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There are two primary issues this body should have on its mind in deciding 111's fate.

Issue 1: Does Bill 111 respect and incorporate the holdings of *Sonia Davis v. County of Maui*, (HI Sup. Ct. March 5, 2024)? *i.e.* Does it meet the constitutional standards the HI Supreme Court spelled out in that decision? It clearly does not. In fact, 111 is in direct conflict with one of the primary holdings of the Supreme Court.

Issue 2: Will 111's passage therefore create an increased number of contested case hearings and general litigation, at great cost to the county? Yes it will.

Why so?

The 2 primary holdings of *Sonia Davis*:

1. The personal possessions of homeless people (including tents, cars, and medications) are protected by the 5th Amendment of the HI State Constitution *even when they are kept in a public space*. P. 32.

County argued that people whose items are located on public land no longer have a protected property interest and therefore don't need any procedural protections at all. Pp. 11, 15, 20.

Sonia Davis Court rejected this argument, citing with approval *Lavan v. City of Los Angeles* involving items on public parkways and sidewalks (p. 30-31) Also citing with approval federal district court decisions within the 9th Circuit the held that "homeless people retain a property interest in tents, tarps, medications, blankets. . . *even when these possessions are kept in a public place.*" *Sonia Davis*, p. 32, n. 3. Also affirming Circuit/trial court's finding that "personal property does not loose protection because it is on public property". P. 15.

2. If the County wishes to seize, impound, and have the option of destroying property, then due process requires that "procedural protections" be put in place; specifically there must be notice and an opportunity to be heard at a meaningful time and in a meaningful manner. To be adequate, the notice must have two components: 1) Notice of impending deprivation/seizure; and 2) Notice of *procedures available for challenging that action*. Pp. 32-33; 34. "In this [*Sonia Davis*] case, the Notice to Vacate contained no information as to how its recipients could challenge the proposed action. Therefore, plaintiffs received deficient notice". P. 34.

Turning to 111:

111 ignores the HI Supreme Court's definition of personal property (that deserves procedural protection). In direct defiance of that ruling, proposed Chapter 9.37.40 of the new law re-labels any personal property that is located on a sidewalk or in a county park as an "impediment". This re-labeling requires no showing that anything *actually* impedes any public access. It's simply based on where the personal property is located. This re-labeling specifically includes "tents". Proposed chapter 9.37.40, which deals with removing this new class of "impediments", says that no notice of any kind at any stage of the seizure, impoundment or destruction is required. *Immediate* removal without notice is allowed. All this can be accomplished on the unilateral declaration of the police chief or fire chief. [Apples/Noni fruit analogy]

Does 111 define "personal property", the subject of the regulatory scheme? No.

e.g. 9.37.080 C. "The County must take reasonable steps to segregate personal property from material that is not personal property" (Ripe for arbitrary designations/deprivations/seizures) [Drones Near Airport]

Does 111 create any procedures allowing one to challenge a proposed deprivation/seizure? A: No.

Does 111 require notice to property owners of how they can contest or challenge a planned deprivation of property? (e.g. any requirement in 111 of giving information on who to contact if one wishes to challenge a proposed sweep?) A: No. Does 111 even acknowledge the right to contest/challenge the seizure, impoundment, and destruction of property? A: No.

Conclusion:

Ignoring precedent won't make it go away. Codifying (in an ordinance) arguments that the HI Supreme Court already fully considered and flatly rejected will invite litigation, not avoid it.

"The integrity and strength of a nation is determined by how well it treats its most marginalized citizens". Even though 111 has some commendable components involving community outreach, and even though it proports, in its preamble, to hold dear the property interests of the homeless, in reality, it sidesteps the HI Supreme Court's recent rulings. It represents a serious whiplash to the backs of the homeless, and it should be stopped in its tracks.

