

**COUNCIL OF THE COUNTY OF MAUI**

# **WATER RESOURCES COMMITTEE**

September 18, 2015

**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 June 17, 2015, July 22, 2015, August 5, 2015, and September 2, 2015, makes reference to County Communication 15-174, from Councilmember Gladys C. Baisa, transmitting the matter of amending Section 14.13.060, Maui County Code, relating to Upcountry water meter installation.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 14.13.060, MAUI COUNTY CODE, ENTITLED 'WATER METER ISSUANCE PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM', RELATING TO FIRE PROTECTION."

The purpose of the proposed bill is to provide that applicants on the Upcountry Priority List who have been offered water meters from the Department of Water Supply and are able to connect to the existing water system shall not be required to make further infrastructure improvements for fire protection, subject to certain conditions.

Your Committee notes Section 14.13.040(A), Maui County Code, provides the following background:

On March 16, 1993, the upcountry water system was found to have insufficient water supply developed for fire protection, domestic, and irrigation purposes to take on new or additional water services without detriment to those already served in the regulated area. Since November 2, 1994, the department has maintained a priority list of premises, organized by the date applications for new or additional water service were received for such premises.

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Effective as of January 1, 2013, the department will not accept any new applications to be placed on the priority list.

Your Committee has sought solutions to assist applicants on the Upcountry Priority List to get water meters so they “may build a home on their property for themselves or their family,” as stated in the proposed bill. Your Committee notes the Upcountry Priority List currently has more than 1,800 applicants.

Your Committee further notes the Department has been offering water meters to designated applicants on the Upcountry Priority List. Costly infrastructure requirements for fire protection have prevented certain applicants from accepting offered water meters.

Your Committee was informed by the Director of Public Works some applicants could also face costly infrastructure requirements for street upgrades as a condition of subdivision approval. This could prevent them from building a home, even if with a waiver from the requirement for fire protection infrastructure.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.13 AND SECTION 18.20.040, MAUI COUNTY CODE, RELATING TO WATER METER ISSUANCE PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM.” The revised proposed bill adds an exemption from street upgrades for qualified applicants on the Upcountry Priority List.

Your Committee voted to further revise the revised proposed bill to assist applicants who did not accept offered water meters after January 1, 2013, because of costly infrastructure requirements. Subject to various conditions, such applicants may be returned to the Upcountry Priority List at their prior placement.

Your Committee voted 6-0 to recommend passage of the revised proposed bill, as further revised, on first reading and filing of the communication. Committee Chair Baisa and members Carroll, Cochran,

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Couch, Crivello, and White voted "aye." Committee Vice-Chair Victorino was excused.

Your Committee is in receipt of a further revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel.

Your Water Resources Committee RECOMMENDS the following:

1. That Bill \_\_\_\_\_ (2015), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.13 AND SECTION 18.20.040, MAUI COUNTY CODE, RELATING TO WATER METER ISSUANCE PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 15-174 be FILED.

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

  
\_\_\_\_\_  
GLADYS C. BAISA, Chair

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

BILL NO. \_\_\_\_\_ (2015)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.13 AND SECTION 18.20.040, MAUI COUNTY CODE, RELATING TO WATER METER ISSUANCE PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM

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

SECTION 1. Section 14.13.020, Maui County Code, is amended to read as follows:

**“14.13.020 Purpose.** The purpose of this chapter is to provide uniform handling of applications for water service from the priority list[.] and to give upcountry residents on the priority list the opportunity to receive water service to their premises, subject to certain conditions and restrictions, so that it may be possible to build a home on their property for themselves or their family.”

SECTION 2. Chapter 14.13, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

**“14.13.065 Exemption from fire protection mainline infrastructure improvements.** A. An applicant on the priority list whose application is being processed because additional source has become available and whose premises directly front the department’s existing water system, determined adequate by the department to supply potable domestic and irrigation water demand to the said premises, shall not be required to make further infrastructure mainline improvements for fire protection, provided that:

1. In the case of a subdivision application, the subdivision is for only two lots, or is amended to a subdivision for two lots, and all structures on each lot shall be used for residential and associated purposes.

2. In the case of a family subdivision created pursuant to sections 14.05.180 and 18.20.280 of this code, the subdivision shall be a subdivision for only two lots, is amended to a subdivision for two lots, or is consolidated and

resubdivided into a subdivision for two lots, and all structures on each lot shall be used for residential and associated purposes.

3. In the case of a single water service request, the request may not be revised to a two-lot subdivision or otherwise revised, and all structures on the lot shall be used for residential and associated purposes.

