

COUNCIL OF THE COUNTY OF MAUI
INFRASTRUCTURE AND
ENVIRONMENTAL MANAGEMENT
COMMITTEE

December 18, 2015

Committee
Report No. _____

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

Chair and Members:

Your Infrastructure and Environmental Management Committee, having met on March 2, 2015, and December 1, 2015, makes reference to the following:

1. County Communication 13-34, from Councilmember Michael P. Victorino, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND SECTION 3.44.015, MAUI COUNTY CODE, RELATING TO ACQUISITION AND DISPOSITION OF REAL PROPERTY."

The purpose of the proposed bill is to allow the Director of Public Works to accept conveyances of certain road-widening lots and related easements to the County.

2. County Communication 14-187, from the Director of Public Works, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.44, MAUI COUNTY CODE, RELATING TO ACCEPTING PROPERTY FOR INFRASTRUCTURE."

The purpose of the proposed bill is to (1) increase the minimum purchase price for real property acquisitions that require Council approval; (2) allow the Director of Public Works to accept conveyances of certain real property for infrastructure purposes; and (3) waive the appraisal of real property acquired or exchanged for infrastructure purposes.

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Your Committee notes the Council's Infrastructure and Environmental Management Committee (2013-2014 Council term) met on July 22, 2014, and December 5, 2014.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed bill, entitled "A BILL FOR AN ORDINANCE TO AMEND CHAPTER 3.44, MAUI COUNTY CODE, PERTAINING TO THE ACQUISITION AND DISPOSITION OF REAL PROPERTY." The revised proposed bill incorporates revisions that clarify the Director of Finance may acquire or accept conveyances of real property and easements for infrastructure purposes, and requires notification to the Council when infrastructure-related acquisitions, conveyances, and exchanges that do not require Council approval are made.

The Director of Public Works informed your Committee conveyances processed by the Department are typically requirements of development entitlements awarded by the County or are necessary for improvements to County infrastructure. Council approval is required for the acceptance of any conveyance, except those conveyances relating to the public water system.

Obtaining Council approval prolongs the acceptance of a conveyance and increases demands on staff resources. The revised proposed bill seeks to streamline the conveyance process by allowing the Director of Finance to accept conveyances relating to the County's roadways and wastewater system.

The Director said acquisitions and exchanges of infrastructure-related property often involve small areas of land with minimal value. In most cases, the cost of processing the acquisition or exchange exceeds the value of the property.

The revised proposed bill seeks to reduce processing costs by allowing the Director of Finance to waive appraisals for acquisitions of

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property with an assessed value of \$3,500 or less and for exchanges of infrastructure-related property with an assessed value of \$250,000 or less.

The Director stated capital improvement projects can require last-minute acquisitions to correct issues with a project site. Acquisitions with a purchase price of \$100,000 or less can be expedited because Council approval is not required. However, the \$100,000 limit was set in 1986 and has not been adjusted for inflation or Maui County's current real estate market.

The revised proposed bill incorporates inflationary adjustments by increasing the purchase price limit to \$250,000. The proposed bill also applies such inflationary adjustments to the purchase price limit for certain housing units by increasing the limit from \$150,000 to \$500,000.

Your Committee expressed a desire to retain oversight over acquisitions, conveyances, and exchanges.

The Director stated the revised proposed bill requires notification to the Council within five days whenever an acquisition or conveyance that does not require Council approval is made. In addition, the Council will receive annual reports of all acquisitions, conveyances, and exchanges made pursuant to Chapter 3.44, Maui County Code.

Your Committee voted 4-1 to recommend passage of the revised proposed bill on first reading and filing of the communications. Committee Chair Cochran and members Baisa, Carroll, and Crivello voted "aye." Committee member Guzman voted "no." Committee Vice-Chair Hokama and member White were excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

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Your Infrastructure and Environmental Management Committee
RECOMMENDS the following:

1. That Bill _____ (2015), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND CHAPTER 3.44, MAUI COUNTY CODE, PERTAINING TO THE ACQUISITION AND DISPOSITION OF REAL PROPERTY," be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That County Communication 13-34 be FILED; and
3. That County Communication 14-187 be FILED.

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This report is submitted in accordance with Rule 8 of the Rules of the Council.



