

**COUNCIL OF THE COUNTY OF MAUI**  
**PUBLIC WORKS AND**  
**FACILITIES COMMITTEE**

August 21, 2007

**Committee**  
**Report No.**

07-93

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

Chair and Members:

Your Public Works and Facilities Committee, having met on February 28, 2007, March 14, 2007, and August 1, 2007, makes reference to a Miscellaneous Communication dated September 23, 2003, from the County Clerk, reporting that at its meeting of September 19, 2003, the Council referred the matter of penalties in Chapter 13.04, Maui County Code, to the Parks and Agriculture Committee, and transmitting a copy of Parks and Agriculture Committee Report No. 03-104, As Amended.

At its meeting of December 2, 2004, the Parks and Agriculture Committee recommended that the Miscellaneous Communication be referred to the Council Chair for the term beginning January 2, 2005, for a recommendation as to referral or other disposition.

At its meeting of January 21, 2005, the Council (2005-2007 Council term) referred the Miscellaneous Communication to its Parks and Economic Development Committee (County Communication No. 05-12).

By correspondence dated August 4, 2005, the Director of Parks and Recreation transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO THE RECREATIONAL AREA REGULATIONS". The purpose of the proposed bill is to amend Chapter 13.04, Maui County Code, relating to regulations governing camping, by revising the definition of "camping"; changing the curfew for camping from midnight to 8:00 p.m.; and establishing the penalty for persons convicted of a violation of any regulation relating to parks and recreational facilities as a petty misdemeanor, subject to a fine of up to \$1,000 or imprisonment for not more than 30 days, or both.

By correspondence dated August 24, 2005, the Director of Parks and Recreation transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO THE RECREATIONAL AREA REGULATIONS". The revised proposed bill further amends

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Chapter 13.04, Maui County Code, to establish the penalty for persons convicted of a violation of any regulation relating to camping as a petty misdemeanor, subject to a fine of up to \$1,000 or imprisonment for not more than 30 days, or both. Except for penalties under Article X, Ocean Recreation Activities, fines of up to \$500 for persons convicted of a violation of any regulation relating to parks and recreations facilities, would be maintained.

At its meeting of September 1, 2005, the Parks and Economic Development Committee met with the Deputy Director of Parks and Recreation; the Prosecuting Attorney; the Technical Services Captain, Department of Police; and a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Director provided a brief overview of the revised proposed bill. He explained that the intent of the bill is to create tighter legislation to curb illegal camping activity. The Deputy Director said that the Department realizes the need for additional campsites on Maui, but recognizes that tighter legislation must be enacted before more campsites are provided.

The Technical Services Captain expressed support for the revised proposed bill. He added that a collaborative effort by all relevant departments, specifically the Department of Police, the Department of the Prosecuting Attorney, and the Department of Parks and Recreation, would be necessary for the ordinance to be effective.

The Prosecuting Attorney also expressed support for the revised proposed bill. She noted that the courts would not likely imprison a first-time offender. She referred to House Concurrent Resolution No. 261, House Draft 1, Senate Draft 1, Regular Session of 2004, entitled "REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO REVIEW, ANALYZE AND RECOMMEND CHANGES TO THE STATUTES AND STATE RULES THAT CRIMINALIZE NON-SERIOUS OFFENSES AND REQUESTING EACH COUNTY TO REVIEW, ANALYZE AND CHANGE COUNTY ORDINANCES AND RULES THAT CRIMINALIZE NON-SERIOUS OFFENSES". She noted that this resolution requested the counties to consider decriminalizing non-serious offenses in their respective ordinances. The Prosecuting Attorney expressed concern that the proposed bill would be viewed as inconsistent with the Legislature's request. However, taking into consideration that illegal camping situations may create an opportunity for violence, she said that modifications to the bill may be warranted.

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The Committee expressed concern that homeless individuals and families living in County beach parks may be forced to move to other beach parks, and that this action would appear to be in direct conflict with the current Administration's policy of keeping the homeless centralized and in close proximity to social service agencies.

The Committee expressed further concern that the language in the revised proposed bill was ambiguous and allowed for misinterpretation of the law. The Committee suggested working with the Department of Police, the Department of the Prosecuting Attorney, and the Department of the Corporation Counsel to recommend language amending the revised proposed bill for consistency and clarity.

The Committee deferred consideration of the matter pending further discussion.

By correspondence dated September 6, 2005, the Chair of the Committee requested that the Prosecuting Attorney recommend language to amend Sections 2, 4, and 6 of the revised proposed bill.

By correspondence dated September 8, 2005, the Chair of the Committee requested that the Chief of Police recommend language to amend Sections 2, 4, and 6 of the revised proposed bill.

By correspondence dated September 28, 2005, the Chief of Police provided comments and suggestions to the revised proposed bill and expressed his Department's support.

By correspondence dated October 4, 2005, the Prosecuting Attorney informed the Committee that her Department had no specific changes to the revised proposed bill.

By correspondence dated October 12, 2005, the Chair of the Committee requested that the Department of the Corporation Counsel consider amending the revised proposed bill consistent with the Committee's recommendations and the suggestions made by the Department of Police.

