or home-based businesses that are compatible with surrounding neighborhoods and lifestyles.” (Maui Island Plan, page 7-25.)

The Maui Planning Commission provided numerous comments on the proposed bill, including proposed revisions. Your Committee notes the Lanai Planning Commission and the Molokai Planning Commission each requested its island be exempted from the proposed bill.

Your Committee reviewed the planning commissions’ comments and all elements of the proposed bill with the assistance of local and national planning experts as well as members of the public, who provided testimony at daytime and evening meetings in the Council Chamber and at several locations throughout the County.

The revised proposed bill allows home businesses as a permitted use in the Apartment, Residential, and Rural Districts, subject to certain criteria. Home businesses would also be allowed in the Agricultural District with a Special Use Permit. Your Committee concluded home business operations must not generate traffic in greater volumes than would normally be expected in the neighborhood where they are located.

Notably, when a home business is a permitted use, hours of operation will be limited to between 8:00 a.m. and 7:00 p.m. In addition, Chapter 19.67 states automotive repair and body shops will require a Special Use Permit.

The revised proposed bill defines “home business” as “an enterprise or activity, conducted by the occupant of the dwelling unit where the enterprise or activity takes place and which includes the growing, processing, or manufacturing of a product, or the provision of services, for consideration and profit.”

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Your Committee notes “home business” is distinct from “home occupation,” which is a permitted use in several zoning districts.

The revised proposed bill prohibits the repair, manufacture, processing, or alteration of goods, materials, or objects that results in a nuisance. Your Committee defined “nuisance” as “a home business use which results in material annoyance, inconvenience, or discomfort to the neighborhood or the public, including but not limited to offensive noise, vibration, smoke, odors, dust, heat, glare, and garbage.”

Your Committee agreed with the Maui Planning Commission’s recommendation to allow group instruction of traditional Hawaiian practices (such as lei making, ukulele and hula classes, and lomi lomi) as a special use in the Residential District, as long as it does not pose a nuisance and off-street parking is available to all participants.

Your Committee noted it shared the Maui Planning Commission’s concerns about noise, pollution, safety, and aesthetics relating to the repair of automobiles and other vehicles with internal combustion engines, which is why the requirement of a Special Use Permit for such activities was added.

A Deputy Corporation Counsel advised your Committee a home business in the Agricultural District would require a Special Use Permit, pursuant to Chapter 205, Hawaii Revised Statutes. Your Committee revised the proposed bill accordingly.

Your Committee limited home business signage to a single 2-square-foot ground or wall sign and included a provision that there can be no other outwardly visible evidence of the home business, unless a Special Use Permit is obtained.

Under the revised proposed bill, on-street parking for home businesses is prohibited, and customers are limited to no more than two at a time and no more than 16 per day.

Your Committee notes to qualify as a permitted use, the revised proposed bill provides the home business may only have one employee, not including residents, at any given time.

In addition, the revised proposed bill generally limits the floor area of the home business to 40 per cent of the main residence.

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Your Committee consulted with the Planning Director on enforcement issues. He noted administrative enforcement of Chapter 19.67 would occur pursuant to Section 19.530.030, MCC, as stated in the revised proposed bill.

Your Committee determined home business opportunities could help residents overcome economic challenges on Lanai and Molokai and therefore did not exempt those islands from the revised proposed bill.

According to a representative of the Department of Finance, without a permitting process, the Department has no means to know that a home business exists. However, the representative noted the granting of a Special Use Permit may result in a real property tax classification change for the property. Your Committee determined it was important to state this in Chapter 19.67 and revised the bill accordingly. Your Committee deleted the amendment to Chapter 3.48.305.

Your Committee added a section to the revised proposed bill requiring the Council to review Chapter 19.67 on May 1, 2016, and every two years thereafter. This biennial review is intended to ensure the ordinance is fulfilling its purposes.

Your Committee voted 5-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Couch and members Baisa, Cochran, Crivello, and White voted "aye". Committee Vice-Chair Victorino and member Guzman were excused.