ELLE COCHRAN, Chair

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ORDINANCE NO. _____

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 3.44,
MAUI COUNTY CODE, PERTAINING TO
THE ACQUISITION AND DISPOSITION OF REAL PROPERTY

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose and intent. The purpose of this ordinance is to improve the County's real property acquisition process by granting the administration greater authority to acquire real property and easements. This ordinance authorizes the administration to acquire, without Council approval, the following: (1) real property for a purchase price that does not exceed \$250,000; (2) certain housing units for a purchase price of \$500,000 or less; and (3) infrastructure-related real property and easements.

SECTION 2. Chapter 3.44, Maui County Code, is amended to read as follows:

"Chapter 3.44

ACQUISITION AND DISPOSITION OF REAL PROPERTY

Sections:

- 3.44.010 Definitions.
- 3.44.015 Acquisition of real property.
- 3.44.020 Disposition by council.
- 3.44.030 [Auctions.] Disposition by auction.
- 3.44.040 [Sealed bids.] Disposition by sealed bids.
- 3.44.050 [Negotiation.] Disposition by negotiation.
- 3.44.060 [Exchanges.] Exchange of real property.
- 3.44.070 Appraisals for real property dispositions.

3.44.010 Definitions. As used in this chapter, unless the context clearly requires otherwise[,]:

["real property"] "Real property" means lands and structures or fixtures [permanently] attached thereto.

"Director" means the director of finance.

3.44.015 Acquisition of real property. A. Except as otherwise provided for by law, any acquisition of real property by the County, whether by agreement, purchase, exchange, gift, devise, eminent domain or otherwise, shall be accomplished in accordance with the provisions of this chapter.

B. The director [of finance] may negotiate for the purchase of real property for purposes in the public interest.

1. In negotiating the purchase price, the director [of finance] shall obtain an appraisal by a disinterested appraiser contracted for by the County, or accept an appraisal furnished by the prospective seller [which] that has been reviewed by an appraiser employed by the County.

2. Notwithstanding the foregoing provisions of this subsection, the director may waive the appraisal when the real property's assessed value is \$3,750 or less. If an appraisal is waived pursuant to this paragraph, the purchase price shall not exceed 200 percent of the assessed value or \$7,500, whichever is lower.

C. [In] The director may acquire property; except that in the case of real property with a purchase price that exceeds [\$100,000,] \$250,000, the [County] council shall authorize the acquisition by [the passage of a resolution, approved by a majority of its members; provided that,] resolution; except that council approval is not required for the purchase of housing units for [less than \$150,000] \$500,000 or less pursuant to repurchase options and other buy-back provisions granted to the County as follows:

1. Deed restriction in a County housing project that [was developed (] secured final subdivision approval or certificate of occupancy)] prior to January 1, 1999[; and].

2. Agreement that was executed by and between the County and the developer of a housing project prior to January 1, 1999 under a County housing program.

[C. The County council may accept] D. The council may, by resolution, authorize the acceptance of gifts or donations of real property or any interest in real property [by the passage of a resolution, approved by a majority of its members.], including any conveyance described in subsection (F) that is rejected by the director.

[D. The director of water supply may accept the conveyance of real property interests to the County of Maui of water storage tank lots, water reservoir sites, and easements for waterline and related improvements when such a conveyance is neither a gift or donation, but is required by the department of water supply. The director of public works and the director of finance shall review and approve such a conveyance prior to acceptance by the director of water supply. In the event the director of water supply does not accept such a conveyance within ninety days of its submittal, the conveyance shall be immediately transmitted to the council with the appropriate resolution and an explanation of its rejection for consideration under subsection (C). The director of water supply shall submit quarterly reports to the council of all conveyances accepted pursuant to this section no later than thirty days after the end of each quarter.]

E. The [County] council may authorize proceedings in eminent domain by [the passage of a resolution approved by a majority of its members.] resolution. Any proceedings so authorized [shall be] are subject to the requirements of chapter 101, Hawaii Revised Statutes.

F. The director [of parks and recreation] may accept the conveyance of real property [interests from a subdivider to the County of Maui when the conveyance] or easements to the County without council approval if any one of the following applies:

1. The conveyance is approved by the director of environmental management, and is part of a capital improvement project by the department of environmental management or is necessary for improvement to a publicly owned treatment works, as defined in section 14.19A.040.

2. The conveyance is approved by the director of water supply, and is part of a capital improvement project by the department of water supply or is necessary for improvement to a public water system, as defined in section 14.01.040.

3. The conveyance is approved by the director of parks and recreation, and is made in accordance with a park assessment agreement approved by council resolution pursuant to section 18.16.320.