At its meeting of November 30, 2006, the Parks and Economic Development Committee recommended that the Miscellaneous Communication be referred to the Council Chair for the term beginning January 2, 2007, for a recommendation as to referral or other disposition.

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At its meeting of January 5, 2007, the Council (2007-2009 Council term) referred the Miscellaneous Communication to your Public Works and Facilities Committee (County Communication No. 07-6).

At its meeting of February 28, 2007, your Committee met with the Director of Parks and Recreation; the Corporation Counsel; a Deputy Corporation Counsel; the Lahaina District Commander, Department of Police; and a Captain, Wailuku Patrol, Department of Police.

There was no public testimony.

The Director reviewed the four components of the revised proposed bill: a new definition of "camping", an allowance for the closure of camping areas, a curfew for all those without camping permits, and harsher penalties for violating this ordinance.

The Lahaina District Commander said that the Department of Police supports the revised proposed bill, particularly the change of hours for curfew enforcement, from midnight to 8:00 p.m.

The Captain stated that the option of making an arrest for camping without a valid permit would be used as a last resort, but would provide an additional tool for enforcement.

Your Committee discussed the intent of the law and the way in which this legislation could indirectly be used to target the homeless. Your Committee noted that there are limited camping areas available to meet the large demand for campsites. Your Committee asked whether the Department of the Corporation Counsel would be responding to the outstanding written request from the former Parks and Economic Development Committee, regarding the definition of camping, curfew hours, and penalties.

The Deputy Corporation Counsel stated that his understanding was that the Department of the Prosecuting Attorney no longer had any objections to the proposed penalty and that his office would be responding to the written request from your Committee.

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By correspondence dated March 12, 2007, the Department of the Corporation Counsel responded to your Committee's inquiries regarding whether the proposed definition of "camping" should be further revised, whether the curfew should be changed, whether penalties could be imposed only when persons refuse to comply with the provisions of the chapter within a reasonable amount of time, and what the impacts of the proposed bill would be on non-camping activities after curfew hours.

At its meeting of March 14, 2007, your Committee met with the Director of Parks and Recreation; the Corporation Counsel; a Deputy Corporation Counsel; a Special Events Specialist, Department of Parks and Recreation; a Captain, Wailuku Patrol, Department of Police; and the Prosecuting Attorney.

There was no public testimony.

The Director stated that the proposed bill will further clarify language in the Maui County Code regarding the regulations for camping, and will increase the penalty for a violation from a citation offense to a petty misdemeanor. She further stated that the curfew will change from midnight to 8:00 p.m., which will enable rangers and officers to more effectively deal with campers.

Your Committee expressed concerns with three of the four changes proposed in the bill: the penalties, the definition of "camping", and provisions to close the camping areas.

The Captain stated that the Department of Police has had a difficult time enforcing the current law given that its only power is to cite violators, and that illegal campers usually give false names, rendering the citations worthless.

The Deputy Corporation Counsel stated that the definition of "camping" in the revised proposed bill mirrors similar ordinances at the State and Federal levels that have been upheld by the courts.

The Special Events Specialist reviewed the current camping enforcement provided by two Park Rangers. He stated that the efforts provided by the rangers at this point are targeted towards education as opposed to enforcement.

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Your Committee expressed the need for further revisions to the proposed bill by the Department of Parks and Recreation and the Department of the Corporation Counsel, so as not to unnecessarily penalize the general public. Your Committee expressed support for the change of hours of enforcement from midnight to 8:00 p.m.

By correspondence dated July 24, 2007, the Director of Parks and Recreation transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO THE RECREATIONAL AREA REGULATIONS". The revised proposed bill amends Chapter 13.04, Maui County Code, as it relates to the regulations governing camping. The bill does not include many of the previously proposed changes, but does change the curfew from midnight to 8:00 p.m.

At its meeting of August 1, 2007, your Committee met with the Deputy Director of Parks and Recreation; a Special Events Specialist, Department of Parks and Recreation; and a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Director stated that the Department had further revised the revised proposed bill to remove all previous amendments to the current law, except for the change in curfew from midnight to 8:00 p.m.

The Special Events Specialist reviewed the approach used by the Department currently to address the issue of camping. He stated that the Department intends to educate first, and to use enforcement as a last resort.

Your Committee supported this approach and noted that the revised proposed bill will enable the Department to better relate to campers at a more reasonable hour (8:00 p.m.), rather than at midnight.

Your Committee voted to recommend passage of the revised proposed bill and filing of the communication.

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Your Public Works and Facilities Committee RECOMMENDS the following:

1.     That Bill No. \_\_\_\_\_ (2007), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO THE RECREATIONAL AREA REGULATIONS", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
  
2.     That the Miscellaneous Communication be FILED.

Adoption of this report is respectfully requested.

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**BILL KAUAKEA MEDEIROS** Co-Chair

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**DANNY A. MATEO** Member

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**MICHAEL P. VICTORINO** Co-Chair

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**JOSEPH PONTANILLA** Member

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**G. RIKI HOKAMA** Member