Your Committee is in receipt of a revised proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO HOME BUSINESSES", approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Planning Committee RECOMMENDS the following:

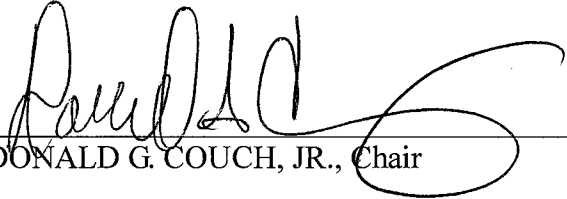
1. That Bill _____ (2014), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO HOME BUSINESSES", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 12-74 be FILED.

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



DONALD G. COUCH, JR., Chair

pc:cr:14033aa:kew/dmr

ORDINANCE NO. _____

BILL NO. _____ (2014)

A BILL FOR AN ORDINANCE AMENDING TITLE 19,
MAUI COUNTY CODE, RELATING TO HOME BUSINESSES

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

SECTION 1. The purpose of this ordinance is to establish regulations for home businesses that will allow an important small business opportunity in the County, subject to restrictions to ensure the character of a neighborhood is maintained. These regulations establish: (1) general standards and restrictions for home businesses; (2) home businesses as a permitted use in the apartment, residential, and rural zoning districts, subject to qualifying standards and restrictions; (3) home businesses as a special use in the residential and rural zoning districts, where permitted use standards and restrictions are not met, but the home business qualifies under special use standards and restrictions and obtains a County special use permit; and (4) home businesses as a special use in the agricultural zoning district.

SECTION 2. Section 19.04.040, Maui County Code, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Home business” means an enterprise or activity, conducted by the occupant of the dwelling unit where the enterprise or activity takes place and which includes the growing, processing, or manufacturing of a product, or the provision of services, for consideration and profit.”

SECTION 3. Section 19.08.020, Maui County Code, is amended to read as follows:

“19.08.020 Permitted uses. Within residential districts, the following uses shall be permitted:

- A. Single-family dwellings[;].

B. Greenhouses, flower and truck gardens, and nurseries; provided that[,] there shall be no retailing or transacting of business on the premises[;], except as provided in chapter 19.67 of this title.

C. Parks and playgrounds, noncommercial; certain commercial amusement and refreshment sale activities may be permitted when under supervision of the government agency in charge of the park or playground[;].

D. [Schools, elementary,] Elementary, intermediate, and high[,] schools, and colleges, publicly or privately owned, which may include on-campus dormitories[;].

E. Buildings or premises used by the federal, [state,] State, or [county] County governments for public purposes[;].

F. Accessory buildings located on the same lot, the use of which is customary, incidental, usual, and necessary to that of the main building or to the use of the land[;].

G. An accessory dwelling [may be permitted] where the area of the lot on which the main house is located is seven thousand five hundred square feet or more. Chapter 19.35 of this title, pertaining to accessory dwellings, shall be applicable to any accessory dwelling[;].

H. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in private homes used for child care services. These facilities shall serve six or fewer children at any one time on lot sizes of less than seven thousand five hundred square feet, [serving] eight or fewer children at any one time on lot sizes of seven thousand five hundred or more square feet but less than ten thousand square feet, or [serving] twelve or fewer children at any one time on lot sizes of ten thousand or more square feet[;].

I. Bed and breakfast homes, subject to the provisions of chapter 19.64 of this title[;].

J. Home [occupations; and] businesses, subject to the provisions of chapter 19.67 of this title.

K. Short-term rental homes, subject to the provisions of chapter 19.65 of this title.”

SECTION 4. Section 19.08.030, Maui County Code, is amended to read as follows:

“**19.08.030 Special uses.** The following [are declared special uses, and approval of the appropriate planning commission shall be obtained:] uses and structures shall be permitted in the residential districts provided that a County special use permit, as provided in section 19.510.070 of this title, has first been obtained:

A. Churches [together with], including any accessory buildings[;].

B. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in private homes used for

child care services serving more than the number of children defined in section [19.08.020H;] 19.08.020(H).

C. Hospitals; provided[,] that written consent of seventy-five percent of the property owners within five hundred feet [from] of the property to be used for such purpose, has been obtained[;].

D. Nursing or convalescent homes and domiciliary facilities operated and maintained to provide nursing or supporting care[;].

