

REQUEST FOR LEGAL SERVICES

RECEIVED

By Corporation Counsel at 4:02 pm, Oct 25, 2024

Date: October 25, 2024
From: Tom Cook, Chair
Water and Infrastructure Committee

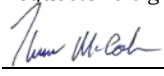
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Caleb P. Rowe, Esq.

Subject: BILL 130 (2024), AMENDING SECTION 14.07.090, MAUI COUNTY CODE, TO ALLOW THE DIRECTOR OF WATER SUPPLY TO ADMINISTRATIVELY EXTEND WATER METER RESERVATIONS IN LIMITED CIRCUMSTANCES (WAI-30)

Background Data: Please see attached revised bill. Please submit your response to wai.committee@mauicounty.us with a reference to WAI-30.

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

Requestor's signature  Tom Cook, Chair	Contact Person <u>Jarret Pascual or Carla Nakata</u> (Telephone Extension: <u>7141 or 5519, respectively</u>)
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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): November 6, 2024
REASON: For posting on the November 15, 2024, Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: CPR	ASSIGNMENT NO. 2023-0137	BY: maa for alh
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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): _____

Changed section C(1) to reflect committee's intent that request for extension be submitted prior to expiration. Stating "within 60 days" suggests the request can be submitted for 60 days after the expiration

DEPARTMENT OF THE CORPORATION COUNSEL

Date 10/29/24

By 

(Rev. 7/03)

wai:ltr:030acc01:jpp

Attachment

ORDINANCE NO. _____

BILL NO. 130, CD1 (2024)

A BILL FOR AN ORDINANCE AMENDING SECTION 14.07.090, MAUI COUNTY CODE, TO ALLOW THE DIRECTOR OF WATER SUPPLY TO ADMINISTRATIVELY EXTEND WATER METER RESERVATIONS IN LIMITED CIRCUMSTANCES BASED ON SPECIFIC FINDINGS

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

SECTION 1. This Ordinance's purpose is to allow the Director of Water Supply to administratively extend water meter reservations in limited circumstances based on specific findings warranting an extension.

SECTION 2. Section 14.07.090, Maui County Code, is amended to read as follows:

"14.07.090 Payment of water system development fee.

A. Applicant ready for water service. The director [shall] must approve applications only upon payment of the water system development fee or application of credit for water service or additional water service, [provided] if water source capacity is available at that time. Total payment for water service [shall] must be the water system development fee in effect at the time the meter is installed.

B. Applicant not ready for water service. Upon payment of a deposit equal to the water system development fee set forth in the annual budget ordinance by an applicant who, to the director's satisfaction, is unable to accept water service immediately, the department may reserve an allocation of water service source capacity available at that time. Total payment for water service will be the water system development fee in effect at the time the meter is installed. [The] For reservations issued before January 1, 2025, the duration of [any such] the reservation [shall] may not exceed five years, [provided] if water service source capacity is available[.], subject to subsection (C). For reservations issued on or after

January 1, 2025, the duration of the reservation may not exceed three years, if water service source capacity is available, subject to subsection (C). The department and the applicant [shall] must agree in writing on the amount of any reserved allocation.

[If within five years, the applicant is not able to accept installation of water service, the application and the reservation of the allocation shall expire, the deposit paid by the applicant shall be forfeited, and said deposit shall be applied to the water system development fee fund with no credit of any kind toward any future application.]

C. Waiver or modification.

1. If an applicant with a reservation is unable to accept installation of water service within the duration of the reservation, the reservation may be extended for a period of two years by the director, if requested by the applicant at least 60 days prior to the reservation's expiration, and the director finds at least three of the following:

a. Strict application of the five-year reservation limitation would cause an absurd, unfair, or unreasonably harsh result to the applicant.

b. The applicant's circumstance or condition is exceptional, and the director would grant the same request if made by every similarly situated applicant.

c. Extension of the reservation expiration will be without detriment to existing users.

d. The applicant's construction plans for required water system improvements have been approved by the department and the applicant has completed significant construction on the water system improvements.

2. Findings justifying the waiver or modification must be reduced to writing in a memorandum which will be maintained in the applicant's file.

3. If the director is unable to make at least three of the four findings and denies the request for an extension, the applicant may appeal the decision to the board in accordance with chapter 14.11. The board may reverse the decision of the director in accordance with section 14.11.040 upon making at least three of the four findings set forth above.

D. Should the reservation and allocation expire, the deposit paid by the applicant must be credited to the property for use in a future application on the same property.

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, on its approval, takes effect retroactive to July 1, 2019.

APPROVED AS TO FORM AND LEGALITY:



Department of the Corporation Counsel
County of Maui

wai:misc:030abill01:jpp

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Alice L. Lee".

ALICE L. LEE

Upon the request of the Mayor.

WAI Committee

From: Caleb Rowe <Caleb.Rowe@co.maui.hi.us>
Sent: Tuesday, October 29, 2024 1:50 PM
To: Carla M. Nakata; Jarret P. Pascual; WAI Committee
Cc: Alice Hale; James Jensen
Subject: WAI 30
Attachments: WAI - 30 With Changes.docx; WAI- 30 CPR Changes and Signed.PDF

Here's the signed version with my updated language as discussed.

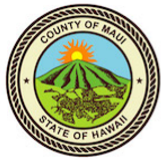
From: Jarret P. Pascual <Jarret.Pascual@mauicounty.us>
Sent: Tuesday, October 29, 2024 1:30 PM
To: Caleb Rowe <Caleb.Rowe@co.maui.hi.us>; Carla M. Nakata <Carla.Nakata2@mauicounty.us>
Cc: Alice Hale <Alice.L.Hale@co.maui.hi.us>; James Jensen <James.Jensen@co.maui.hi.us>
Subject: RE: WAI 30

Hi Caleb,

Here you go!

Thanks,
Jarret Pascual

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Jarret P. Pascual

Legislative Analyst
County of Maui | Office of Council Services
Email: Jarret.Pascual@mauicounty.us
Office: (808) 270-7141 | Cell: (808) 793-9257

From: Caleb Rowe <Caleb.Rowe@co.maui.hi.us>
Sent: Tuesday, October 29, 2024 1:01 PM
To: Carla M. Nakata <Carla.Nakata2@mauicounty.us>
Cc: Alice Hale <Alice.L.Hale@co.maui.hi.us>; James Jensen <James.Jensen@co.maui.hi.us>; Jarret P. Pascual <Jarret.Pascual@mauicounty.us>
Subject: Re: WAI 30

Sure. Can you send me the word copy? I only have the pdf version with the new changes

Sent from my iPhone

On Oct 29, 2024, at 12:58 PM, Carla M. Nakata <Carla.Nakata2@mauicounty.us> wrote:

I agree. We talked with Mr. Jensen about that ahead of the meeting but no request for revision was made. Do you want to incorporate the change before you return it and note the change in the comments section of the RLS?

From: Caleb Rowe <Caleb.Rowe@co.maui.hi.us>

Sent: Tuesday, October 29, 2024 12:47 PM

To: WAI Committee <WAI.Committee@mauicounty.us>

Cc: Alice Hale <Alice.L.Hale@co.maui.hi.us>; James Jensen <James.Jensen@co.maui.hi.us>; Carla M. Nakata <Carla.Nakata2@mauicounty.us>; Jarret P. Pascual <Jarret.Pascual@mauicounty.us>

Subject: WAI 30

I've signed off as to form and legality on the attached bill. That being said, I think you may want to edit the language and resubmit the language in section C(1). It currently reads, "if requested by the applicant **within**

60 days of the reservation's expiration." (emphasis added). As written, that would mean that they have 60 days AFTER the reservation expires to request the extension. Based on the conversation in committee, I do not believe that was the intent. I believe the committee wanted the request to be submitted prior to the expiration of the reservation. I think it should be "if requested by the applicant at least 60 days prior to the reservation's expiration" or "within the sixty days prior to the reservation's expiration."

With Aloha,

Caleb P. Rowe

Deputy Corporation Counsel, County of Maui