4. The exemption from review for fire protection for the first and second dwelling unit as provided in subsection 14.04.020(A) of this code shall not apply to premises that receive water service pursuant to this section. The requirements for adequate fire protection for building permit applications for residential dwelling units and associated structures permitted in any zoning district listed in title 19 of this code, shall be reviewed, administered, and issued by the department of fire and public safety in accordance with section 16.04C.460 of this code; however, the exceptions contained in section 16.04C.460 shall not apply.

5. The requirements of section 16.04C.470 (subsection 18.4.6) of this code shall not apply to subdivisions that receive water service pursuant to this section.

6. This exemption from making further infrastructure mainline improvements for fire protection shall not apply to any further subdivision of any resulting parcels, and any such subdivision shall be subject to the requirements of section 14.05.090 of this code; provided, however, that in the case of subsequent development consisting of the construction of a building or group of buildings on a single lot, which will contain, result, or be divided into four or more dwelling units, the requirements for adequate fire protection shall be reviewed, administered, and issued by the department of fire and public safety.

7. No remote meters shall be permitted.

8. The owner of the lot or lots shall enter into an agreement with the County, whereby the lot owner agrees to all of the following:

a. To accept such water service as the department is able to render from its existing facilities and to execute a written release in favor of the County for all claims on account of any inadequacy in the County's system or inadequacy of water supply to the premises for fire protection.

b. That further subdivision or requests for building permits may require the installation of water system improvements, such as water mains for potable

domestic, irrigation, and fire protection water demand and fire hydrants for fire protection.

c. That the agreement shall be recorded with the bureau of conveyances or the land court of the State, shall run with the land, and, unless released or cancelled by the County, shall bind the owner of the lot or lots and bind and constitute notice to all subsequent grantees, successors, assignees, mortgagees, lienors, and other persons claiming any interest in the lot or lots.

B. The provisions of this section shall apply to applicants on the priority list as of January 1, 2013. Applicants offered water service by the department after January 1, 2013, but who declined such offer may be eligible to be placed back on the priority list at their prior placement, provided, that the application complies with subsection 14.13.065(A)(1), 14.13.065(A)(2), or 14.13.065(A)(3). Such applicant shall be notified of their eligibility in writing by certified mail, return receipt requested, at the premises address listed with the County of Maui, department of finance, real property assessment division. The applicant shall be given sixty days from the date the certified mail was received by the applicant to complete and deliver to the department an application for water service or to reserve an allocation of water service in accordance with the department's established rules, regulations, and procedures. Failure to respond within sixty days or the return of an unsigned return receipt will be treated as a refusal of water service."

SECTION 3. Section 14.13.100, Maui County Code, is amended to read as follows:

**"14.13.100 Applicability.** Prior to the enactment of this chapter, the board promulgated an administrative rule known as the "Water Meter Issuance Rule for the Upcountry Water System", which rule is codified as chapter 106, subtitle 1, title MC-16 of the rules and regulations of the department of water supply, County of Maui. No provisions contained in this chapter shall affect the rights, privileges, remedies, requirements, or duties of any applicant or the department in accordance with [said] chapter 106 that have accrued prior to the effective date of this chapter.

Further, the council is aware this code previously required water meter applicants to complete water system improvements, including fire protection improvements, to their premises or to the department's water system prior to the installation of a water meter. The council understands that such requirement caused considerable expense to some applicants who accepted that

responsibility in exchange for water service to their premises. It is the council's desire to eliminate obstacles for upcountry residents to receive water service. Therefore, it is the council's express intent that nothing herein shall give rise to a cause of action against the County or the department for reimbursement for past installed improvements or for loss of value to real property caused by any action or code requirements prior to the effective date of section 14.13.065 relating to the acceptance or refusal of water service from the department, and to the requirement of the installation of water system improvements."

SECTION 4. Section 18.20.040, Maui County Code, is amended by amending subsection A to read as follows:

**"18.20.040 Existing streets.** A. No improvements shall be required upon existing streets for a consolidation of lots; for a subdivision creating only road widening lots; for a consolidation of three developable lots or less which is resubdivided without creating additional developable lots; for a subdivision into two developable lots or for a subdivided parcel used for a church. Churches shall dedicate land necessary for road widening purposes to comply with the requirements of this chapter. Parcels that have undergone a subdivision into two developable lots under this subsection shall not qualify for this exemption with respect to any subsequent resubdivision of any of the parcel which creates additional developable lots."

SECTION 5. Material to be replaced 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 6. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



JENNIFER M.P.E. OANA  
Department of the Corporation Counsel  
County of Maui

WR-28 2015-09-10 Ordinance Chapter 14.13 and Section 18.20.040  
2014-3085