WASSP Committee

From: Lisa Darcy <lisa@shareyourmana.org>
Sent: Monday, December 2, 2024 8:56 AM
To: WASSP Committee
Subject: Testimony Dec 2, 2024 Bill 111

You don't often get email from lisa@shareyourmana.org. [Learn why this is important](#)

Aloha Committee Chair and members,

For immediate consideration:

BILL 111 (2024), TO ESTABLISH PROCEDURES FOR THE REMOVAL AND STORAGE OF PERSONAL PROPERTY IN PUBLIC PLACES AND A RIGHT TO SHELTER (WASSP-13):

In order to stop moving this problem around, all financial resources need to be focused on actions which are proven to assist lifting those out of Maui County's system generated circumstances. While I recognize the intent of Bill 111 comes from a place of concern and this is the basis for noble change, because the below answers have not been answered and have not influenced the structure/context of this evolution, the below questions need to be answered/incorporated before this Bill 111 moves out of committee. If they are not answered, AGAIN we simply push the problem onto the next group to figure out. As established in the successful argument by the ACLU HI at the Hawai'i Supreme Court last year in [Davis vs Bissen](#) for the removal of personal property and procedural deficits, the new version of Bill 111 continues allows for the violation of basic human and civil rights which the Justices did acknowledge in the County's disregard of [Ke Kānāwai Māmalahoe](#).

- A. How does Maui county assess the efficacy of these actions? Where are the public reports to demonstrate how effective the methods used in sweeps are or are not?
How much is spent by the County each year on these actions including # of people housed or forced to relocate?
How many staff does it take? How many Department heads and other nonprofit staff members are involved?
How many county and nonprofit agencies are involved and why don't they work to coordinate each time?
What is the amount spent on outreach workers vs police and sheriff presence?
What is the smoothest most effective, efficient method of housing people?
- B. Why isn't the county or the Council or the Maui Homeless Alliance focusing on:
 - 1. The FACT that there is no available safe living/sleeping spaces? Period. Oahu has broad diversity in their approaches to exiting this system. Maui continues to be intentionally ignored.
 - 2. The actual methods to house people? The County deemed the pallet housing project during Covid as a success and yet it was removed and never set up again. Why, when there has been no increase in sheltering beds/spaces (since the fires a decrease) has the county refused to put these funds into evidence-based methods which were proven to be successful? Why are they continuing to engage in harmful practices instead?

- C. The National Center for Disease Control - CDC has for years reported on the harm of sweeps, there is no evidence these actions do more good than harm. There is evidence of the harm they cause, by breaking up support networks, interrupting agency connections, reducing the amount of community support such as food delivery and health and hygiene assistance which deters hospital visits, and the needed sense of routine which guides our every day. There is no evidence these aggressive interactions produce successful housing connections as they were originally designed.
- D. FYI - designed under the Arakawa administration with leadership from every department head and a representative from most of the active Maui Homeless Alliance HUD funded agencies in the county over the course of about 8 meetings, some several hours in length, sweeps started over 10 years ago. I participated I believe in all but one and attended and documented my first sweep on Baldwin beach in 2012.
- E. The County has spent years breaking up “encampments” and scattering people. No resources have been spent to determine where people are scattered to and whether they will be in more danger than previously noted. In the evolution of Bill 111, it notes and encampment of 5 or more. That gives the county permission to wipe out anyone who is in a group of 4 or less with no paper trail or designated supports. The Maui Homeless Alliance has not addressed one of these issues in years. Evidence shows people who congregate together are able to share resources and improve stability. The Maui Homeless Alliance agencies are receiving funds while actively supporting practices which the Department of Housing and Urban Development openly advise against...with no other alternatives established.
- F. When we say “The County” it defers any responsibility that there is any one person who is making these decisions, when indeed the buck does stop somewhere. Where is the Director of the Human Concerns Department on this? Why is the Director and the numerous staff not fighting for the rights and safety of these residents? Why do they never show up when invited to attend sweeps either before or during or after? Why are they not considered beloved and respected for supporting the health and safety of all residents?

Bottom line is that this Bill attempts to address a much broader and complicated problem which plagues and taxes ALL of our resources unnecessarily. Maui county needs to have been setting up culturally based safe sleeping options a decade ago and now continues to turn a blind eye the dangerous and violent actions normalized in the county and agency neglect and processes. This Bill eliminates protections, it does not increase them. Keep it in committee or kill the bill. Moving it forward will cost us in more lives lost unnecessarily and a far greater financial burden to continue to bear.

Today is a new day. If you want a different result, try something different. Share Your Mana is here to guide new procedures and processes which strengthen the individual and the community.

Mahalo,

Lisa Seikai Darcy

Share Your Mana