

**COUNCIL OF THE COUNTY OF MAUI**  
**BUDGET AND FINANCE COMMITTEE**

October 20, 2017

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

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

Chair and Members:

Your Budget and Finance Committee, having met on October 3, 2017, makes reference to the following:

1. County Communication 17-349, from the Mayor, informing the Council that the Department of Fire and Public Safety has not received an executed Memorandum of Agreement or letter of intent from the State Department of Land and Natural Resources for Makena Lifeguard Services for Fiscal Year 2018.
2. County Communication 17-350, from the Mayor, transmitting a letter of intent from Suzanne D. Case, Chairperson, Board of Land and Natural Resources, State Department of Land and Natural Resources, for salary reimbursements for Makena Lifeguard Services, commencing July 1, 2017.

By correspondence dated September 11, 2017, the Fire Chief transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT AMENDING THE MEMORANDUM OF AGREEMENT FOR LIFEGUARD SERVICES BETWEEN THE STATE OF HAWAII AND THE COUNTY OF MAUI FOR MAKENA BEACH PARK."

The purpose of the proposed bill is to authorize the Mayor to enter into an intergovernmental agreement to amend the Memorandum of Agreement with the State Department of Land and Natural Resources for lifeguard services at the State-owned Makena Beach Park. The agreement is for the State to pay the County \$264,014.66 for water safety officer positions at Makena Beach Park for the period July 1, 2017 through September 30, 2017. The agreement deletes the protections afforded by

**COUNCIL OF THE COUNTY OF MAUI**  
**BUDGET AND FINANCE COMMITTEE**

Page 2

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

Act 170, Session Laws of Hawaii 2002, as amended, which expired on July 1, 2017.

The Fire Chief said the amount anticipated to be received from the State for Fiscal Year 2018 is about \$1,056,059, which equates to about \$449,590 more than the prior year. He acknowledged the amount from the State would be adequate to cover the cost of the services, including fringe benefits.

Your Committee questioned whether the State covers equipment costs for Makena Beach Park. The Fire Chief responded the costs have been covered in the past, but he is unsure if they will be included for Fiscal Year 2018.

He said a Memorandum of Agreement to continue lifeguard services at Makena Beach Park should have been secured prior to the start of the fiscal year. He could not explain the State's rationale for quarterly agreements or the lateness of the ninth amendment to the Memorandum of Agreement, which was effective from July 1, 2017 through September 30, 2017.

The Fire Chief said during the last legislative session Act 170 and its demise were of great concern to all of the counties. Nonetheless, recognizing the services are needed at Makena Beach Park, the Department continued to provide lifeguard services without a commitment from the State.

The Interim Director of Finance said although there was no funding commitment for Fiscal Year 2018, payments were made for payroll purposes for the month of July. He said the funds were charged to the Department of Fire and Public Safety's budget in the interim. Once the State's letter of intent was received, payments were properly reflected to the appropriate index code.

Your Committee notes the deletion of the protections afforded by Act 170 forced the County to purchase its own liability insurance. Your

**COUNCIL OF THE COUNTY OF MAUI**  
**BUDGET AND FINANCE COMMITTEE**

Page 3

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

Committee also notes the cost of the insurance policy is about \$100,000 per year and the County's General Fund should be reimbursed by the State for this cost.

Your Committee questioned whether the State grant is based on reimbursements for costs incurred by the County on a quarterly or annual basis, and expressed dissatisfaction with the process. Your Committee noted the State should be charged for all fringe benefit costs, additional insurance premiums, and other costs related to the County providing lifeguard services on the State's behalf. Your Committee notes that, in past fiscal years, fringe benefit costs were not reimbursed to the County.

Your Committee noted if the State continues to proceed with quarterly agreements and reimbursements to the County, the State should explore options to find another entity to provide lifeguard services at Makena Beach Park.

Your Committee further questioned the need to extend an existing Memorandum of Agreement rather than enter into a new agreement with the State. Your Committee recommended a new agreement be pursued.

Your Committee acknowledged the agreement being considered expired on September 30, 2017. Your Committee supported the continuation of much-needed lifeguard services at Makena Beach Park pending an agreement beginning October 1, 2017, with the understanding the County will charge the State for all costs incurred.

Your Committee voted 8-0 to recommend passage of the proposed bill on first reading. Committee Chair Hokama, Vice-Chair White, and members Atay, Carroll, Cochran, Guzman, King, and Sugimura voted "aye." Committee member Crivello was excused.

Your Budget and Finance Committee RECOMMENDS that Bill \_\_\_\_\_ (2017), attached hereto, entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT AMENDING THE

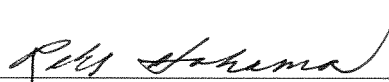
COUNCIL OF THE COUNTY OF MAUI  
**BUDGET AND FINANCE COMMITTEE**

Page 4

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

MEMORANDUM OF AGREEMENT FOR LIFEGUARD SERVICES BETWEEN THE STATE OF HAWAII AND THE COUNTY OF MAUI FOR MAKENA BEACH PARK," 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.