E. Housing for the aged, operated by governmental or nonprofit organizations; provided[,] that the normal population density is not increased more than ten percent[;].

F. Housing for low and moderate income families, operated by governmental or nonprofit organizations; provided[,] that the normal dwelling unit density is not increased more than ten percent[;].

G. Public utilities substations, which are not and will not be hazardous or a nuisance to the surrounding areas[;].

H. [Certain domestic type] Domestic-type businesses in the home[,] that do not meet the definition of home business or home occupation, including group instruction of traditional Hawaiian practices, such as lei making, ukulele classes, hula classes, and lomi lomi, provided that there will be no detrimental or nuisance effect upon the neighbors[. Such businesses shall be normal functions of the home, such as baking, sewing and piano playing;], and further, provided that off-street parking is available to participants.

I. [Residential planned developments only.] Home businesses, subject to the provisions of chapter 19.67 of this title.”

SECTION 5. Section 19.12.020, Maui County Code, is amended to read as

follows:

“**19.12.020 Permitted uses.** Within the A-1 and A-2 districts, the following uses shall be permitted:

A. Any use permitted in the residential and duplex districts[;].

B. Apartment houses[;].

C. [Boardinghouses, roominghouses, and lodginghouses;] Boarding houses, rooming houses, and lodging houses.

D. Bungalow courts[;].

E. Apartment courts[;].

F. Townhouses[; and

G. Home occupations].”

SECTION 6. Section 19.29.030, Maui County Code, is amended to read as

follows:

“19.29.030 Permitted uses. The following uses and structures shall be permitted in the RU-0.5, RU-1, RU-2, RU-5, RU-10, and County rural districts if they also conform with all other applicable laws:

A. Principal uses.

1. One single-family dwelling per one-half acre in the RU-0.5 and County rural districts; one single-family dwelling per one acre in the RU-1 district; one single-family dwelling per two acres in the RU-2 district; one single-family dwelling per five acres in the RU-5 district; and one single-family dwelling per ten acres in the RU-10 district[;].

2. Growing and harvesting of any agricultural or agricultural crop or product, subject to restrictions set forth in this chapter[;].

3. Minor utility facilities as defined in section 19.04.040 of this title[;].

4. Parks for public use[;], but not including commercial[:] camping, campgrounds, campsites, overnight camps, and other similar uses[;].

5. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, adult day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in dwelling units used for child care services. These facilities shall serve six or fewer clients at any one time on lot sizes of less than seven thousand five hundred square feet, eight or fewer clients at any one time on lot sizes of seven thousand five hundred or more square feet, but less than ten thousand square feet, or twelve or fewer clients at any one time on lot sizes of ten thousand or more square feet[; and].

6. Home [occupations.] businesses, subject to the provisions of chapter 19.67 of this title.

B. Accessory uses.

1. Accessory uses such as garages, carports, barns, greenhouses, gardening sheds, and similar structures that are customarily used in conjunction with, and incidental and subordinate to, a principal use or structure[;].

2. The keeping of livestock, hogs, poultry, and fowl and game birds[;].

3. One accessory dwelling per lot, in accordance with the provisions of chapter 19.35 of this title[;].

4. Small-scale energy systems that are incidental and subordinate to principal uses[;].

5. Stands for the purpose of displaying and selling agricultural, floriculture, or farming products, if such products have been produced or grown on the premises, subject to standards in section 19.29.020 [of this title]. Goods produced off-premises are expressly prohibited[;].

6. Bed and breakfast homes, subject to the provisions of chapter 19.64 of this title[; and].

7. Short-term rental homes, subject to the provisions of chapter 19.65 of this title.”

SECTION 7. Section 19.29.040, Maui County Code, is amended to read as follows:

“**19.29.040 Uses permitted with a County special use permit.** The following uses and structures shall be permitted in the RU-0.5, RU-1, RU-2, RU-5, RU-10, and County rural districts, provided a County special use permit, [pursuant to] as provided in section 19.510.070[, Maui County Code,] of this title, has first been obtained:

- A. Commercial stables, and riding academies[;].
- B. Schools, churches and religious institutions, and private clubs and lodges; but not including commercial[;] camping, campgrounds, campsites, overnight camps, and other similar uses[;].
- C. Cemeteries, crematories, and mausoleums[;].
- D. Major utility facilities as defined in section 19.04.040[, Maui County Code; and] of this title.
- E. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, adult day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in dwelling units used for child care services serving more than the number of children defined in section 19.29.030.
- F. Home businesses, subject to the provisions of chapter 19.67 of this title.”

