

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

September 15, 2006

Committee
Report No.

06-110

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

Chair and Members:

Your Planning Committee, having met on September 2, 2003, December 1, 2003, November 30, 2004, January 9, 2006, January 10, 2006, January 11, 2006, and August 21, 2006, makes reference to County Communication No. 01-277, from the Council Vice-Chair, relating to the matter of crowing roosters in residential areas.

Your Committee notes that at its meeting of October 4, 2001, the Council referred County Communication No. 01-277 to the Land Use Committee (2001-2003 Council term).

At its meeting of January 10, 2003, the Council referred County Communication No. 01-277 to the prior Council's Planning and Land Use Committee (County Communication No. 03-05).

By correspondence dated May 28, 2003, Councilmember Robert Carroll transmitted the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO FOWL IN RESIDENTIAL, R-0 ZERO LOT LINE RESIDENTIAL, TWO-FAMILY (DUPLEX), AND APARTMENT DISTRICTS". The purpose of the proposed bill is to prohibit the keeping of chickens and other fowl in various residentially oriented zoning districts.
2. A draft resolution entitled "REFERRING A PROPOSED BILL RELATING TO FOWL IN RESIDENTIAL, R-0 ZERO LOT LINE RESIDENTIAL, TWO-FAMILY (DUPLEX), AND APARTMENT DISTRICTS TO THE PLANNING COMMISSIONS". The purpose of the draft resolution is to refer the proposed bill to the planning commissions pursuant to Sections 8-8.4 and 8-8.6 of the Charter of the County of Maui.

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Your Committee notes that prior to its first meeting on September 2, 2003, from the period beginning May 30, 2003, through August 29, 2003, the Planning and Land Use Committee received 59 pieces of correspondence and two petitions signed by 135 individuals in support of the proposed bill. The Committee also received correspondence from 5 individuals and two petitions signed by 1263 individuals in opposition to the proposed bill. The Committee also received correspondence from 2 individuals providing general comments.

Individuals who supported the proposed bill generally stated the following:

1. Maui's growing population is resulting in increased density, and rooster crowing contributes largely to the additional neighborhood noise.
2. Constant rooster crowing disturbs the neighboring property owners' rights to peaceful enjoyment of their property.
3. Neighboring property owners' sleep is disturbed and abbreviated when roosters crow throughout the night.
4. Roosters are often kept far from the owner's home, yet close to a neighbor's home.
5. The State Department of Health, the Maui Humane Society, and Department of Police advise residents that a County ordinance is needed to properly address this problem.
6. Many of the noisemakers are gamecock, and cockfighting is illegal in Hawaii.
7. There are a number of health hazards related to fowl.

Individuals who opposed the proposed bill generally stated the following:

1. They, or their families, have raised fowl at their residence for many years, sometimes spanning generations.
3. Raising fowl is a cultural tradition.
4. Crowing is a natural part of a rooster's lifestyle.
5. Only newcomers to Maui are opposed to rooster noise.
6. Any prohibition of fowl in residential areas could be interpreted as race, economic, or geographic discrimination.
8. Poultry is raised for economic reasons such as defraying household costs and added family income.
9. People should respect and tolerate other people's differences.

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10. Restrictions on how the roosters should be housed can impose economic burdens on people.
11. Feral fowl are the real neighborhood nuisance.

By correspondence dated June 6 2003, Councilmember Robert Carroll requested that the Committee hold a weeknight meeting to discuss the matter.

By correspondence dated June 9, 2003, Councilmember Robert Carroll transmitted an article from the May 27, 2003 issue of *The Maui News* entitled "Neighbor's chickens raise a ruckus due to streetlight," and an article from the May 23, 2003 issue of *The Honolulu Advertiser* entitled "Rooster complaints are not going away."

By correspondence dated August 29 2003, the Chair of the Committee transmitted a copy of correspondence, dated March 6, 2001, from the Department of the Corporation Counsel to David Patti, responding to a request that appropriate action be taken against persons with numerous roosters.

By correspondence dated September 2, 2003, the Planning Director suggested that legislation regulating roosters may be better implemented by an amendment to Chapter 6.04, Maui County Code (MCC), relating to Animal Control.

At its meeting of September 2, 2003, the Planning and Land Use Committee met with the Planning Director; an Administrative Planning Officer, Department of Planning; the Director of Public Works and Environmental Management; the Prosecuting Attorney; a Lieutenant, Department of Police; and a Deputy Corporation Counsel.

The Committee received testimony from 36 individuals, 13 in support of the proposed bill, 22 in opposition to the proposed bill, and 1 who provided general comments. The testifiers in support of the proposed bill stated that neighborhood peace and quiet is almost nonexistent due to the constant crowing of roosters. The testifiers in opposition to the proposed bill generally stated that raising fowl was an inherent part of their cultural identity.

The Committee received written testimony from one individual in support of the proposed bill, and a petition signed by 127 individuals in opposition to the proposed bill.

