

COUNCIL OF THE COUNTY OF MAUI

# AGRICULTURE AND PUBLIC TRUST COMMITTEE

August 5, 2022

**Committee  
Report No. \_\_\_\_\_**

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

Chair and Members:

Your Agriculture and Public Trust Committee, having met on July 12, 2022, makes reference to Bill 101 (2022) entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 16.26B.105, MAUI COUNTY CODE, RELATING TO FENCE HEIGHTS FOR AXIS DEER CONTROL."

Bill 101's purpose is to amend Section 16.26B.105, Maui County Code, to allow for the construction and existing use of fences over seven feet in height without a building permit for axis deer management.

Your Committee notes that fences exceeding seven feet in height erected under a Governor's Emergency Proclamation may be noncompliant with Maui County Code at the end of the declared emergency period.

Your Committee also notes the State of Hawai'i Department of Land and Natural Resources recommends fences of at least eight feet in height as an effective deterrent to axis deer incursion.

Your Committee further notes there are an estimated 60,000 axis deer in Maui County and axis deer on Moloka'i are on pace to outnumber residents ten to one.

Your Committee discussed the benefits of allowing fences of up to ten feet in height to protect agricultural operations from extensive and costly damage to pastures, native vegetation, irrigation, animals, and crops.

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Your Committee also discussed the potential negative ramifications of erecting or maintaining fences for reasons unrelated to the intent of Bill 101, and the potential proliferation of fences throughout the County.

The Deputy Managing Director said the Administration supported Bill 101's intent, but expressed concerns about unintended consequences of fencing, and negative impacts on neighboring properties, view planes, air flows, and flood plain management. He also said Bill 101 lacks specific language as to what qualifies as "agricultural operations" and the types of fencing allowed.

The Director of Public Works said fences should allow air and wind flow to avoid possible injury or damage, consistent with the intent of Title 16 to promote public health and safety.

He also said the Department would respond to fencing issues under a Request For Service and would involve the Department of Planning for verification of agricultural operations.

A representative from the Department of Planning said fences should allow adequate passage of air and light and recommended using the definition for "fence" found in Title 19, which your Committee supported. He also said that zoning regulations such as height limits within setbacks should also be considered.

Your Committee noted an existing State exemption for County building permits for agricultural structures that includes fencing up to ten feet in height. However, this exemption requires a Declaration of Compliance form which poses an administrative hurdle for applicants and the Department of Public Works.

Your Committee also noted that fences constituted axis deer mitigation, not management, and more effective measures would be needed to control axis deer populations.

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Your Committee further amended Bill 101 to include the protection of “conservation areas, cultural sites, and public roadways” as allowable exemptions.

Your Committee voted 6-0 to recommend passage of Bill 101, CD1 (2022) on first reading. Committee Chair Sinenci, Vice-Chair Johnson, and members King, Molina, Paltin, and Rawlins-Fernandez voted “aye.” Committee member Lee was excused.

Your Committee is in receipt of Bill 101, CD1 (2022), approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee’s revisions and nonsubstantive revisions.

Your Agriculture and Public Trust Committee RECOMMENDS that Bill 101, CD1 (2022), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING SECTION 16.26B.105, MAUI COUNTY CODE, RELATING TO FENCE HEIGHTS FOR AXIS DEER CONTROL,” be PASSED ON FIRST READING and be ORDERED TO PRINT.

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

  
\_\_\_\_\_  
SHANE M. SINENCI, Chair

ORDINANCE NO. \_\_\_\_\_

BILL NO. 101, CD1 (2022)

A BILL FOR AN ORDINANCE AMENDING SECTION 16.26B.105, MAUI COUNTY CODE, RELATING TO FENCE HEIGHTS FOR AXIS DEER CONTROL

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

SECTION 1. The Council finds that measures are needed to protect local agricultural operations from damages caused by axis deer, including damages to pasture forage, native vegetation, and crops. The Council also finds the State of Hawai'i Department of Land and Natural Resources recommends fencing as one of the most effective ways to manage axis deer populations, and further recommends fences of at least eight feet in height. Therefore, the Council finds that fences over seven feet in height should be permitted for agricultural and axis deer management purposes without a building permit.

SECTION 2. Section 16.26B.105, Maui County Code, is amended by amending subsection 105.2 to read as follows:

**“105.2 Work exempt from permit.** Exemptions from permit requirements of this code [shall not be deemed to] do not grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Building permits [shall] are not [be] required for the following:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed [120] one hundred twenty square feet (11 m<sup>2</sup>).