4. The conveyance is approved by the director of public works, and is part of a capital improvement project by the department of public works; involves a road lot, road widening lot, remnant lot, or easement that complies with title 16 or title 18; or is required by and complies with title 16 or title 18; except that council approval is required when the conveyance is not compliant with title 16 or title 18.

G. The director shall not acquire, or accept any conveyance of, any real property or easement pursuant to this section unless:

1. The corporation counsel reviews and approves as to form and legality the conveyance documents.

2. The director of public works reviews and approves the metes and bounds description of the real property or easement being acquired or conveyed.

H. The director shall notify the council in writing of any acquisition or conveyance made pursuant to this section that does not require council approval. The notice shall include a map of the real property or easement acquired or conveyed, and shall be submitted no later than five days after the date the acquisition or conveyance is completed.

I. No later than thirty days after the end of each calendar year, the director shall submit to the council an annual report of all acquisitions made, and conveyances accepted, pursuant to this section.

3.44.020 Disposition by council. A. Except as otherwise provided by law and subject to other provisions of this chapter, the [County] council may, by resolution, [approved by a majority of its members, dispose] authorize the disposition of real property in fee simple or easements.

B. The [County] council may hold a public hearing prior to the [passage] adoption of any [resolutions] resolution authorizing the disposition of real property in fee simple under this chapter.

3.44.030 [Auctions.] Disposition by auction. A. [Unless the County council finds that it is in the public interest to dispose the real property in some other manner, and passes a resolution to that effect approved by two-thirds of its members, all disposition] Disposition of real property shall be made at public auction, after public notice [as provided in subsection B of this section.] pursuant to subsection (C), unless the council finds that it is in the public interest to dispose of the real property in another manner and adopts a resolution to that effect, approved by two-thirds of its members. [All such auctions shall be held at the offices of the director of finance of the County or at such other place as is convenient in the district in which the real property is located, as set by the finance director and]

B. The auction shall be conducted by the [finance] director or [by his] an authorized representative[.] and held at the director's office or at a site designated by the director that is located in the community plan area where the real property is situated and accessible by the public.

[B.] C. Notice of any proposed disposition by [auctions] auction shall be published at least once in each of [three] two successive weeks in a newspaper of general circulation in the County, the last publication to be not less than five days before the date of the auction. Notice of the auction shall contain the following:

1. Time and place of auction[;].
2. General description of the real property, including the address and the tax map key[;].
3. Specific use for which the disposition is intended, if any[; and].
4. Upset price.

[C.] D. The map showing the metes and bounds description and the classification of the land shall be kept in the office of the [finance] director and shall be open for inspection at all reasonable hours.

3.44.040 [Sealed bids.] Disposition by sealed bids. A. Real property may be sold by a call for sealed bids[, upon a finding by the County council] if the council finds that disposition in such a manner is in the public interest and [the passage of] adopts a resolution to that effect, [is] approved by two-thirds of its members. [The finance director shall provide notice by publication for a call for bids as provided in subsection B of this section.]

B. All bids shall be sealed [and] when delivered to the [finance] director and [shall be] opened by [him] the director at the time and place stated in the [call for bids.] notice published pursuant to subsection (C). The [finance] director may reject any [or all bids] bid and waive any defects [when in his opinion such rejection or waiver will be in the best interest of the public.] if the rejection or waiver is in the public interest.

[B.] C. Notice of any proposed disposition by sealed bids shall be published at least once in each of [three] two successive weeks in a newspaper of general circulation in the County, the last publication to be not less than five days before the date set for the receipt of [proposals.] bids. Notice of [the call for] a proposed disposition by sealed bids shall contain the following:

1. Time and place for opening of the sealed bids[;].
2. General description of the real property, including the address and the tax map key[;].
3. Location where bid forms and instructions for bidders may be secured.

[C.] D. When deemed necessary by the [finance] director, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to a return of their bid deposit when [the finance director has required such.] required by the

director. A successful bidder shall forfeit any bid deposit required by the [finance] director upon failure on [his] the bidder's part to enter into a required contract within ten days after the award.

3.44.050 [Negotiation.] Disposition by negotiation. A. Real property may be sold through negotiation [upon a finding by the County council] if the council finds that disposition in such a manner is in the public interest and [the passage of] adopts a resolution to that effect, [is] approved by two-thirds of its members.

B. After a determination is made to negotiate the disposition, the [finance] director shall:

1. Give public notice of the [county's] County's intention to sell the real property through negotiation, published at least once in each of [three] two successive weeks in a newspaper of general circulation in the County. [Such] The notice shall invite sealed proposals and state [in general terms,] the size, location, and prices of real property to be sold, the terms of sale, and the last date [on which] that applications will be received by the [finance director, which date shall not be less than thirty days after the last date of publication of the notice.] director. Final publication of the notice shall occur not less than thirty days prior to the last date that applications will be received by the director. The notice shall also state the times and places [at which] that interested persons may obtain more detailed information with respect to the sale [may be secured by interested persons;].

2. Establish reasonable [written] criteria for the selection of the buyer [; which criteria] that shall be available for [study] review by the public at the [offices of the director of finance] director's office at the time public notice is given pursuant to [subsection B1 of this section;] subsection (B)(1).

3. Determine the applicants who meet the criteria for selection and notify all applicants of [his] the determination. [Any applicant may examine the] The basis of the determination[, which] shall be made in writing[.] and available for review by an applicant at the director's office. Any applicant may appeal the [finance director's] determination to the council [of the County] by notifying the council [chairman] chair, in writing, of objections, and the grounds therefor, [in writing, within twenty days of] not later than the twentieth day following the date of the applicant's receipt of the notice. Upon receipt of a timely objection [within the time period identified above], the [chairman of the] council chair shall set a hearing date for the council to hear and determine the appeal from the [finance] director's decision.

C. If only one applicant meets the criteria for selection of the buyer, the [finance director may, after notice as provided in subsection B3 of this section,] director may dispose the real property by negotiation[.] after giving notice pursuant to subsection (B)(3). If two or more applicants meet the criteria for selection of the buyer, the [finance] director shall select the buyer who submits the highest offer contained in the sealed [bid] proposal deposited with the [finance] director.

3.44.060 [Exchanges.] Exchange of real property. A. No [exchanges] exchange of real property for private property shall be made [except upon a finding by], unless the council finds that the purpose of the exchange is in the public interest and [the passage of] adopts a resolution to that effect [is], approved by two-thirds of its members. Such [purposes] public interests may include [, but not by way of limitation]:

1. Consolidation of holdings of real property[;].
2. Realigning boundaries of real property[; or].
3. Acquisition of adequate access for landlocked real property.

B. Exchanges shall be effective without public auction. Public notice of [any proposed] an exchange shall be published at least once in [each of three] two successive weeks in a newspaper of general circulation in the County. The notice shall contain a general description of the real property proposed to be disposed, including the size, location, address and tax map key.

C. Notwithstanding the foregoing provisions of this section, the director may exchange real property for private property without council approval and without public notice when the assessed value of the private property is \$250,000 or less and the exchange is necessary for road-related, bridge-related, or drainage-related improvements.

D. The director shall notify the council in writing of any exchange made pursuant to subsection (C) no later than five days after the date the exchange is completed. The notice shall include the basis for the exchange and a map of the exchanged property.

3.44.070 Appraisals for real property dispositions. A. An appraisal is required for any sale or other disposition of real property in fee simple, unless waiver of such appraisal is authorized by council resolution[.]; except the director may waive the appraisal for an exchange made pursuant to subsection 3.44.060(C).

B. [The appraisal of real property for sale at public auction or by sealed bids for the determination of the upset price may be] Real property disposed of by public auction or sealed bids shall be sold at a price not less than the fair market value determined by an

appraisal performed by an appraiser employed by the County[.] or by one, but not more than three, disinterested appraisers [whose services shall be] contracted for by the County[.]; except the director may establish an upset price at less than the fair market value after notifying the council in writing of the basis for establishing such an upset price. [No such real property shall be sold for a sum less than the value fixed by such appraisal; provided, that for any sale at public auction or by sealed bids, the finance director may establish the upset sale at less than the appraised value and the real property may be sold at that price.]

C. [The sale of real] Real property [to be] disposed of by [negotiations] negotiation shall be [no] sold at a price not less than the fair market value determined by an appraiser [whose services shall be] contracted for by the County.

D. Real property disposed of by exchange shall be exchanged for property [of not less than equal value. Such property for which the real property is exchanged may be] that is of reasonably equivalent value, as determined by the director, and is realty or a combination of realty and payment. The value of all real [estate] property involved in [the transaction, both the county's and the other party's,] an exchange shall be determined by an appraiser [whose services shall be] contracted for by the County.

E. Whenever more than one appraiser is appointed, each shall prepare and submit an independent appraisal. All appraisal reports shall be available for study by the public."

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



RICHELLE M. THOMSON
Department of the Corporation Counsel
County of Maui
iem:misc:060abill02:jkm
2014-3081