SECTION 8. Section 19.30A.060, Maui County Code, is amended to read as follows:

“**19.30A.060 Special uses.** A. The following uses and structures shall be permitted in the agricultural district if a special use permit, [pursuant to] as provided in section 19.510.070 of this title, has been obtained; except that if a use described in this section also requires a special permit [pursuant to] as provided in chapter 205, Hawaii Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the [state] State special permit shall fulfill the requirements of this section:

- [A.]1. Additional farm dwellings beyond those permitted by subsection [19.30A.050.B.1;] 19.30A.050(B)(1).
- [B.]2. Farm labor dwellings that do not meet the criteria of subsection [19.30A.050.B.2;] 19.30A.050(B)(2).
- [C.]3. Agricultural products stands that do not meet the standards of subsection [19.30A.050.B.3;] 19.30A.050(B)(3).
- [D.]4. Farmer's markets that do not meet the standards of subsection [19.30A.050.B.4;] 19.30A.050(B)(4).
- [E.]5. Public and quasi-public institutions that are necessary for agricultural practices[;].

[F.]6. Major utility facilities as defined in section 19.04.040 of this title[;].

[G.]7. Telecommunications and broadcasting antenna[;].

[H.]8. Open land recreation uses, structures or facilities [which] that do not meet the criteria of subsection [19.30A.050.B.11,] 19.30A.050(B)(11), including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, rollerblading, playing fields, accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a special permit [pursuant to] as provided in chapter 205, Hawaii Revised Statutes. The following uses or structures shall be prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses, and golf driving ranges[;].

[I.]9. Cemeteries, crematories, and mausoleums[;].

[J.]10. Churches and religious institutions[;].

[K.]11. Mining and resource extraction[;].

[L.]12. Landfills[;].

[M.]13. Solar energy facilities that are greater than fifteen acres[; and].

[N.]14. Short-term rental homes, subject to the provisions of chapter 19.65 of this title; provided[,] that, the applicant need not obtain a County special use permit [pursuant to] as provided in section 19.510.070 of this title; and provided further that, if the property containing the short-term rental home is located in the State agricultural district, the applicant shall obtain a State special [use] permit, [pursuant to] as provided in section 205-6, Hawaii Revised Statutes, in addition to the short-term rental home permit required by chapter 19.65 of this title.

B. Home businesses shall be permitted in the agricultural district if a State special permit as provided in chapter 205, Hawaii Revised Statutes, is obtained; provided that, the home business shall comply with the provisions of chapter 19.67 of this title, and shall also obtain a County special use permit, if required by chapter 19.67 of this title.”

SECTION 9. Title 19, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 19.67

HOME BUSINESSES

Sections:

19.67.010	Purpose.
19.67.015	Definitions.
19.67.020	Districts in which permitted.
19.67.030	General standards and restrictions.
19.67.040	Permitted use standards and restrictions.

- 19.67.050 Special use standards and restrictions.**
- 19.67.060 Administrative rules.**
- 19.67.070 Enforcement.**
- 19.67.080 Review.**

19.67.010 Purpose. The purpose of this chapter is to establish procedures for the regulation of home businesses while preserving the character of the existing neighborhood in which they are operating.

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

“Nuisance” means a home business use which results in material annoyance, inconvenience, or discomfort to the neighborhood or the public, including, but not limited to, offensive noise, vibration, smoke, odors, dust, heat, glare, and garbage.

19.67.020 Districts in which permitted. A. Home businesses shall be permitted in accordance with the provisions established in each zoning district and as provided in this chapter.

B. Any home business in the State agricultural district shall first obtain a State special permit as provided in the provisions of section 205-6, Hawaii Revised Statutes. In addition, the home business shall comply with the provisions of this chapter, including the requirement of obtaining a County special use permit, if required by this chapter.