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The Planning Director stated that: (1) Chapter 6.04, MCC, provides specific tools such as an animal control board, animal control officers, and animal shelters that will be necessary to efficiently administer fowl control; (2) animal control officers, unlike zoning inspectors in the Department of Planning, are trained to control and handle animals; and (3) meaningful enforcement of fowl control will require procedures for administrative fines and the removal of prohibited fowl.

The Prosecuting Attorney stated that the Department of the Prosecuting Attorney receives many complaints from the populace regarding rooster nuisances. She discussed the difficulties of trying to prosecute under Section 711-1101, Hawaii Revised Statutes, relating to disorderly conduct. She advised that an ordinance specific to rooster noise is needed.

The Director of Public Works and Environmental Management stated that Section 16.08.220, MCC, which addresses the Housing Code's provision that no animals shall be kept in or within 20 feet of a residential structure, may be an area where enforcement could occur in some instances.

The Committee discussed the benefits and drawbacks of establishing an ordinance under Chapter 6.04, MCC, as a possible alternative to the proposed bill, which amends Title 19, MCC.

The Administrative Planning Officer stated that amending the relevant zoning ordinances may be more appropriate than creating special legislation to prohibit fowl in residential areas.

The Committee deferred consideration of the matter pending further discussion.

Your Committee notes that prior to the introduction of the draft bill defining fowl to include only roosters, geese, and peacocks, from the period beginning September 2, 2003, through November 26, 2003, the Planning and Land Use Committee received 45 pieces of correspondence in support of the proposed bill. Generally, those in support stated that neighbor peace and quiet was almost nonexistent due to the constant crowing of roosters. The Committee also received correspondence from two individuals in opposition to the proposed bill, stating that raising fowl was an inherent part of their cultural identity.

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By correspondence dated November 28, 2003, Councilmember Robert Carroll transmitted a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATED TO FOWL IN RESIDENTIAL, R-0 ZERO LOT LINE RESIDENTIAL, TWO-FAMILY (DUPLEX), AND APARTMENT DISTRICTS". The purpose of the draft bill is to prohibit roosters, geese, and peacocks in residential areas, authorizes animal control officers to enforce the prohibition of fowl in residential areas, and authorizes the Mayor to adopt rules to implement said fowl prohibition.

By correspondence dated November 28, 2003, the Chair of the Committee transmitted documents relative to Honolulu City Council's Bill No. 47 (2003), relating to animal nuisances.

Prior to its meeting of December 1, 2003, from the period beginning November 28, 2003, through November 30, 2003, the Planning and Land Use Committee received five pieces of correspondence in support of the draft bill, stating that noise was their primary concern, and five pieces of correspondence opposed to the draft bill, generally stating that raising fowl was an inherent part of their cultural identity.

By correspondence dated December 1, 2003, the Chair of the Committee transmitted information on rooster ordinances in other jurisdictions of the United States.

By correspondence dated December 1, 2003, Councilmember Robert Carroll stated reasons that fowl prohibition would be more appropriately enforced if an ordinance was established under Title 19, MCC.

At its meeting of December 1, 2003, the Planning and Land Use Committee met with the Deputy Planning Director; the Prosecuting Attorney; a Sergeant, Department of Police; and a Deputy Corporation Counsel.

The Committee received testimony from 37 individuals.

Seven individuals testified in support of the draft bill. A representative of the Maui Humane Society expressed the following concerns regarding enforcement: (1) there is not enough manpower to enforce an ordinance; (2) there is not enough space to house seized animals; and (3) there are no established procedures regarding seizure and disposition of animals. The other individuals who testified in support of the draft bill

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stated, generally, that neighborhood peace and quiet is almost nonexistent due to constant rooster noise.

Twenty-nine individuals testified in opposition to the draft bill, generally stating that raising fowl was an inherent part of their cultural identity.

One individual commented that the bill should include dogs.

The Committee received written testimony from one individual from Molokai in opposition to the draft bill stating cultural heritage and the rural setting on Molokai as reasons not to impose any restrictions regarding roosters on Molokai.

The Committee discussed the need for more research regarding the ramifications of enforcement. The Committee also requested research into what geographic areas are mostly affected by rooster noise.

The Committee deferred consideration of the matter pending further discussion.

By correspondence dated March 16, 2004, the Chair of the Committee transmitted an article from the March 15, 2004 issue of the *Honolulu Star-Bulletin* entitled "Group helps simmer down roosters."

By correspondence dated September 13, 2004, the Chair of the Committee transmitted an article from the September 9, 2004 issue of *The Maui News* entitled "Family's chickens have county stewing."

Prior to its meeting of November 30, 2004, from the period beginning December 1, 2003, through August 18, 2004, the Planning and Land Use Committee received correspondence from 19 individuals in support of the draft bill, generally stating that neighborhood peace and quiet is almost nonexistent due to the constant crowing of roosters.

At its meeting of November 30, 2004, the Planning and Land Use Committee recommended that County Communication No. 01-277 be referred to the Council Chair for the term beginning January 2, 2005, for a recommendation as to referral or other disposition.

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The Committee received written testimony from two individuals in support of the draft bill. One individual stated that the neighbor has upwards of 30 roosters, and the other individual stated that sleep deprivation was due to the constant crowing of roosters.

At its meeting of January 21, 2005, the Council referred County Communication No. 01-277 to your Planning Committee (County Communication No. 05-12).

By correspondence dated April 5, 2005, Councilmember Robert Carroll transmitted an article from the March 31, 2005 issue of *The Maui News*, transmitted by Pete Degregorio, entitled "Study: Most adults not sleeping well."

By correspondence dated May 27, 2005, Councilmember Robert Carroll transmitted an article from the May 26, 2005 issue of *The Maui News* entitled "Man guilty of negligence in fatal crash."

By correspondence dated November 7, 2005, Councilmember Robert Carroll transmitted an article from the November 7, 2005 issue of *The Maui News* entitled "Cockfighting bill aimed at stemming bird flu in U.S. stops short of vote."

Your Committee notes that prior to its first meeting on January 9, 2006, from the period beginning March 2, 2005, through September 26, 2005, your Committee received correspondence from five individuals in support of the draft bill, generally stating that neighborhood peace and quiet is almost nonexistent due to the constant crowing of roosters.

At its meeting of January 9, 2006 in Hana, your Committee received testimony from three individuals. One individual testified in support of the draft bill stating that cockfighting, gambling, and illegal drug use are all related. Two individuals testified in opposition stating that raising fowl was an inherent part of their cultural identity.

Your Committee deferred consideration of the matter pending further discussion.

At its meeting of January 10, 2006 on Lanai, your Committee met with the Program Planning Administrator, Current Planning Division, Department of Planning; the Director of Public Works and Environmental Management; and a Deputy Corporation Counsel.

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Your Committee received testimony from four individuals opposed to the draft bill. Generally, the individuals stated that raising fowl was an inherent part of their cultural identity.

Your Committee deferred consideration of the matter pending further discussion.

At its meeting of January 11, 2006 on Molokai, your Committee received testimony from ten individuals. Three individuals testified in support of the draft bill, although one person testified against the raising of large amounts of fowl on a property, and one individual testified that the bill should be limited to roosters, geese, and peacocks. Seven individuals testified in opposition to the draft bill. Generally, individuals who testified in opposition to the draft bill stated that raising fowl was an inherent part of their cultural identity.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated January 12, 2006, Councilmember Robert Carroll transmitted an article from the December 16, 2005 issue of *The Maui News* entitled "Tourist complaints about noise warrant attention" and an article from the January 6, 2006 issue of *The Maui News* entitled "Residential roosters a noise issue, not cultural dispute."

By correspondence dated April 11, 2006, Councilmember Robert Carroll transmitted an article from the April 11, 2006 issue of *The Maui News* entitled "Avian flu a real threat from the chickens, roosters next door."

Prior to its meeting on August 21, 2006, from the period beginning January 12, 2006, through August 21 2006, your Committee received correspondence from 4 individuals, and a petition signed by 161 individuals, in support of the draft bill, generally stating that neighborhood peace and quiet is almost nonexistent due to the constant crowing of roosters. Your Committee also received correspondence from 1 individual providing general comments.

At its meeting of August 21, 2006, your Committee met with the Planning Director and a Deputy Corporation Counsel.

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Your Committee received testimony from 2 individuals in support of the draft bill, stating that excessive noise and health issues related to the Avian Flu were their main concerns. Your Committee received testimony from 18 individuals in opposition to the draft bill. Generally, individuals who testified in opposition to the draft bill stated that raising fowl was an inherent part of their cultural identity.

Your Committee also received written testimony from 2 individuals in support of the draft bill, both testifying to the constant noise in their neighborhood. Your Committee also received a petition signed by 334 individuals in opposition to the draft bill.

Your Committee requested that correspondence be transmitted to the Department of Police, the Department of the Prosecuting Attorney, the Department of Planning, the Department of Public Works and Environmental Management, and the Maui Humane Society regarding prosecution and enforcement of rooster nuisance in residential areas under Section 711-1101, Hawaii Revised Statutes; under Section 16.08.220, MCC; and under the draft bill.

Your Committee voted to recommend adoption of a draft resolution referring to the planning commissions the draft bill, which restricts the definition of fowl to include only roosters, geese and peacocks.

Your Committee is in receipt of a proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, entitled "REFERRING A DRAFT BILL RELATING TO FOWL IN RESIDENTIAL, R-0 ZERO LOT LINE RESIDENTIAL, TWO-FAMILY (DUPLEX), AND APARTMENT DISTRICTS TO THE PLANNING COMMISSIONS". The title and text of the proposed resolution reflect the transmittal of a draft bill rather than a proposed bill.

Your Planning Committee **RECOMMENDS** that Resolution No. _____, attached hereto, entitled "REFERRING A DRAFT BILL RELATING TO FOWL IN RESIDENTIAL, R-0 ZERO LOT LINE RESIDENTIAL, TWO-FAMILY (DUPLEX), AND APARTMENT DISTRICTS TO THE PLANNING COMMISSIONS" be **ADOPTED**.

Adoption of this report is respectfully requested.

