

COUNCIL OF THE COUNTY OF MAUI

PARKS AND AGRICULTURE COMMITTEE

November 21, 2003

Committee

Report No. 03-144

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

Chair and Members:

Your Parks and Agriculture Committee, having met on November 6, 2003, makes reference to a Miscellaneous Communication dated September 23, 2003, from the County Clerk, referring the matter relating to an appeals process for Chapter 5.24, Maui County Code (Committee Report No. 03-104, as amended).

Your Committee notes that Committee Report No. 03-104, as amended, recommended passage on first reading of a proposed bill entitled "A BILL FOR AN ORDINANCE REPEALING CHAPTER 5.24, MAUI COUNTY CODE, PERTAINING TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS, AND AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO RECREATIONAL AREA REGULATIONS". The purpose of the bill is to repeal Chapter 5.24, Maui County Code (MCC), and amend Chapter 13.04, MCC, by: (1) adding a new article relating to the conduct of ocean recreational activity businesses; and (2) transferring the administration of ocean recreational activity permits from the Department of Finance to the Department of Parks and Recreation.

Your Committee further notes that Committee Report No. 03-104, as amended, referred the following to your Committee: (1) matter relating to an appeals process for Chapter 5.24, MCC, to address concerns raised by the Department of Finance and the ocean recreational activity industry for the interim until Chapter 5.24 is repealed on June 30, 2004; (2) matter relating to penalties in Chapter 13.04, MCC; and (3) matter relating to beach parks where ocean recreational activities are prohibited in Section 5.24.040, MCC.

At its meeting of September 19, 2003, the Council adopted Committee Report No. 03-104, as amended.

By correspondence dated October 30, 2003, your Committee's Chair transmitted a draft bill entitled "A BILL FOR AN ORDINANCE TO AMEND CHAPTER 5.24, MAUI COUNTY CODE, TO AUTHORIZE APPEALS RELATING

COUNCIL OF THE COUNTY OF MAUI

PARKS AND AGRICULTURE COMMITTEE

November 21, 2003
Page 2

Committee
Report No. 03-144

TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS". The purpose of the draft bill is to amend Chapter 5.24, MCC, to authorize the Board of Variances and Appeals (BVA) to consider appeals of decisions by the Director of Finance relating to ocean recreational activity business permits.

At its meeting, your Committee met with the Director of Finance, a Planner from the Department of Planning, and a Deputy Corporation Counsel.

The Director of Finance stated that his Department supports the passage of the draft bill.

The Planner explained that the rules of the BVA include appeals relating to building, subdivision, and zoning ordinances (Chapters 16, 18 and 19, MCC). She questioned whether the BVA could hear appeals relating to other areas.

The Deputy Corporation Counsel stated that Subsection 8-8.7(3) of the Charter of the County of Maui authorizes the BVA to "Hear and determine all other matters which the board may be required to pass on pursuant to ordinances".

Your Committee requested that the Department of the Corporation Counsel revise the draft bill to add to the proposed Subsection 5.24.100(C) standards that the BVA shall consider when reviewing an appeal.

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

Your Committee is in receipt of a revised proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 5.24, MAUI COUNTY CODE, TO AUTHORIZE APPEALS RELATING TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS", approved as to form and legality by the Department of the Corporation Counsel. The revised proposed bill incorporates the changes requested by your Committee regarding the standards that the BVA shall consider when reviewing an appeal. Such standards shall be:

1. Based on a clearly erroneous finding of material fact or erroneous application of the law; or

COUNCIL OF THE COUNTY OF MAUI

PARKS AND AGRICULTURE COMMITTEE

November 21, 2003
Page 3

Committee
Report No. 03-144

2. Arbitrary and capricious in its application; or
3. A clearly unwarranted abuse of discretion; and
4. A reversal or modification of the decision or order will not jeopardize life, limb, or property.

The Department of the Corporation Counsel also made other nonsubstantive changes.

Your Parks and Agriculture Committee RECOMMENDS the following:

1. That Bill No. _____ (2003), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 5.24, MAUI COUNTY CODE, TO AUTHORIZE APPEALS RELATING TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS" 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.

COUNCIL OF THE COUNTY OF MAUI
PARKS AND AGRICULTURE COMMITTEE

November 21, 2003
Page 4

Committee
Report No. 03-144

JO ANNE JOHNSON Chair

JOSEPH PONTANILLA Member

ROBERT CARROLL Vice-Chair

CHARMAINE TAVARES Member

MICHAEL J. MOLINA Member