19.67.030 General standards and restrictions. All home businesses, as defined in section 19.04.040 of this title, shall meet the following general standards and restrictions:

A. The home business shall be clearly incidental and secondary to the use of the dwelling unit as a residence.

B. A home business shall not generate traffic in greater volumes than would normally be expected in the neighborhood in which it is located.

C. On-site home business hours of operation shall be limited to between 8:00 a.m. and 7:00 p.m.

D. The repair, manufacture, processing, or alteration of goods, materials, or objects that results in a nuisance, as defined in section 19.67.015, shall be prohibited. Automotive repair and body shops shall require a special use permit, as described in section 19.67.050.

E. The home business shall accommodate a maximum of four parking spaces on lots of less than one acre, six parking spaces on lots of one to two acres, ten parking spaces on lots of more than two acres to five acres, and twelve parking spaces for lots over five acres. No on-street parking of vehicles associated with the home business shall be permitted.

F. Except for one ground sign or wall sign, as defined in section 16.13.030 of this code, not to exceed two square feet, there shall be no visible

evidence of the home business, including, but not limited to, alterations to the exterior of the residence that change the character of the residence or neighborhood, exterior displays, or the outdoor storage of materials or equipment used by the home business. Ground signs shall not be permitted within fifteen feet of the front or side property line. Wall signs may be affixed to a fence at the entrance of the property on lots of two acres or more.

19.67.040 Permitted use standards and restrictions. Where home businesses are permitted uses, the following standards and restrictions shall be met:

A. Only one person, other than those residing on the property, may be employed at the home business site at any given time.

B. No more than forty percent of the floor area of any building on a lot shall be used by the home business; provided that, for any accessory structure on a lot of 15,000 square feet or more that may not be used as a long-term rental, one hundred percent of the floor area may be used by the home business.

C. No more than two customers shall be at the home business site at any given time, not to exceed a total of sixteen customers per day.

D. Installation of mechanical equipment, other than equipment that is common in a residential dwelling unit, is not allowed.

E. Materials, equipment, or more than two vehicles associated with the home business, excluding customer or employee vehicles, shall not be stored or parked outside a structure on the property.

19.67.050 Special use standards and restrictions; real property tax classification. A. Where home businesses do not meet the standards and restrictions set forth in section 19.67.040, a special use permit, as provided in section 19.510.070 of this title, shall be obtained, and the following standards and restrictions shall be met:

1. Only two persons, other than those residing on the property, may be employed at the home business site at any given time.

2. No more than forty percent of the floor area of a dwelling unit on a lot shall be used by the home business.

3. The home business may use hundred percent of the floor area of any accessory building on the lot.

4. Except for signage as described in section 19.67.030, there shall be no visible evidence of the home business from alterations to the exterior of the residence. However, the character of the property may show minimal evidence of its business use.

5. Vehicles, trailers, and other equipment associated with the home business shall be stored or parked in an organized manner and in an inconspicuous location on the lot.

6. All other exterior storage of equipment and materials associated with the business shall be located behind the footprint of the dwelling unit and shall be screened so that it is not visible from any right-of-way.

7. On-street parking of motor vehicles to be repaired is prohibited. The repair and off-street parking of motor vehicles shall conform to State and federal regulations and shall be restricted as follows:

- a. Two vehicles for lots up to 10,000 square feet.
- b. Four vehicles for lots greater than 10,000 square feet to one-half acre.
- c. Six vehicles for lots greater than one-half acre to two acres.
- d. Ten vehicles for lots greater than two acres.

8. Body shops are prohibited except on lots of two acres or more.

B. Granting of a special use permit as provided in this chapter may result in a change of the real property tax classification for the property as provided in section 3.48.305 of this code.

19.67.060 Administrative rules. The director may adopt administrative rules to implement the provisions of this chapter.

19.67.070 Enforcement. A. Enforcement of this chapter shall be as provided in the provisions of section 19.530 of this code.


B. Home businesses proven to cause a nuisance as defined in section 19.67.015 may be subject to enforcement.

19.67.080 Review. The council shall review this chapter beginning May 1, 2016, and every two years thereafter.”

SECTION 10. 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 11. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui