

COUNCIL OF THE COUNTY OF MAUI

BUDGET AND FINANCE COMMITTEE

March 7, 2003

Committee
Report No.

03-23

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

Chair and Members:

Your Budget and Finance Committee, having met on February 18, 2003, makes reference to County Communication No. 02-240, from the Director of Parks and Recreation, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2003 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO CHARGES FOR CURRENT SERVICES, FEE -- USE OF PARK FACILITIES".

The purpose of the proposed bill is to establish fees for the use of community centers by private recreational instructors (Type I(CC)) by amending Appendix B - Revenue - Rates, Fees, and Assessments of the Fiscal Year 2003 Budget.

At its meeting of December 6, 2002, the prior Council recommended that County Communication No. 02-240 be referred to the Council Chair for the term beginning January 2, 2003, for a recommendation as to referral or other disposition.

At its meeting of January 10, 2003, the Council referred County Communication No. 02-240 to your Budget and Finance Committee (County Communication No. 03-6).

Your Committee notes that the prior Council's Budget and Finance Committee addressed a related matter in Committee Report No. 02-178. In that report, the Committee recommended that a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2003 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO THE DEPARTMENT OF HOUSING AND HUMAN CONCERNS" be passed on first reading and be ordered to print. Committee Report No. 02-178 was adopted at the Council meeting of December 6, 2002. The purpose of Ordinance 3104, Bill No. 74 (2002) is to increase the equivalent personnel in the Department of Housing and Human Concerns by 7.0 positions in order to employ the

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independent contractors who provide instructional classes for the Senior Services Program.

Your Committee further notes that the review of instructors' contracts in the Department of Parks and Recreation and in the Department of Housing and Human Concerns in terms of their status as independent contractors versus County employees was prompted by a letter dated May 10, 2002 from the United States Department of the Treasury, Internal Revenue Service (IRS). In that letter, the IRS stated that a determination of whether a fitness instructor is an independent contractor or a County employee is based on evidence of control, including behavior controls, financial controls and relationship of the parties.

Your Committee further notes that the situation with the private recreational instructors in the Department of Parks and Recreation differs from the instructors in the Department of Housing and Human Concerns' Senior Services Program because the full cost of the instructors' classes in the Department of Parks and Recreation is paid directly to the instructors by the participants in the program.

By correspondence dated February 11, 2003, your Committee Chair transmitted a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, RELATING TO RECREATIONAL AREA REGULATIONS PERMITS AND FEES". The purpose of the draft bill is to amend Chapter 13.04 of the Maui County Code, relating to recreational area regulations permits and fees, to add a definition for "Type I(CC) (Community Class) activity".

By correspondence dated February 11, 2003, your Committee Chair requested that the Department of the Corporation Counsel review and approve as to form and legality the draft bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, RELATING TO RECREATIONAL AREA REGULATIONS PERMITS AND FEES".

By correspondence dated February 14, 2003, the Department of the Corporation Counsel transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, RELATING TO RECREATIONAL AREA REGULATIONS, PERMITS AND FEES", approved as to form and legality.

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At its meeting, your Committee met with the Director and the Deputy Director of Parks and Recreation, the Budget Director, and a Deputy Corporation Counsel.

The Deputy Director of Parks and Recreation stated that the new fee category for recreational facilities was being developed to address some of the concerns of the IRS regarding classes held at County facilities. The minimal fee for the use of County facilities by the Type I(CC) activity will provide additional support for the instructors who are classified as independent contractors.

The Deputy Corporation Counsel expressed concerns regarding the control over the instructors by the Department of Parks and Recreation. Specifically, she stated concern over the Type I(CC) activity being defined, in part, as "approved by the community class program for the County of Maui, department of parks and recreation". She felt the definition, as drafted, would make it difficult for the Department of Parks and Recreation to implement the legislation without evidence of control. She further stated that it was not sufficient to eliminate the contracts with the instructors to avoid Federal and State tax concerns, since the issue is with the County's control over the instructors.

Your Committee expressed concern that the County should be able to control the type of classes held in public facilities while ensuring that certain standards are met.

Your Committee expressed concern regarding the need for timely action on the proposed bills since the contracts for the instructors expire on March 31, 2003. Your Committee directed the Department of the Corporation Counsel to work with the Department of Parks and Recreation to make further revisions to the proposed bill to resolve the concern over the degree of County control without further review by your Committee.

Your Committee requested the following revisions to the proposed bill amending Appendix B of the budget ordinance: (1) change the year of the bill from "2002" to "2003"; (2) add "Type I(CC)" for the key deposit; and (3) delete "Account No. 3455, Special Recreation Program Assessment".

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Your Committee voted to recommend passage of the proposed bill amending Appendix B of the budget ordinance and the revised proposed bill amending Chapter 13.04 of the Maui County Code on first reading, and filing of the communication.

Subsequently,, your Committee Chair was verbally advised by the Department of the Corporation Counsel that the Department of Parks and Recreation is recommending changing the proposed "Type I(CC) activity" to a "Type II(CC) activity" to provide a more accurate description of the permitted activity. A Type II activity is an activity open to the public and co-sponsored by the County, in contrast to a Type I activity which is organized and conducted by the County.

Your Committee is in receipt of a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, RELATING TO RECREATIONAL AREA REGULATIONS, PERMITS AND FEES". The purpose of the revised proposed bill is to amend Chapter 13.04 of the Maui County Code, relating to recreational area regulations permits and fees, to add a definition of Type II(CC) activity to address the concerns regarding the control over the instructors.

Your Committee is in receipt of a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2003 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO CHARGES FOR CURRENT SERVICES, FEE -- USE OF PARK FACILITIES". The revised proposed bill incorporates the changes recommended by your Committee, and changes the Type I(CC) activity to Type II(CC) activity as recommended by the Department of the Corporation Counsel.

Your Budget and Finance Committee RECOMMENDS the following:

1. That Bill No. _____ (2003), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2003 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO CHARGES FOR CURRENT SERVICES, FEE -- USE OF PARK FACILITIES", be PASSED ON FIRST READING and be ORDERED TO PRINT;

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2. That Bill No. _____ (2003), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, RELATING TO RECREATIONAL AREA REGULATIONS, PERMITS AND FEES", be PASSED ON FIRST READING and be ORDERED TO PRINT; and

3. That County Communication No. 02-240 be FILED.

Adoption of this report is respectfully requested.

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G. RIKI HOKAMA **Chair**

DANNY A. MATEO **Member**

WAYNE K. NISHIKI **Vice-Chair**

MICHAEL J. MOLINA **Member**

ROBERT CARROLL **Member**

JOSEPH PONTANILLA **Member**

JO ANNE JOHNSON **Member**

CHARMAINE TAVARES **Member**

DAIN P. KANE **Member**