

AH Committee

From: Graham Resell <Graham.M.Resell@co.maui.hi.us>
Sent: Wednesday, August 10, 2022 3:35 PM
To: AH Committee
Subject: AH-14(1) Ord Amd Title 9 Property In Public Places
Attachments: AH-14(1) 2022-01-21 RFLS Stewart Bill Amd Title 9.pdf

Please find attached the RFLS relating to the above matter explaining why our office will not be reviewing the proposed ordinance at this time. Please let me know if there are any questions.

Thank you,
Graham

Graham M. Resell
Law Technician
Department of the Corporation Counsel
Telephone: (808)270-1778

RECEIVED

By Dept of the Corporation Counsel at 11:21 am, Jan 21, 2022

REQUEST FOR LEGAL SERVICES

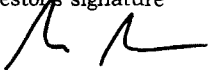
Date: January 20, 2022
From: Gabe Johnson, Chair
Affordable Housing Committee

TRANSMITTAL
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Mimi DesJardins, Esq.

Subject: COMPREHENSIVE AFFORDABLE HOUSING PLAN: RIGHT TO SHELTER (AH 14(1))

Background Data: Please see the attached bill. Please submit the response to ah.committee@mauicounty.us with a reference to AH-14(1).

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Gabe Johnson	Contact Person <u>Alison Stewart or James Forrest</u> (Telephone Extension: 7661 or 7137, respectively)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): _____
REASON: _____

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: MDJ	ASSIGNMENT NO. 2021-0011	BY: jcm
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): Per discussion with OCS, will wait to comment/approve until the comments from the Homelessness Commission are incorporated into the proposed bill.

DEPARTMENT OF THE CORPORATION COUNSEL

Date August 9, 2022

By 

(Rev. 7/03)

ah:ltr:014(1)acc01:jbf

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2022)

A BILL FOR AN ORDINANCE AMENDING TITLE 9, MAUI COUNTY CODE,
TO ESTABLISH PROCEDURES FOR THE REMOVAL AND STORAGE OF
PROPERTY LOCATED IN PUBLIC PLACES AND
A FUNDAMENTAL RIGHT TO SHELTER

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

SECTION 1. Title 9, Maui County Code, is amended by adding a new chapter to be appropriately numbered and read as follows:

“Chapter 9.37

**ESTABLISHING PROCEDURES FOR THE REMOVAL AND
STORAGE OF PROPERTY LOCATED IN PUBLIC PLACES AND
A FUNDAMENTAL RIGHT TO SHELTER**

Sections:

- 9.37.010 Applicability.
- 9.37.020 Intent.
- 9.37.030 Definitions.
- 9.37.040 Removing obstructions and immediate hazard encampments.
- 9.37.050 Encampment removal and notice requirements.
- 9.37.060 Identifying or providing alternative shelter before removing encampments.
- 9.37.070 Outreach for encampment removal.
- 9.37.080 Encampment removal and cleanup.
- 9.37.090 Post-encampment removal notice.
- 9.37.100 Storage of personal property removed from an encampment.
- 9.37.110 Recovering stored personal property.
- 9.37.120 Right to shelter.
- 9.37.130 Budgeting.
- 9.37.140 Administrative rules.

9.37.010 Applicability. This chapter applies to Maui County residents.

9.37.020 Intent. The County confirms the equal worth and dignity of every individual. Protecting our most vulnerable residents is one of the greatest concerns of government and its people. The County recognizes there is a fundamental right to shelter and housing. The purpose and intent of this chapter is to provide the procedures to compassionately relocate people when necessary, including offering access to services and storage of personal property.

9.37.030 Definitions. Whenever used in this chapter, unless a different meaning clearly appears from the context, certain words and terms are defined as follows:

“Crisis intervention team training” means a specialized police curriculum that aims to reduce the risk of serious injury or death during an emergency interaction between persons with behavioral health issues and police officers.

“Encampment” means one or more tents, structures, vehicles, or an assembly of personal property located in an identifiable area on public land, that appears to be used for housing purposes.

“Immediate hazard encampment” means an encampment where people living outdoors are at risk of serious injury or death beyond that caused by increased exposure to the elements or their presence creates a risk of serious injury or death to others, including encampments at highway shoulders, areas exposed to moving vehicles, areas that can only be accessed by crossing driving lanes outside of a legal crosswalk, and landslide or flood-prone areas.

“Obstruction” means tents, personal property, garbage, debris, or other objects related to an encampment that: are in a County park or on a public sidewalk; interfere with the pedestrian or transportation purposes of public rights-of-way; or interfere with areas that are necessary for or essential to the intended use of a public property or facility.

“Outreach provider” means an entity or human service that focuses on supporting houseless individuals. This may include:

- a. Homeless provider case managers.
- b. Substance abuse case managers.
- c. Behavioral health support case managers.
- d. Veterans Affairs case managers.
- e. State department of human services’ benefit, employment, and support services division.
- f. Animal welfare.
- g. Legal Aid Society of Hawaii or other not-for-profit legal association.

- h. State department of human services' child and adolescent mental health division.
- i. State department of education social workers.
- j. All other organizations providing compassionate care to the houseless including individuals, groups, faith-based organizations, and those providing meals, clothing, and other necessities.

“Personal property” means an item that: is reasonably recognizable as belonging to a person; has apparent utility in its present condition and circumstances; and is not hazardous. Examples of personal property include identification, personal papers and documents, tents, bicycles, radios and other electronic equipment, eyeglasses, prescription medications, photographs, jewelry, crutches, wheelchairs, and children’s toys. Personal property does not include building materials such as wood products, metal, pallets, or rigid plastic. When it is unclear whether an item should be considered personal property or some other type of property, the item must be treated as personal property under this chapter.

“Pu‘uhonua” means a temporary place of refuge, sanctuary, and asylum designated by the County, including a safe place where large tents are set up and basic necessities are provided, including showers, bathrooms, garbage removal, animal care, and safe storage of personal property and vehicles. The Pu‘uhonua may be staffed with relevant human services including:

- a. A triage area where individuals are quickly assessed for their most urgent needs.
- b. Medical staff including street medicine providers.
- c. Outreach providers.
- d. Representatives of housing providers to screen, intake, and facilitate unhoused individuals in obtaining appropriate shelter or other housing, including:
 - 1. Homeless shelters.
 - 2. Temporary housing.
 - 3. Behavioral health facilities and services.
 - 4. Domestic violence shelters.
 - 5. Substance abuse treatment.
 - 6. Senior housing.
 - 7. Subsidized housing.

9.37.040 Removing obstructions and immediate hazard encampments. A. Obstructions and immediate hazard encampments may be removed immediately. The storage of personal property must follow the provisions of this chapter.

Sections 9.37.050, 9.37.060, and 9.37.070 do not apply to removing obstructions and immediate hazard encampments.

B. If removal is not commenced within two hours of its discovery, a notice must be affixed as soon as reasonably possible. The notice must state:

1. The date the notice was posted.
2. That the obstruction or immediate hazard encampment must be immediately removed and is subject to removal without further notice.
3. Where any personal property removed will be stored.
4. How any stored personal property may be claimed by its owner.

C. If the obstruction or immediate hazard encampment is determined to be under the control of an individual present, oral notice to immediately remove their personal property must be given to the individual, if reasonably possible.

D. Physical personal property must be removed and stored as provided in section 9.37.100 and may be recovered as provided in section 9.37.110.

E. Garbage, debris, waste, and hazardous items may be immediately removed and disposed of.

F. Upon removing an obstruction or immediate hazard encampment, the County must post a notice as provided in section 9.37.090.

G. The department, or its contractors, storing personal property must notify the department of housing and human concerns of the storage on the same day the personal property is stored. The department of housing and human concerns must post notice of the stored personal property on a designated County website where notices are maintained and available for public inspection.

H. The removal of obstructions and immediate hazard encampments must be video recorded and photographed.

9.37.050 Encampment removal and notice requirements.

A. A notice must be posted on or near each tent, structure, or vehicle that is subject to removal stating:

1. The date the notice was posted.
2. The date and time range the removal is scheduled.
3. Where any personal property removed will be stored.
4. How any stored personal property may be claimed by its owner.

5. Contact information for outreach providers who can assist with shelter alternatives and other services.

B. If individuals are present at the encampment, oral notice must be given, if reasonably possible, that the encampment is subject to removal as provided in the posted notice.

C. The notice must be posted no fewer than forty-five days before an encampment removal and must provide a removal date no more than fifty days after the notice posting date. If the action to physically remove the encampment is not commenced within the removal date and time range provided in the notice, notice of the encampment removal must be reposted before removal may occur. Any removal that was properly commenced during the removal date and time range may be completed.

D. The notice must be printed in Hawaiian, English, Chuukese, Tagalog, Ilocano, Spanish, and any other language that would further the purpose of the notice.

E. Removal of a large encampment may occur over a period of days, so long as each day's operations start during the period identified in the notice.