\_\_\_\_\_  
RIKI HOKAMA, Chair

bf:cr:17083aa:mmy

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

BILL NO. \_\_\_\_\_ (2017)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE  
COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL  
AGREEMENT AMENDING THE MEMORANDUM OF AGREEMENT FOR  
LIFEGUARD SERVICES BETWEEN THE STATE OF HAWAII AND THE COUNTY  
OF MAUI FOR MAKENA BEACH PARK

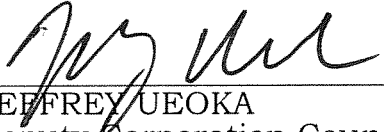
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. On July 3, 2008, the State of Hawaii and the County of Maui entered into an agreement where the County would provide lifeguard services at Makena Beach Park. The State of Hawaii and the County of Maui have amended this Agreement over the years to continue the practice of providing County lifeguard services at Makena Beach. The protections afforded by Act 170, Session Laws of Hawaii 2002, as amended, expired on July 1, 2017. The removal of these protections affects a significant section of the original agreement and therefore the proposed Amendment to the Memorandum Agreement, attached hereto as Exhibit "1", has the potential to place a financial obligation on the County. Section 2.20.020, Maui County Code ("MCC"), provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the County or any department or agency thereof.

SECTION 2. Authorization. The Council hereby authorizes the Mayor or his authorized representative to execute the Amendment to the Memorandum of Agreement, and any further amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

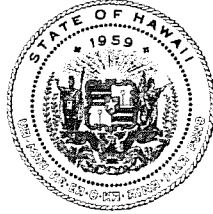
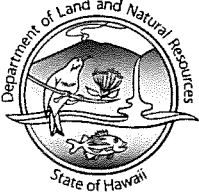


---

JEFFREY UEOKA  
Deputy Corporation Counsel  
County of Maui

LF 2015-4654  
2017-08-30 Ordinance MOA

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

August 22, 2017

Fire Chief Jeffery Murray  
Maui Fire Department  
200 Dairy Road  
Kahului, Hawaii 96732

Dear Fire Chief Murray:

The purpose of this letter is to serve as the ninth written amendment to the Memorandum of Agreement for Lifeguard Services (MOA) made and entered into on July 3, 2008, as amended on July 22, 2009, June 28, 2010, June 16, 2011, June 8, 2012, June 7, 2013, May 14, 2014, June 1, 2015, and June 17, 2016 between the State of Hawaii and the County of Maui for Makena Beach.

The available funding is limited to \$264,014.66 for this amendment. Division of State Parks understands you are able to continue to provide lifeguard services at Makena under the following conditions:

1. This amendment will be for lifeguard services at Makena Beach State Recreation Area, Island of Maui, from July 1, 2017 through September 30, 2017, provided that the State may cancel the contract at any time with 30 days written notice.
2. Funding under this amendment can be used solely for Water Safety Officer positions until further discussion and concurrence.
3. The effective date of this amendment is July 1, 2017.

EXHIBIT " 1 "

4. Funds to be transmitted to the County of Maui under this amendment shall total \$264,014.66.

| Employee                  | Annual Salary       | Benefits            | Total                 | Quarter             |
|---------------------------|---------------------|---------------------|-----------------------|---------------------|
| OSO IV Captain SR21 G     | \$                  | \$                  | \$                    | \$ 30,026.54        |
| OSO III Lieutenant SR19 F | \$                  | \$                  | \$                    | \$ 26,697.57        |
| OSO II SR17 H             | \$                  | \$                  | \$                    | \$ 26,697.57        |
| OSO II SR17 G             | \$                  | \$                  | \$                    | \$ 25,672.01        |
| OSO II SR17 F             | \$                  | \$                  | \$                    | \$ 24,679.35        |
| OSO II SR17 F             | \$                  | \$                  | \$                    | \$ 24,679.35        |
| OSO II SR17 F             | \$                  | \$                  | \$                    | \$ 24,679.35        |
| OSO II SR17 E             | \$                  | \$                  | \$                    | \$ 23,752.50        |
| OSO II SR17 E             | \$                  | \$                  | \$                    | \$ 23,752.50        |
| OSO II SR17 D (half-time) | \$                  | \$                  | \$                    | \$ 11,424.50        |
| OSO II SR17 C             | \$                  | \$                  | \$                    | \$ 21,953.65        |
| <b>Total</b>              | <b>\$577,681.00</b> | <b>\$478,377.64</b> | <b>\$1,056,058.64</b> | <b>\$264,014.66</b> |

5. All other terms and conditions of the MOA shall remain unchanged with the exception of Section C. The following language is deleted:

In accordance with Act 170, Session Laws of Hawaii 2002, as amended by Act 152, Session Laws of Hawaii 2007, and Act 81, Session Laws of Hawaii 2009, “a county lifeguard, the employing county, and the State shall not be liable for any civil damages resulting from any act or omission of the lifeguard while providing rescue, resuscitative, or other lifeguard services on the beach or in the ocean in the scope of employment as a county lifeguard. This exception from liability, however, shall not apply when the claim for civil damages results from a county lifeguard’s gross negligence or wanton act or omission.”

Please sign and date below and return the original to us. Your staff may call Mr. Curt A. Cottrell at 587-0290, if there are any questions.

Sincerely,



SUZANNE D. CASE  
 Chairperson  
 Board of Land and Natural Resources



Fire Chief Jeffery Murray  
MOA, 9<sup>th</sup> Amendment

APPROVED AS TO FORM:



---

Date: August 23, 2017  
Deputy Attorney General  
Office of the Attorney General

RECOMMEND APPROVAL:



---

Date: 8/20/2017  
FIRE CHIEF JEFFERY MURRAY  
Maui Fire Department  
County of Maui

ACKNOWLEDGED:

---

Date: \_\_\_\_\_  
ALAN M. ARAKAWA  
Mayor  
County of Maui

APPROVED AS TO  
FORM AND LEGALITY:

---

Deputy Corporation Counsel  
County of Maui

Date: \_\_\_\_\_