2. Fences and walls not over [7] seven feet (2133.6 mm) high when measured from the lowest grade to the top of the fence or wall[.]; and fences, as defined in section

19.04.040, not over ten feet high when measured from the lowest grade to the top of the fence and when used for the purpose of protecting agricultural operations, conservation areas, cultural sites, and public roadways from axis deer.

3. Oil derricks.

4. Retaining walls which do not have more than three feet of retainage between the finish grade on each side of the wall and not greater than [7] seven feet in total height measured from the lowest grade to the top of the wall, unless supporting a surcharge or impounding Class I, II or III-A liquids.

5. Water tanks supported directly on grade if the capacity does not exceed [15,000] fifteen thousand gallons (56781 L) and the ratio of height to diameter or width does not exceed 1:2.

6. Sidewalks and driveways not more than [30] thirty inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.

7. Painting, papering, tiling, carpeting, cabinets, counter tops, installation of shelves, and similar finish work.

8. Temporary motion picture, television, and theater stage sets and scenery and temporary exhibits and other related structures as approved by the building official.

9. Prefabricated swimming pools accessory to a Group R-3 occupancy in which the pool walls are entirely above the adjacent grade and do not exceed [5,000] five thousand gallons (18925 L).

10. Detached shade cloth structures constructed for nursery or agricultural purposes within the [county] County agricultural districts, not including service systems.

11. Playground equipment, including [but not limited to,] swings, merry-go-rounds, slides, jungle gyms, goals, chain-link fences, baseball backstops, dugouts, and other recreational structures as determined by the building official.

12. Window awnings supported by an exterior wall that do not project more than [54] fifty-four inches (1372 mm) from the exterior wall and do not require additional support of Group R-3 and Group U occupancies.

13. Nonfixed and movable fixtures, cases, racks, counters and partitions not over [5] five feet [9] nine inches (1753 mm) in height.

14. Work performed for any federal or state governmental agency when exemption is specifically requested in writing by that governmental agency and approved by the building official.



15. Site work on property, including [but not limited to,] sidewalks, curbs, parking lots, planter boxes, and water features less than [24] twenty-four inches in depth.

16. One-story detached agricultural buildings [200] two hundred square feet or less in floor area within the [county] County agricultural and rural districts.

17. Reroofing of Group [R, Division 3] R-3 one and two family dwellings, and Group U occupancies accessory to these dwellings.

18. Street light standards, utility poles, not including wireless telecommunication towers, television antennas, or satellite dishes.

19. Repairs which involve only the replacement of component parts or existing work with similar materials for the purpose of maintenance and do not cost over \$5,000 per structure in any [12-month] twelve-month period.

20. Television and radio antennas and solar panels attached to roofs of Group [R, Division 3] R-3 occupancy one and two family dwellings and Group U occupancy.

21. Temporary construction toolsheds, fences, and jobsite offices on the same property where construction is occurring under a valid building or grading permit.

22. Construction equipment used for work authorized by a valid permit or for work exempted from permit requirements.

23. Temporary tents or other coverings for uses other than private family parties or camping, provided that the temporary tents and other coverings [shall be:] are:

[(1)] a. Removed daily and erected only between the hours of [six] 6:00 a.m. to [six] 6:00 p.m., or for [96] ninety-six hours for events sponsored by an eleemosynary organization approved by the building official; or

b. Erected on property owned by or under the control of the County and administered by the department of parks and recreation and removed within seventy-two hours of the time of the installation of the tents or other coverings.

24. Work located in a right-of-way maintained by any federal, state, or county governmental agency.

25. Work by an electric or telecommunication utility operating under a franchise or charter granted by the State of [Hawaii,] Hawai'i; provided, that the work which is not regulated by the [Public Utilities Commission] public utilities commission of the State of [Hawaii shall] Hawai'i will be subject to this code. If the utility claims an exemption under

this provision, the utility [shall have] has the burden of demonstrating to the satisfaction of the building official that the work is regulated by the [Public Utilities Commission.] public utilities commission.

26. Electrical, plumbing, and mechanical equipment.

27. Motor vehicles with a valid certificate of registration.

28. Drainage structures.

[Exemption from the building permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of this code or any other laws or ordinances of this jurisdiction.]”

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 takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:



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CHRISTIE M. TRENHOLME  
Deputy Corporation Counsel  
Department of the Corporation Counsel  
County of Maui

LF2021-0010  
APT-65 2022-07-27 Ord Amd Sec 16.26B.105  
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INTRODUCED BY:

  
SHANE M. SINENCI