F. All notices must be video recorded or photographed at the time of posting. Photos of the notices must be uploaded to a designated County website where notices are maintained and available for public inspection.

9.37.060 Identifying or providing alternative shelter before removing encampments. A. Prior to removing an encampment, the County must identify alternative locations for encampment occupants, such as available housing, shelter accommodations with or without day programs, authorized managed encampments or "no-barrier" shelters, temporary Pu'uhonua, or substance abuse or behavioral health support. The alternatives must be available to the encampment occupant starting on the date an encampment removal notice is posted and must continue to be available until the encampment removal is completed. The County, or its designee, must maintain an updated list of alternative shelter locations on the department of housing and human concerns' public website.

9.37.070 Outreach for encampment removal. A. Outreach providers must be notified of and be present at every scheduled encampment removal when available, between the time that notice of removal is posted and the completed removal date, or until their services are no longer required.

B. If the need for a police response arises during an encampment removal, every effort will be made to ensure there is at

least one female police officer responding and that responding police officers are certified in crisis intervention team training.

9.37.080 Encampment removal and cleanup. A. All County personnel, contractors, outreach providers, and other required personnel should be present at the start of an encampment removal and cleanup.

B. New tents, structures, or vehicles that were not previously posted with a notice under this chapter but are in the immediate encampment area may be removed if the tent, structure, or vehicles was placed in the immediate area after notices were posted.

C. The County must take reasonable steps to segregate personal property from material that is not personal property, so long as the segregation does not pose a danger to the individual segregating the personal property from the other material.

D. Personal property must be stored as provided in section 9.37.100 and may be recovered as provided in section 9.37.110.

E. The County may remove and dispose of garbage, debris, waste, hazardous items, and other similar material.

F. Vehicles that are being used as a primary shelter and in the possession of their owner must not be deemed abandoned or derelict. The County must assist in the towing of inoperable vehicles to a previously designated area. All other vehicles should be removed in accordance with sections 10.48.200 and 20.20.060.

9.37.090 Post-encampment removal notice. A. A notice must be prominently posted for a minimum of 10 days at the site where an encampment has been removed and site cleanup has taken place.

B. The notice must state:

1. The date the cleanup was performed.
2. Where any personal property is being stored by the County.
3. How any stored personal property may be claimed by its owner.
4. Contact information for outreach providers who can assist with shelter alternatives and other services.

C. The department organizing the cleanup must, within two business days of the cleanup, send electronic documentation of the cleanup to the department of housing and human concerns in the format required for posting on a designated County website where documentation is maintained and available for public inspection.

9.37.100 Storage of personal property removed from an encampment. A. All personal property that is unable to be moved or stored by its owner must be stored unless disposal of it is allowed under this chapter or it is reasonably expected to become a hazard during storage.

B. Personal property must be stored at a location accessible by public transportation.

C. The County must maintain a log of personal property removed from an encampment. Each item must be kept until the personal property is recovered by its owner or the property is discarded as permitted under this chapter.

D. Personal property that is not recovered after ninety days from and including the day the property was stored may be discarded or donated by the County.

9.37.110 Recovering stored personal property. A. Individuals or authorized agents claiming personal property has been removed from an encampment may contact the County at a designated phone number and email address.

B. Individuals or authorized agents claiming personal property must describe the item with particularity. No identification is required for an individual to recover the property. The log of personal property must indicate who received the recovered property.

C. Personal property may be recovered by the individual or authorized agent at the location where the property is stored.

D. The County may assess a fee for the storage and recovery of personal property. Individuals unable to pay will be provided a form to request a waiver of any fees.

9.37.120 Right to shelter. A. The fundamental human right to shelter is declared to exist in Maui County. This right ensures access to adequate shelter for all County residents. It is the shared obligation of the County and its agencies to respect, protect, and fulfill this right through progressively implemented measures, consistent with available resources, within an aggressive, but reasonable, time frame. This section does not create any liabilities, public or private, or any vested interests, on behalf of any individual or entity as a cause of action against the County.

B. The right to shelter should include:

1. A safe place to sleep and keep one's belongings.
2. An ability to remain with one's partner.
3. An ability to remain with one's pets.
4. Access to services necessary to stabilize one's life and transition into supportive housing or permanent housing,

including behavioral health, addiction treatment, and other services.

9.37.130 Budgeting. The council must allocate appropriations required to implement this chapter in the annual budget ordinance.

9.37.140 Administrative rules. The director of housing and human concerns must adopt administrative rules to implement this chapter's provisions."

SECTION 2. This Ordinance takes effect one year after its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

ah:misc:014(1)abill02

INTRODUCED BY:
